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Resisting Putting the Cat in the Bag: The Case Against Extending Minnesota's Dog Attack Strict Liability Statute to Cats

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**RESISTING PUTTING THE CAT IN THE BAG: THE CASE
AGAINST EXTENDING MINNESOTA’S DOG ATTACK
STRICT LIABILITY STATUTE TO CATS**

*Julianna Passe**

I. INTRODUCTION	382
II. BACKGROUND	384
<i>A. LIABILITY FOR DOG ATTACKS</i>	385
1. <i>COMMON LAW SCIENTER ACTIONS</i>	385
2. <i>COMMON LAW NEGLIGENCE ACTIONS</i>	388
3. <i>THE ONE BITE RULE</i>	389
4. <i>STRICT LIABILITY STATUTES</i>	392
<i>B. MINNESOTA LAW</i>	394
1. <i>MINNESOTA’S DOG BITE STATUTE</i>	394
2. <i>MINNESOTA CASE LAW INTERPRETING § 347.22</i>	397
3. <i>MINNESOTA CASE LAW REGARDING CATS</i>	402
<i>C. CATS VERSUS DOGS</i>	404
1. <i>DISEASES CAUSED BY CATS</i>	405
2. <i>LIKELIHOOD OF FATALITY CAUSED BY ATTACK</i>	408
3. <i>HARMS CAUSED BY OTHER DOMESTIC ANIMALS</i>	409
4. <i>ROAMING OUTDOORS</i>	410
<i>D. PROPOSED MINNESOTA LEGISLATION</i>	412
III. ANALYSIS: THE ARGUMENT AGAINST EXTENDING THE STATUTE TO CATS	413
<i>A. HARMS CAUSED BY CATS ARE INSUFFICIENT TO JUSTIFY STRICT LIABILITY</i>	413
1. <i>DISEASES TRANSMITTED BY CATS DO NOT MERIT IMPOSITION OF STRICT LIABILITY</i>	413
2. <i>CAT BITES AND ATTACKS SHOULD NOT BE SUBJECT TO HEIGHTENED LIABILITY</i>	416
3. <i>STRICT LIABILITY IS UNNECESSARY BECAUSE CAT ATTACKS ARE NOT FATAL</i>	418
<i>B. LEGAL CONSIDERATIONS SUPPORT NOT EXTENDING THE STATUTE</i>	419
1. <i>LESSENING THE BURDEN ON THE VICTIM IS INCONSISTENT WITH THE HARM POSED BY CATS</i>	419

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2.	<i>COURTS AND JURIES WILL STRUGGLE TO DEFINE PROVOCATION</i>	420
3.	<i>THE STATUTE WILL NOT HAVE A SUBSTANTIAL IMPACT ON MAKING CAT OWNERS MORE RESPONSIBLE FOR THEIR PETS</i>	423
4.	<i>SUITABLE CAUSES OF ACTION ALREADY EXIST FOR CAT BITE VICTIMS</i>	424
5.	<i>EXTENDING STRICT LIABILITY TO CATS IS CONTRARY TO THE ORIGINAL LEGISLATIVE INTENT</i>	425
IV.	CONCLUSION	425

I. INTRODUCTION

In the late summer of 2013, Gary Nelson, a television news reporter in Florida, was unexpectedly sidelined from his job after venturing into his driveway.¹ Mr. Nelson sustained an injury that required multiple hospital visits, surgeries, and hours of physical therapy.² The cause of the injury was not a runaway vehicle, a jagged piece of metal, or a malfunctioning lawnmower; it was Mr. Nelson's cat, Buckles.³ Buckles bit Mr. Nelson in the finger joint because he was not quite ready to come inside, causing the reporter to be unable to work for over six weeks.⁴ Despite the pain and suffering caused by Buckles, Mr. Nelson reaffirmed his love for his cat and stated that he had learned never to force a cat to come home before it is ready.⁵ Mr. Nelson's story is a rare instance of serious injuries inflicted by a cat.⁶

In spite of the potential dangers of pet ownership, pets have an undeniably important place in the lives of millions of animal-loving Americans.⁷ The modern human-pet relationship is a continuation of thousands of years of pet ownership, dating back to the Egyptians, when animals were valued as companions and not merely for their utilitarian

¹ Kevin Eck, *Miami Reporter on Tail End of Recovery from Cat Bite*, MEDIABISTRO (Sept. 30, 2013), www.mediabistro.com/tvspy/miami-reporter-on-tail-end-of-recovery-from-cat-bite_b105226 (describing the facts behind Mr. Nelson's injuries resulting from a cat bite).

² *Id.* (noting the severity of the injuries that can be caused by a cat bite).

³ *Id.* (stating Mr. Nelson's injuries resulted from a cat bite).

⁴ *Id.* (discussing the events leading up to Mr. Nelson's injuries).

⁵ *Id.* (demonstrating a cat owner's understanding of the independent nature of cats).

⁶ *See infra* text accompanying note 257 (noting the relative infrequency of cat bites).

⁷ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. b (2010) (explaining that pets such as dogs and cats are frequently considered members of the family because they provide companionship).

purposes.⁸ Humans spend billions of dollars every year caring for their four-legged friends, including spending a portion of their hard-earned money on such luxuries as pet spas, pet hotels, and pet strollers.⁹ While the percentage of American households with dogs is slightly greater, approximately thirty-eight percent of American households owned cats as of 2008.¹⁰ Furthermore, seventy-eight percent of cat owners feel that their cats are members of their families.¹¹

Since dogs and cats are a part of many households, a substantial body of law has developed regarding the liability of pet owners when their pets inflict injuries on other people.¹² Common law has long recognized the liability of owners of domestic animals, and about half of jurisdictions today have adopted a strict liability standard for dog owners.¹³ Generally, strict liability statutes hold a dog owner liable when his or her dog attacks or injures another person, regardless of whether the owner had any previous knowledge of the dog's propensity to engage in dangerous behavior.¹⁴

Almost all jurisdictions adopting strict liability statutes expressly limit their application to dogs.¹⁵ In 2013, however, Representative JoAnn Ward introduced a bill to the Minnesota House of Representatives, seeking to modify Minnesota's existing dog attack liability statute by extending it to cats.¹⁶ According to Representative Ward, this proposed statute reflects the fact that cats are quite capable of inflicting serious bodily injury.¹⁷ The statute, however, overlooks many of the essential differences between cats and dogs, such as the implications of size differences.¹⁸ Additionally, the

⁸ Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1064 (1995) (exploring the relationship of humans and animals over time).

⁹ PEW RESEARCH CTR., GAUGING FAMILY INTIMACY: DOGS EDGE CATS (DADS TRAIL BOTH) 1 (2006), available at <http://pewresearch.org/assets/social/pdf/Pets.pdf> (noting that while Americans spent \$17 billion in 1994, spending on pets had increased to approximately \$39.5 billion in 2005).

¹⁰ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. b (explaining further that forty-six percent of American households own dogs, while seventy-one percent of households own a pet of some kind).

¹¹ PEW RESEARCH CTR., *supra* note 9, at 1 (noting the importance of pets to American households).

¹² See *infra* Part II (discussing the common law distinction between wild and domestic animals and the various standards of liability applied to dogs).

¹³ See *infra* Part II.D (tracing the development and characteristics of strict liability dog bite statutes). "Many of the statutes are limited to the special problem of dog bites, but other statutes apply to a broader range of injuries and harms brought about by dogs." RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. d.

¹⁴ See, e.g., MINN. STAT. § 347.22 (2013) (stating that a dog owner will be held liable for injuries caused by his dog).

¹⁵ See *infra* text accompanying note 103 (discussing the removal of the scienter requirement).

¹⁶ See *infra* Part II.D (exploring the introduction of Representative Ward's bill in the Minnesota House of Representatives).

¹⁷ See *infra* Part II.C.1–2 (describing the harms caused by cats).

¹⁸ See *infra* Part II.C (noting the differences in sizes between cats and dogs).

statute discounts the overall infrequency of cat bites, as dog bites account for eighty to ninety percent of animal bites, while cats account for only five to fifteen percent.¹⁹ Furthermore, the statute disregards general societal understandings of the dangers posed by dogs and cats.²⁰ The proposed extension of Minnesota's strict liability statute is unprecedented and will only serve to complicate the law regarding pet owners' liability.²¹

This article begins by describing common law standards for liability for injuries caused by wild and domestic animals.²² The article then explores different statutes jurisdictions currently follow regarding dog bite liability.²³ Next, it explains the legislative history behind the Minnesota statute and identifies how Minnesota courts have applied the dog bite statute.²⁴ Then, the article discusses Minnesota cases involving injuries inflicted by cats and highlights the fundamental differences between dogs and cats.²⁵ Finally, the article concludes by asserting that the proposed bill is unnecessary and potentially unworkable.²⁶

II. BACKGROUND

Dog bite strict liability statutes provide general evidence about how the courts would implement a cat bite strict liability statute and affect cat owners.²⁷ A number of states have enacted dog bite strict liability statutes, but common law causes of action still exist even in states with strict liability statutes.²⁸ Minnesota has addressed the issue of pet owner liability both through enacting a dog bite strict liability statute and through a number of court decisions discussing the liability of both dog and cat owners.²⁹ Minnesota's approach to pet owner liability provides insight into whether the

¹⁹ See *infra* text accompanying note 257 (noting the prevalence of dog bites).

²⁰ See *infra* Part II.C (describing society's focus on the danger of dogs and tolerance for the dangers posed by cats).

²¹ See *infra* Part III (arguing that the existing remedies are sufficient to compensate for the risk of harm posed by cats).

²² See *infra* Part II.A.1–2 (exploring the common law standards of liability).

²³ See *infra* Part II.A.4 (discussing current dog bite liability statutes in various jurisdictions).

²⁴ See *infra* Part II.B.1 (exploring the adoption of Minnesota's strict liability statute).

²⁵ See *infra* Part II.B.3 (exploring Minnesota case law discussing liability for cat bites).

²⁶ See *infra* Part III (arguing that the common law remedies for cat bites are adequate and that the proposed strict liability for cat owners is unnecessary).

²⁷ See *infra* Part II.B.2 (explaining how the courts have interpreted and implemented the Minnesota statute).

²⁸ See, e.g., *Matson v. Kivimaki*, 200 N.W.2d 164, 169 (Minn. 1972) (noting that the plaintiff could have pursued both a cause of action under the statute as well as a claim for negligence).

²⁹ See *infra* Part II.B (discussing Minnesota case law regarding cat and dog bites).

proposed bill extending strict liability to cats is consistent with the underlying concerns of the existing statute.³⁰

A. Liability for Dog Attacks

The United States has a history of providing dog bite victims with a legal remedy for their injuries.³¹ Though every jurisdiction provides some type of remedy for dog bite victims, the particular remedy afforded varies among the jurisdictions.³² Moreover, the theories of liability for dog bites have evolved significantly over time.³³ This section will discuss the four primary concepts regarding the liability of dog owners: (1) common law scienter actions; (2) common law negligence actions; (3) the One Bite Rule; and (4) strict liability statutes.³⁴

1. Common Law Scienter Actions

The common law categorizes legal remedies and owner liability by whether the animal involved in the cause of action is considered wild or domestic.³⁵ The owner of a domestic animal is generally not liable for damages caused by the animal unless the owner had knowledge of the dangerous nature or propensities of the animal.³⁶ The rationale behind the distinction between the different classes of animals is that most domestic animals are usually safe, so that strict liability is not justified for all animals.³⁷ Domestic animals are generally considered to be safe because they

³⁰ See *infra* Part II.B.1 (providing background on the impetus behind the dog bite statute).

³¹ See Julie A. Thorne, *If Spot Bites the Neighbor, Should Dick and Jane Go to Jail?*, 39 SYRACUSE L. REV. 1445, 1469–71 (1988) (explaining the early common law causes of action for harms caused by animals).

³² See Ward Miller, Annotation, *Modern Status of Rule of Absolute or Strict Liability for Dog Bite*, 51 A.L.R.4th 446 (1989) (describing the use of various theories of liability).

³³ See, e.g., Lynn A. Epstein, *There Are No Bad Dogs, Only Bad Owners: Replacing Strict Liability with a Negligence Standard in Dog Bite Cases*, 13 ANIMAL L. 129, 131 (2006) (explaining that courts historically imposed strict liability only for abnormally dangerous animals and that some jurisdictions eventually adopted strict liability dog bite statutes).

³⁴ See *infra* Part II.A–D (exploring the different common law and statutory remedies for victims of dog attacks).

³⁵ See *Clark v. Brings*, 169 N.W.2d 407, 409 (Minn. 1969) (noting that the “judicial distinction between classes of animals was clearly announced, at least by dicta, as early as 1730”).

³⁶ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23. In contrast, the owners of wild animals are strictly liable under the common law for damage caused by their animals. *Id.* § 22.

³⁷ *Id.* § 23 cmt. b (noting that domestic animals are generally safe, or at least “not abnormally unsafe in a way that would justify the imposition of strict liability”).

pose only a modest risk of danger.³⁸ Domestic animals also frequently provide either economic or companionship benefits to humans.³⁹ Since many people own cats and dogs, the modest danger posed by cats and dogs is largely reciprocal, thus allowing for a lessened degree of liability.⁴⁰

The categorization of an animal as wild or domesticated has a tremendous impact on the extent of the owner's liability today and remains inconsistent.⁴¹ The liability attributed to each animal category varies by location and scholars often cannot agree on which animals should be categorized as domestic.⁴² However, most scholars agree cats and dogs belong in the domestic animal category.⁴³

Although the common law classification may at times seem arbitrary, the common law today requires that the owner of a domestic animal have actual or constructive knowledge, often referred to as scienter, that the animal is dangerous or has a dangerous propensity before liability attaches.⁴⁴ If this requirement is fulfilled, a domestic animal will be categorized as abnormally dangerous and the court will use a strict liability standard.⁴⁵ Scienter does not require that the defendant have actual

³⁸ *Id.* (noting the prevalence of domestic animals in society and the benefits of their ownership).

³⁹ *Id.* Livestock are economically valuable, and pets such as cats or dogs provide companionship that many people enjoy. *Id.*

⁴⁰ *Id.* (stating that lessened liability is justified by the fact that many people own dogs or cats).

⁴¹ Bruce A. Levin & Michael Spak, *Lions & Lionesses, Tigers & Tigresses, Bears & . . . Other Animals: Sellers' Liability for Dangerous Animals*, 58 NOTRE DAME L. REV. 537, 551–52 (1983) (arguing that it is illogical to base liability on what the authors deem to be arbitrary categorization based on unclear definitions). “Each animal is an individual and cannot summarily be placed in the wild or domestic category.” *Id.* at 552–53.

⁴² RESTATEMENT (SECOND) OF TORTS § 506 (1977). The Second Restatement distinguishes between wild and domestic animals by evaluating whether they are devoted to the service of mankind. *Id.* The Restatement acknowledges that this method of categorization is at times problematic because animals may be put in different categories depending on the location of the animal. *Id.* at cmt. b. For example, elephants would fall under the domestic animal categorization in places such as Burma because they are used as draft animals there, while in the United States, elephants are firmly in the wild animal category. *Id.*

⁴³ *But see Clark*, 169 N.W.2d at 409–11 (rejecting the plaintiff's argument that the common law distinction between wild and domestic animals was based on “comparative economic utility” and that owners of “useless” animals were not entitled to the less stringent standards of liability by holding that although the purpose of animals has changed over time, the law has not evolved into considering animals that are now primarily kept for mere pleasure or exercise to be wild animals).

⁴⁴ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 (explaining that an owner of any animal may be liable for injuries caused by the animal if the owner “knows or has reason to know” that the animal possesses “dangerous tendencies abnormal for the animal's category”). Black's Law Dictionary states that the term “scienter” means “a degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission.” BLACK'S LAW DICTIONARY (9th ed. 2009).

⁴⁵ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 (noting that “[a]n owner or possessor of an animal that the owner or possessor knows or has reason to know has dangerous tendencies abnormal for the animal's category is subject to strict liability”).

knowledge of the vicious propensity of the animal, only that the nature of the propensity would have put a prudent person on notice.⁴⁶ Furthermore, the owner is not required to have knowledge or constructive knowledge of the animal's actual viciousness; the mischievousness or playfulness of an animal may result in its classification as a dangerous animal.⁴⁷ For instance, the court in *Jewell v. Backes* addressed whether an owner knew of her horse's dangerous propensity after learning that the horse had playfully nipped a trainer on a previous occasion.⁴⁸ The court emphasized that the issue was not whether the previous bite was playful, but rather whether the previous bite showed a propensity to cause harm.⁴⁹

The owner of an animal with vicious propensities is not liable, however, when a plaintiff voluntarily and unnecessarily places himself in the way of a known vicious animal.⁵⁰ In *Anderson v. Anderson*, for instance, the defendant was not liable for the injuries his bull inflicted upon the plaintiff.⁵¹ The plaintiff had over sixty years of experience working with livestock, including bulls, and had previously owned the bull that injured him.⁵² Despite his experience, the plaintiff admitted he knowingly placed himself in danger when he entered the bull's enclosure without a cattle dog.⁵³ The court noted that a plaintiff's slight negligence or want of due care is not enough for the owner of a domestic animal with vicious propensities to escape liability.⁵⁴ However, the court found for the defendant and concluded that the plaintiff, "with full knowledge of the dangerous propensities of the bull, exposed himself to the existing dangers."⁵⁵ A person is contributorily negligent if he or she fails to act in a way that a reasonable person would act in order to protect oneself from harm.⁵⁶ The common law scienter action may be

⁴⁶ *Hagerty v. Radle*, 37 N.W.2d 819, 827–28 (Minn. 1949) (upholding the jury's finding of the actual or constructive notice of the vicious propensities of the horse, because the verdict was supported by the evidence).

⁴⁷ *See Groner v. Hedrick*, 169 A.2d 302, 303 (Penn. 1961) (holding that knowledge of a dog's tendency to jump on people could constitute notice of the dog's dangerous nature).

⁴⁸ *Jewell v. Backes*, No. A07-2358, 2008 WL 4133865, at *1 (Minn. Ct. App. Sept. 9, 2008) (examining what constitutes knowledge of an animal's dangerous nature).

⁴⁹ *Id.* at *2 (focusing on the foreseeability of future harm).

⁵⁰ *See, e.g., Anderson v. Anderson*, 107 N.W.2d 647, 649 (Minn. 1961) (accepting defendant's claim that contributory negligence will bar recovery in this case).

⁵¹ *Id.* at 651 (noting that a plaintiff cannot recover if he knows of the risk posed by the animal but chooses to disregard it).

⁵² *Id.* (focusing on the plaintiff's knowledge of bulls and of the particular bull that injured him).

⁵³ *Id.* at 648 (noting the extent of the plaintiff's previous experience with livestock).

⁵⁴ *Id.* at 650 (stating that contributory negligence does not necessarily relieve the defendant's liability, although it may mitigate the damages).

⁵⁵ *Id.* at 651 (holding that the plaintiff's extensive knowledge of the nature of the bull foreclosed him from recovering).

⁵⁶ *See* RESTATEMENT (SECOND) OF TORTS § 466 (1965) (explaining that contributory negligence consists of either intentionally exposing oneself to the danger created

defeated if the defendant is able to establish that the plaintiff intentionally and unreasonably subjected himself to the “danger created by the defendant’s negligence, of which danger the plaintiff knows or has reason to know.”⁵⁷

2. Common Law Negligence Actions

If a plaintiff is not able to establish scienter, many courts recognize other claims.⁵⁸ The court may hold an animal owner liable under a negligence standard even if the abnormally dangerous requirement of the scienter action is lacking.⁵⁹ An owner is liable if his or her negligence caused the physical harm, unless the duty of reasonable care is inapplicable.⁶⁰ Hence, the owner of a domestic animal may be held liable for bringing the animal into an inappropriate societal setting or for failing to properly restrain the animal.⁶¹

A number of cases demonstrate that a plaintiff can bring a scienter action and a negligence action simultaneously.⁶² In *Ryman v. Alt*, a St. Bernard bit the plaintiff while visiting a mobile home.⁶³ The owner, while holding the dog, invited the plaintiff to pet it.⁶⁴ The dog broke free of its owner and bit the plaintiff’s lip.⁶⁵ The portion of the plaintiff’s lip was removed and the plaintiff had a permanent facial deformity, even after three

by the defendant’s negligence or failing to engage in conduct which a reasonable person would to protect oneself from harm).

⁵⁷ RESTATEMENT (SECOND) OF TORTS § 466 (1965)

⁵⁸ See, e.g., *Christensen v. County of Kandiyohi*, No. C3-93-526, 1993 WL 459894, at *1 (Minn. Ct. App. Nov. 9, 1993) (addressing a dog bite victim’s claim for damages under a negligence theory).

⁵⁹ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. i (explaining that negligence is an alternative cause of action that may be used to recover against the owner of an animal).

⁶⁰ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 6 (“An actor whose negligence is a factual cause of physical harm is subject to liability for any such harm within the scope of liability, unless the court determines that the ordinary duty of reasonable care is inapplicable.”).

⁶¹ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. i (noting an animal owner may be liable for foreseeable harms caused by the negligence of the owner).

⁶² See, e.g., *Balen v. Peltier*, No. A05-787, 2006 WL 163518, at *2 (Minn. Ct. App. Jan. 18, 2006) (stating that a plaintiff thrown from a horse could pursue both a scienter and negligence action); *Brunell v. Kyle*, No. A06-886, 2007 WL 1121362, at *5 (Minn. Ct. App. Apr. 17, 2007) (providing that a plaintiff kicked by a horse could amend her complaint to include a scienter action in addition to the negligence action).

⁶³ *Ryman v. Alt*, 266 N.W.2d 504, 506 (Minn. 1978). As discussed *infra* Part II.A.1, until Minn. Stat. § 347.22 was amended in 1980, strict liability only applied to dog attacks that occurred in rural areas. MINN. STAT. § 347.22 (1951) (amended 1980). In this case, the parties stipulated before the trial that Minn. Stat. § 347.22 did not apply in this case, because the attack occurred in a rural area. *Ryman*, 266 N.W.2d at 507 n.6.

⁶⁴ *Ryman*, 266 N.W.2d at 506 (noting the apparent negligence of the dog owner).

⁶⁵ *Id.* (describing the plaintiff’s injuries). Furthermore, the defendant apparently stated that he had meant to get rid of the dog because it bit him on a previous occasion. *Id.*

plastic surgeries.⁶⁶ The Minnesota Supreme Court specifically noted that, despite its prevalence, the scienter action was never the exclusive basis of recovery for injuries caused by a domestic animal in Minnesota.⁶⁷ The court remanded the case to the trial court because the negligence theory had not been presented to the jury at trial.⁶⁸

Scienter actions are more frequently pursued than negligence actions because many injuries happen when the animal's owner is not present, making negligence difficult to prove.⁶⁹ Negligence actions are only infrequently pled in cases concerning the conduct of dogs because of the prevalence of strict liability statutes.⁷⁰ Negligence causes of action are used much more frequently when plaintiffs are injured by domestic animals not included in strict liability statutes.⁷¹ For example, plaintiffs have brought negligence actions against the owners of a kitten that injured the plaintiffs because there was no statute providing strict liability for cat owners.⁷²

3. *The One Bite Rule*

Courts frequently single out dog owners by assigning them different standards of liability.⁷³ Many courts apply the One Bite Rule, also known as

⁶⁶ *Id.* (noting the severity of the injury inflicted by the dog).

⁶⁷ *Id.* at 508 (finding that Minnesota courts had “recognized a cause of action for injuries inflicted by a domestic animal based entirely upon the negligence of the animal's owner or keeper”).

⁶⁸ *Id.* The complaint in this case alleged negligence, but the counsel for both parties agreed to a special verdict form, which only addressed the common law scienter cause of action. *Ryman*, 266 N.W.2d at 506.

⁶⁹ *Id.* at 508 (noting the prevalence of scienter actions in cases involving injuries inflicted by domestic animals).

⁷⁰ See Epstein, *supra* note 33, at 139 (explaining that plaintiffs injured by dogs usually only pursue negligence actions when the state's strict liability standard requires the plaintiff to show the defendant's knowledge of the vicious nature of the dog and the plaintiff is unable to meet that burden).

⁷¹ See, e.g., *Rosenthal v. Hill Top Riding Acad., Inc.*, 110 N.W.2d 854 (Minn. 1961) (negligence for horse); *Lee v. Seekins*, 294 N.W. 842 (Minn. 1940) (negligence for horse); *Wedel v. Johnson*, 264 N.W. 689 (Minn. 1936) (negligence for horse); *Anderson*, 107 N.W.2d at 647 (negligence for bull). Importantly, a significant minority of jurisdictions have chosen not to adopt a strict liability statute in dog bite cases. RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. d. One reason the courts in these jurisdictions have refused to extend strict liability to dogs without a statute is because dogs have been traditionally accepted as friends of humankind and have substantial use to humankind. *Hillier v. Noble*, 458 A.2d 1101, 1104 (Vt. 1983).

⁷² *Thomas v. Weddle*, 605 S.E.2d at 244, 246 (N.C. Ct. App. 2004). In this case, the plaintiffs were unable to succeed under any of the negligence theories they presented because the element of proximate cause was lacking. *Id.*

⁷³ See Epstein, *supra* note 33, at 134 (explaining that public pressure led to stricter standards of liability for dogs).

the First Bite Rule.⁷⁴ The One Bite Rule incorporates the common law concept of scienter and requires the owner to know or have reason to know of the dog's propensity to engage in dangerous behavior.⁷⁵ Courts traditionally required the plaintiff to prove that the dog had bitten or attacked a person in the past before a dog owner was held liable.⁷⁶

Current jurisprudence has moved away from the traditional court interpretations of the One Bite Rule.⁷⁷ Courts now recognize there are circumstances where an owner knows or should know of the dangerous propensity of his or her dog, even though the dog has not bitten or attacked anyone.⁷⁸ For example, an owner should know his dog has a propensity for danger if the dog has unsuccessfully lunged at another person.⁷⁹ However, the One Bite Rule is limited in two important ways.⁸⁰ First, the dog owner is not liable for a subsequent dog bite if the owner had no reason to know that the dog had previously injured or attempted to injure a person.⁸¹ Second, an owner is not liable for a dog bite, despite knowledge of a previous bite, if the previous bite was the result of provocation.⁸²

The One Bite Rule promotes fairness for dog owners by not holding them liable for the unforeseeable actions of their dogs.⁸³ The rule requires that an owner will be liable for injuries caused by the dog if the owner knows

⁷⁴ See Cindy Andrist, *Is There (and Should There Be) Any "Bite" Left in Georgia's "First Bite" Rule?*, 34 GA. L. REV. 1343, 1350 (2000) (specifically discussing the evolution of the rule's application in Georgia).

⁷⁵ *Id.* at 1350–51 (noting that the rule compares the "dog's established pattern of behavior to the behavior that caused the plaintiff's injury").

⁷⁶ Anna Sibylle Ehresmann, *Torts: Smith v. Ruidoso: Tightening the Leash on New Mexico's Dogs*, 32 N.M. L. REV. 335, 339 (2002). Ehresmann discusses the fact that New Mexico strictly adhered to the traditional One Bite Rule until *Perkins v. Drury*, where the court held that "the old doctrine of every dog being entitled to 'one bite' is out of harmony with a modern humanitarian society." *Id.* at 339 n.140; *Perkins v. Drury*, 258 P.2d 379, 382 (N.M. 1953). The court recognized in *Perkins* that it was possible for an owner to be liable for the injuries caused by his or her dog if the dog's danger to humans had been manifested in traits other than viciousness. *Perkins*, 258 P.2d at 382.

⁷⁷ Epstein, *supra* note 33, at 134 (noting that courts applying the One Bite Rule often found that other dangerous characteristics of the dog were sufficient to demonstrate the owner's knowledge of the dog's dangerous character).

⁷⁸ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. c. For example, a person may have knowledge of her dog's dangerous propensity if the dog has a habit of jumping on people. *Id.*

⁷⁹ *Id.* The Restatement suggests that general tendencies of an animal, such as being generally frisky or barking, will not suffice to prove the dangerous propensity of the animal. *Id.*

⁸⁰ *Id.* (discussing the application of the One Bite Rule).

⁸¹ *Id.* (noting that the owner must have actual or constructive knowledge for the One Bite Rule to apply).

⁸² RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM §23 cmt. c. This exception is echoed in most strict liability statutes. See *infra* Part II.D (discussing strict liability statutes).

⁸³ Andrist, *supra* note 74, at 1351 (noting that the One Bite Rule requires comparing the previous behavior of the dog to the behavior that led to the plaintiff's injury when determining if the owner should be held liable).

of the dangerous propensity of the dog and does not restrain it.⁸⁴ Furthermore, the rule promotes community safety by giving owners of vicious dogs an incentive to keep their dogs contained.⁸⁵

The application of the One Bite Rule is demonstrated in an early Minnesota case, *Maron v. Marciniak*.⁸⁶ In that case, the plaintiff claimed the dog's owner had actual knowledge of the vicious nature of the dog.⁸⁷ The court looked to the circumstances of the alleged previous vicious conduct of the dog.⁸⁸ The dog had previously scratched three small children but all of those minor injuries had been inflicted in play.⁸⁹ Furthermore, there was no evidence that the injury at issue was not inflicted in similar circumstances.⁹⁰ The court also noted that the parents in the neighborhood frequently allowed their children to play with the dog, implying their trust in the dog and its lack of a reputation for viciousness.⁹¹ Thus, the court held that the only reasonable inference to be made from the facts was that the dog was of an "amiable disposition," and its owners could not be held liable for the bite.⁹² As *Maron* indicates, under the One Bite Rule, courts generally take into account the previous behavior of the dog and the reasons for the past behavior, as well as the general reputation of the dog.⁹³

The knowledge requirement has led to the One Bite Rule generally protecting dog owners instead of dog bite victims in jurisdictions that recognize the rule.⁹⁴ The One Bite Rule also allows the defendant to succeed more easily on a summary judgment motion.⁹⁵ The summary judgment standard requires the movant demonstrate that the plaintiff's cause of action lacks an element.⁹⁶ The defendant does not need to disprove the claim

⁸⁴ See *id.* (holding the dog owner liable where there was sufficient evidence to prove that the owner was aware of the dog's dangerous nature).

⁸⁵ See *Maron v. Marciniak*, 205 N.W. 894 (Minn. 1925) (decided more than twenty years before Minnesota adopted a strict liability statute).

⁸⁶ *Id.* at 894.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* Interestingly, while the court characterizes the injury at issue as a bite, it does not discuss the severity of the bite, though it notes that the evidence here does not prove that the dog did not inflict the bite in play. *Maron*, 205 N.W. at 894 (noting that the dog had previously scratched other children when playing with them). Without the underlying facts, it is difficult to ascertain why the court believes the bite may have occurred during play and whether this is acceptable because of relative mildness of the bite. *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* In this case, the court inquired into the neighborhood reputation of the dog, its prior behavior with other children, and the general disposition of the dog. *Id.*

⁹⁴ See *Andrist*, *supra* note 74, at 1352 (explaining that defendants frequently succeed with summary judgment motions in dog bite cases in jurisdictions following the One Bite Rule).

⁹⁵ *Id.* (noting the importance of the One Bite Rule in summary judgment motions).

⁹⁶ *Id.*

against him or her, only that the plaintiff cannot meet all of his or her burden.⁹⁷ Thus, when the plaintiff cannot successfully rebut the owner's affidavits denying any knowledge of the dangerous propensity of the dog, the defendant succeeds on the summary judgment motion and the plaintiff is denied any recovery.⁹⁸

4. *Strict Liability Statutes*

Today, more than half of jurisdictions have adopted strict liability statutes for dog attacks.⁹⁹ Although the statutes may define the conduct covered by the statute differently, almost all of the statutes are specifically limited to dogs.¹⁰⁰ The movement from the One Bite Rule to strict liability statutes came about largely because it was difficult for dog bite victims to prove scienter and to prove that the dog was abnormally vicious.¹⁰¹ Legislators were facing increasing pressure to create laws favorable to victims.¹⁰² The easiest way to create victim friendly laws was to remove the requirement and impose strict liability regardless of the owner's knowledge.¹⁰³

Although strict liability dog bite statutes remove the requirement of the owner's knowledge, they generally limit recovery to injured parties who were acting peaceably.¹⁰⁴ This is an integral part of most statutes and

⁹⁷ *Id.*

⁹⁸ *Id.* (arguing that the One Bite Rule allows dog owners to recover more easily).

⁹⁹ RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. d; Cynthia Hodges, *Table of Dog Bite Strict Liability Statutes*, ANIMAL LEGAL & HISTORICAL CENTER, <http://animallaw.info/articles/State%20Tables/tbusdogbite.htm> (last updated 2012). Today this list includes thirty-six states and the District of Columbia. The states are Alabama, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Washington, West Virginia, and Wisconsin. *Id.*

¹⁰⁰ *Id.* (providing a summary of the strict liability statutes and what animals are covered by the statutes).

¹⁰¹ Epstein, *supra* note 33, at 134 (noting that many courts found that a previous bite did not indicate viciousness).

¹⁰² *Id.* (noting that public pressure was mounting to provide an easier way for dog bite victims to recover).

¹⁰³ Epstein, *supra* note 33, at 134. Epstein argues that the common law one bite standard reflects society's determination that dogs are essentially humankind's companions and that, by moving away from this standard, the laws are effectively rejecting the reality of the important and prominent role that dogs play, and have always played, in society. *Id.* at 130–31. Notably, some jurisdictions have adopted breed specific legislation subjecting certain breeds of dogs to a heightened degree of regulation merely because of their specific breeds. See generally Safia Gray Hussain, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 FORDHAM L. REV. 2847 (2006).

¹⁰⁴ Epstein, *supra* note 33, at 134. Recovery "requires four elements: 1) injury caused by a dog owned by the defendant; 2) peaceable conduct of the person injured; 3)

prohibits victims from recovering if they somehow provoked the dog.¹⁰⁵ The provocation exception frequently proves to be the decisive factor in deciding whether a dog owner is liable in a particular case.¹⁰⁶ The provocation defense becomes problematic, however, when juries do not have information as to what provocation is.¹⁰⁷ When juries do not have an adequate definition of provocation, they are forced to either apply a common sense interpretation or listen to animal behavior experts attempt to explain the dog's psyche.¹⁰⁸

Other exceptions are also recognized by many statutes.¹⁰⁹ Most statutes provide that a dog owner is not liable if the victim was trespassing at the time of the dog attack.¹¹⁰ For instance, Connecticut's statute does not apply to any person bitten while trespassing or committing another tort.¹¹¹ Some statutes exempt police or military dogs that are on duty.¹¹² A number of states also allow comparative negligence defenses to their strict liability statutes.¹¹³ However, the provocation, trespass, and police dog exceptions are much more common.¹¹⁴

presence of the injured person in a place where he has the legal right to be; and 4) lack of provocation." *Id.* at 134–35.

¹⁰⁵ See Hilary M. Schwartzberg, *Tort Law in Action and Dog Bite Liability: How the American Legal System Blocks Plaintiffs from Compensation*, 40 CONN. L. REV. 845, 857 (2008) (noting that most strict liability statutes only provide two exceptions: a provocation and a law enforcement exception).

¹⁰⁶ Epstein, *supra* note 33, at 135 (discussing the importance of determining provocation in a strict liability statute).

¹⁰⁷ *Id.* at 135–36 (arguing that the lack of legislative intent as to the definition of provocation confuses juries and leads to inconsistent results).

¹⁰⁸ *Id.* (noting that the lack of adequate definition of what constitutes provocation may lead juries to "try and grapple with a parade of animal behavior experts").

¹⁰⁹ See, e.g., Schwartzberg, *supra* note 105, at 857–58 (noting that some jurisdictions seem to have negligence requirements in their strict liability standards).

¹¹⁰ See Hodges, *supra* note 99 (providing a summary of a number of dog bite statutes that contain a trespass exception).

¹¹¹ CONN. GEN. STAT. ANN. § 22-357 (West 2013). Connecticut's statute is one of many that provide that strict liability will not apply when the victim was trespassing. See Hodges, *supra* note 99 (summarizing the strict liability statutes).

¹¹² See Hodges, *supra* note 99 (summarizing the dog bite statutes of each state and noting if there is a police dog exception). The Minnesota Supreme Court held that police departments are not exempt from liability for the actions of police dogs under the statute. *Hyatt v. Anoka Police Dept.*, 691 N.W.2d 824, 828 (Minn. 2005).

¹¹³ Epstein, *supra* note 33, at 135. Contributory negligence compares the plaintiff's negligence with the defendant's strict liability and may mitigate the amount of damages that the defendant is required to pay. *Seim v. Garavalia*, 306 N.W.2d 806, 811 (Minn. 1981). Florida's strict liability dog bite statute, for example, reduces the liability of the owner by the percentage that the victim's negligence contributed to the bite. FLA. STAT. ANN. § 767.04 (West 2013).

¹¹⁴ See Hodges, *supra* note 99 (providing the text of all of the dog bite liability statutes in the United States which generally include defenses for police dogs and for cases of provocation or trespass, although comparative negligence provisions are relatively common as well).

While the vast majority of the statutes only apply to dogs, a few statutes cover other animals as well.¹¹⁵ For example, Illinois adopted a strict liability statute for a “dog or other animal.”¹¹⁶ Georgia, on the other hand, chooses to not single out dogs at all, holding liable the owner of a “vicious or dangerous animal of any kind.”¹¹⁷ Jurisdictions with strict liability statutes applicable to animals other than dogs rarely apply the statute to animals other than dogs.¹¹⁸

B. Minnesota Law

Minnesota has a strict liability dog bite statute that is currently expressly limited to dogs.¹¹⁹ Minnesota, however, may become the first state to explicitly extend its dog bite statute to cats.¹²⁰ This section will discuss three aspects of the current law in Minnesota: (1) Minnesota’s dog bite statute; (2) Minnesota case law interpreting the statute; and (3) Minnesota case law regarding cats.¹²¹

1. Minnesota’s Dog Bite Statute

Minnesota adopted its strict liability dog bite statute in 1951.¹²² Workers who frequently came into contact with dogs as part of their occupation supported the statute’s enactment.¹²³ The House Committee on the Judiciary minutes note that the bill’s proponents included three individual letter carriers and the father of a child who suffered a dog bite.¹²⁴ The

¹¹⁵ See *id.* (compiling all of the dog bite liability statutes, which are generally expressly limited to dogs, except for Georgia, Hawaii, and Illinois).

¹¹⁶ 510 ILL. COMP. STAT. ANN. 5/16 (West 2013).

¹¹⁷ GA. CODE ANN. § 51-2-7 (West 2010). Interestingly, this statute specifically excludes liability for domesticated fowl, including “roosters with spurs,” or for any domesticated livestock. *Id.*

¹¹⁸ See generally *Kirkham v. Will*, 724 N.E.2d 1062 (Ill. App. Ct. 2000); *Howle v. Aqua Ill., Inc.*, 978 N.E.2d 1132 (Ill. App. Ct. 2012); *Docherty v. Sadler*, 689 N.E.2d 332 (Ill. App. Ct. 1997) (pursuing cases against dog owners under the Illinois statute). The broader statutes have been applied in a number of horse cases as well. See generally *Burns v. Leap*, 645 S.E.2d 741 (Ga. Ct. App. 2007); *Mayer v. Naperville Manner, Inc.*, 634 N.E.2d 411 (Ill. App. Ct. 1994) (pursuing cases against horse owners under the Georgia and Illinois statutes).

¹¹⁹ MINN. STAT. § 347.22 (holding dog owners to a strict liability standard).

¹²⁰ H.R. 1087, 88th Leg. (Minn. 2013) (proposing extending the strict liability standard to cat owners).

¹²¹ See *infra* Parts II.B.1–3 (giving a general overview of Minnesota case law regarding dog and cat owners’ liability).

¹²² MINN. STAT. § 347.22 (1951) (amended 1980) (providing a strict liability standard for the first time for dogs in Minnesota).

¹²³ MINN. H.R. COMM. ON THE JUDICIARY, 57TH LEG. (Comm. Print 1951) (stating that letter carrier associations, among others, were proponents of the bill).

¹²⁴ *Hearing on H.F. 102. Before the H. Comm. on the Judiciary*, 57th Minn. Leg. (1951). Additionally, a representative from the Letter Carriers Association of South St. Paul, a

legislature sought to protect people who come into contact with dogs, particularly those who may lawfully enter the land of another, such as mail carriers.¹²⁵ The legislature also sought to eliminate the One Bite Rule in the hopes of protecting people who may enter another's property as part of their occupation by allowing them to more easily recover.¹²⁶

The statute has undergone a few revisions since its original enactment.¹²⁷ The original statute read as follows:

If a dog, without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be in any urban area, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term "owner" includes any person harboring or keeping a dog. The term "dog" includes both male and female of the canine species.¹²⁸

The statute originally limited strict liability to dog owners in urban areas because legislators worried that the bill could handicap farmers who use dogs to protect their property.¹²⁹ This limitation was eradicated by the statute's amendment in 1980.¹³⁰

The 1980 amendment also changed the statute by modifying the definition of an owner.¹³¹ The revised statute stated that the "term 'owner' includes any person harboring or keeping a dog *but the owner shall be primarily liable.*"¹³² The legislature may have instituted this change because the courts had been struggling with the meaning of "owner" in two cases.¹³³

representative of the Minneapolis Fire Department, and a representative from the Trades and Labor Assembly attended the hearing in support of the bill. *Id.*

¹²⁵ *Lewellin ex rel. Lewellin v. Huber*, 465 N.W.2d 62, 65 (Minn. 1991). The Committee specifically discussed the need for the bill as regards mail carriers, service men, etc. *Hearing on H.F. 102 Before the H. Comm. on the Judiciary*, 57th Minn. Leg. (1951).

¹²⁶ *Hearing on S.F. 1042 Before the Sen. Comm. on the Judiciary*, 71st Minn. Leg. (1979) audio tape (comments of Sen. Marion O. Menning), cited in *Lewellin*, 465 N.W.2d at 65 n.3 (noting that letter carriers, firefighters, and tradespeople were proponents of the bill).

¹²⁷ MINN. STAT. § 347.22 (1951) (amended 1980, 1986)

¹²⁸ *Id.* (providing that dog owners are strictly liable for the attacking or injuring behavior of their dogs).

¹²⁹ *Hearing on H.F. 102 before the H. Comm. on the Judiciary*, 57th Minn. Leg. (1951) (stating that some of the committee members were concerned that the statute could limit the use of dogs by farmers to protect their property).

¹³⁰ MINN. STAT. § 347.22 (1980) (amended 1986) (providing that the strict liability statute applied to all dogs in Minnesota, regardless of whether the injuring behavior took place in an urban or rural area).

¹³¹ *Id.* Previously, the statute provided that owner meant "any person harboring or keeping a dog." MINN. STAT. ANN. § 347.22 (West 1951).

¹³² *Id.* (emphasis added).

¹³³ See *Verett v. Silver*, 244 N.W.2d 147, 149 (Minn. 1976) (concluding that a jury instruction regarding the meaning of "owner" was correct); *Gilbert v. Christiansen*, 259

In *Verett v. Silver*, the court held that one could be an owner without being in immediate control of the dog.¹³⁴ Another case held that a corporation managing an apartment complex was not the owner of a tenant's dog that bit another tenant.¹³⁵ Although courts still must interpret the meaning of "owner" under the statute, the 1980 amendment clarified that the owner shall be primarily liable for the harmful conduct of the dog, even if others come within the statutory definition of "owner."¹³⁶

Today, the statute reflects many of the standard characteristics of strict liability dog bite statutes in other states.¹³⁷ Minnesota's current statute reads as follows:

If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the dog may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term "owner" includes any person harboring or keeping a dog but the owner shall be primarily liable. The term "dog" includes both male and female of the canine species.¹³⁸

The language of the statute limits such liability to dogs, as is the case with most strict liability statutes.¹³⁹

N.W.2d 896, 898 (Minn. 1977) (rejecting the argument that the corporation was an owner of the dog because it received an economic benefit from renting to a dog owner).

¹³⁴ *Verett*, 244 N.W.2d at 149. The jury instructions in this case indicated that to be liable under the statute, the defendant need not be the actual owner of the dog. *Id.* The court here held that whether the defendant was owner of the dog was properly submitted to the jury. *Id.*

¹³⁵ *Gilbert*, 259 N.W.2d at 897 (holding that the corporation did not come within the definition of owner and that interpreting the corporation to be the owner of the tenant's dog would make it difficult for dog owners to find housing).

¹³⁶ MINN. STAT. § 347.22 (1980) (amended 1986). Minnesota courts have since held that a person harboring a dog so as to come within the definition of "owner" is a person who provides refuge for a dog for a limited purpose or time, but the harboring must amount to more than a casual presence on property or giving an occasional meal to a stray dog. *Anderson v. Christopherson*, 816 N.W.2d 626, 632–33 (Minn. 2012).

¹³⁷ See *Hodges*, *supra* note 99 (providing a general summary of the provisions and limitations of dog bite strict statutes).

¹³⁸ MINN. STAT. § 347.22.

¹³⁹ See RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 23 cmt. d (noting that almost all of the strict liability statutes are limited to dogs and further noting that some of the statutes are limited to dog bites, while others apply more broadly to any injury caused by a dog). The statute also contains the customary exception in cases of provocation. MINN. STAT. § 347.22.

2. Minnesota Case Law Interpreting § 347.22

Since 1951, many Minnesota courts have examined and further defined the scope of the statute.¹⁴⁰ An early case noted that the statute “leaves the dog owner in the same position which the common law left the keeper of a wild animal; namely, with the strict liability of an insurer.”¹⁴¹ Additionally, the courts have examined the causation required for liability under the statute.¹⁴²

The pivotal Minnesota case addressing this issue is *Lewellin v. Huber*.¹⁴³ In that case, a driver drove off the road and ran over a boy because the driver was distracted when her dog attempted to get into the front seat of a car.¹⁴⁴ The court held that the Minnesota dog owner’s liability statute requires direct and immediate causation; no intermediate links in the chain of causation can exist.¹⁴⁵ The court reasoned that the legislative intent of the statute was to provide remedies for people who were subject to “attacks and immediate harm from dogs” because they came into contact with dogs upon lawful entry into private property.¹⁴⁶ Thus, the court held that the link between the dog’s conduct and the death of the child was too attenuated to hold the dog owners liable under the statute.¹⁴⁷

¹⁴⁰ See, e.g., *Clark v. Jones*, No. A13–1110, 2014 WL 211387, at *4 (Minn. Ct. App. Jan. 21, 2014) (holding that the statute does not preclude the “allocation of fault between a dog owner and a co-tortfeasor”).

¹⁴¹ *Lavalle v. Kaupp*, 61 N.W.2d 228, 230 (Minn. 1953). In this case, the court had to decide whether the statute imposed a duty of care upon the dog owner, thus making the statute essentially a negligence statute. *Id.* The court held that strict liability is imposed regardless of any duty of care, making the cause of action not dependent on the existence of negligence. *Id.* Interestingly, the standard, which was supposed to be friendlier to the victims of dog bites, actually had the opposite effect in this case because the defendant died between the summons of complaint and the date of the trial. See *id.* at 229. Minnesota law at the time held that a cause of action could survive the death of the defendant only if the injuries were caused by the negligence of the deceased. *Id.* Since the plaintiff had originally only brought a cause of action under § 347.22, he could not pursue the case under a negligence theory. *Id.* The statute was later amended to eliminate this exception. MINN. STAT. § 573.01 (2013).

¹⁴² See, e.g., *Lewellin*, 465 N.W.2d at 66 (holding that the dog was not the proximate cause of the plaintiff’s injuries when a number of events happened between the dog’s conduct and the death of the child).

¹⁴³ *Id.* (exploring the issue of causation under the Minnesota statute).

¹⁴⁴ *Id.* at 63. The driver in this case was taking care of the dog when the dog’s owners were away. *Id.* The six-month-old golden retriever had a tendency to be frisky, but had not otherwise displayed any dangerous or vicious behavior. *Id.*

¹⁴⁵ *Id.* at 66 (holding that the chain of events were too attenuated to hold the dog owners liable for the actions of the dog).

¹⁴⁶ *Lewellin*, 465 N.W.2d at 65 (noting that the legislature at the time of the bill’s enactment was concerned with protecting letter carriers and other people who lawfully entered the property of others).

¹⁴⁷ *Id.* at 66 (holding that because of the lack of direct and immediate connection between the dog’s actions and the boy’s death, the boy’s estate could not recover against the dog owners).

Shortly after *Lewellin* was decided, the Minnesota Court of Appeals held that physical contact between the dog and the injured party was not required for recovery under the statute.¹⁴⁸ The court also established that the statute includes a dog's affirmative but non-aggressive actions, as well as his violent actions.¹⁴⁹ The Minnesota Court of Appeals first addressed this issue in *Boitz v. Preblich*, when a man suffered a broken wrist and back injuries after a dog rushed down the sidewalk and caused him to fall.¹⁵⁰ The court held that by including the phrase "or injures," the legislature intended the statute to include injuries caused by non-aggressive behavior, such as jumping on elderly people and causing them to fall over.¹⁵¹ The Minnesota Supreme Court expressly approved this view in *Lewellin* by holding the statute covers non-attacking behavior that injures, as well as attacking behavior.¹⁵²

Subsequent cases interpreted *Lewellin*'s ruling as requiring that the victim be the focus of the dog's actions.¹⁵³ The Minnesota Supreme Court explicitly denounced this focus requirement in *Anderson v. Christopherson*, holding that *Lewellin* contained no such requirement and that an injured party could be implicated by the non-hostile behavior of the dog without being the focus of the dog's actions.¹⁵⁴ In *Anderson*, a man was walking with his dog when a larger dog ran across the street and attacked the man's dog; in his attempt to separate the dogs, the man fell and broke his hip.¹⁵⁵ The court held that the dog's conduct fell under the statute, even though the dog's focus was on the other dog, because its actions could have been the

¹⁴⁸ *Morris v. Weatherly*, 488 N.W.2d 508, 510 (Minn. Ct. App. 1992). This case was a consolidated appeal of two cases where the plaintiffs sought to establish that the statute did not require physical contact. *Id.* at 509. One of the cases involved a dog that ran at a man on a bicycle, causing the man to sustain injuries because of his abrupt dismount. *Id.* at 510. The other case involved a large dog that ran past a mail carrier, causing him to spin around and wrench his back. *Id.*

¹⁴⁹ See, e.g., *Lewellin*, 465 N.W.2d at 64 (reasoning that this result is mandated because the two verbs in the phrase "attacks or injures" are in tandem).

¹⁵⁰ *Boitz v. Preblich*, 405 N.W.2d 907, 909 (Minn. Ct. App. 1987). The trial court in this case held that the Minnesota statute should only apply to bites or other dangerous attacks of the dog. *Id.* at 910.

¹⁵¹ *Id.* (reversing the trial court's holding that the statute only applied to bites or other dangerous attacks).

¹⁵² *Lewellin*, 465 N.W.2d at 64. "The legislature intended the verb 'injures' to cover a dog's affirmative but non-attacking behavior which injures a person who is immediately implicated by such nonhostile behavior." *Id.*

¹⁵³ *Mueller v. Theis*, 512 N.W.2d 907, 910–11 (Minn. Ct. App. 1994). The court in this case created a two-prong test for liability under the statute, requiring that the dog's actions be focused on the injured party and that the injuries be the direct and immediate result of that focus. *Id.*

¹⁵⁴ *Anderson*, 816 N.W.2d at 631 (holding that the focus requirement was inconsistent with the *Lewellin* court's discussion of proximate cause).

¹⁵⁵ *Id.* at 628–29.

proximate cause of the man's injuries.¹⁵⁶ The abandonment of the focus requirement allows for a broader interpretation of the statute.¹⁵⁷

The Minnesota statute also includes the typical defenses of provocation and trespass.¹⁵⁸ By its very language, the statute provides no relief for an injured party who provoked the dog or failed to conduct themselves "peaceably in [a] place where the person may lawfully be."¹⁵⁹ Although the Minnesota courts have not frequently addressed this issue, the statute allows for what amounts to a trespasser defense for injured parties not invited on the property.¹⁶⁰ Although both defenses are important, the issue of provocation has been the most heavily contested issue in dog bite cases in Minnesota courts.¹⁶¹

Whether the dog was provoked is a question for the jury in Minnesota, as it is in most other jurisdictions.¹⁶² "Provocation under the statute has a narrower meaning than contributory negligence."¹⁶³ One who "voluntarily and unnecessarily" provokes a dog is not permitted to recover under the statute.¹⁶⁴ Provocation can occur even if the victim does not intend to provoke the dog.¹⁶⁵ "Rather, provocation involves voluntary conduct that exposes the person to a risk of harm from the dog, where the person had

¹⁵⁶ *Id.* at 631. Because the trial court had granted summary judgment in favor of the defendant because of the focus requirement, the court remanded the issue of whether the dog's actions were the proximate cause of the injuries, noting that it was unclear whether or not the plaintiff's involvement in the altercation was voluntary. *Id.* at 632.

¹⁵⁷ *See id.* at 632 (holding that because the court rejected the focus requirement, the question of whether the victim's injuries were caused by the dog's conduct was a question about which reasonable minds may differ).

¹⁵⁸ MINN. STAT. § 347.22.

¹⁵⁹ *Id.*; *see also Seim*, 306 N.W.2d at 812. (noting that the statute is "equivalent to absolute liability except for the statutory defenses of provocation and failure to peaceably conduct oneself in any place where one may lawfully be").

¹⁶⁰ The primary Minnesota case to address this issue is *Matson*. In this case, a child was bitten by a neighbor's dog when he leaned through lower boards of the fence separating the properties. *Matson*, 200 N.W.2d at 166. Because the child was certainly not at a place where he could lawfully be, recovery was denied under the statute. *See id.* at 168–71.

¹⁶¹ *See, e.g., Grams v. Howard's O.K. Hardware Co.*, 446 N.W.2d 687, 690 (Minn. Ct. App. 1989) (holding that no provocation occurred when a young child sat on a dog, because the child was unaware of the potential danger and had been told that the dog could be safely petted).

¹⁶² *Engquist v. Loyas*, 803 N.W.2d 400, 406 (Minn. 2011).

¹⁶³ *Id.*

¹⁶⁴ *Id.* (quoting *Fake v. Addicks*, 47 N.W. 450, 451 (Minn. 1890)) (reasoning that one who provokes a dog invites the injury).

¹⁶⁵ *Id.* The court here stated that the legislature had the chance to change this interpretation of the statute because of a previous court decision. *Id.* The court found that the legislature had acquiesced to its interpretation because the legislature did not act to amend the statute. *Id.*

knowledge of the risk at the time of the incident.¹⁶⁶ Inadvertent and involuntary acts are not a basis for finding provocation.¹⁶⁷

In *Grams*, the court held that a twenty-two-month-old child did not provoke a dog after she hugged or sat on it because the victim did not appreciate any danger when approaching the dog.¹⁶⁸ In contrast the nine-year-old victim in *Bailey v. Morris* was held to have provoked a dog when she reached out to pet a new mother guarding her puppies.¹⁶⁹ The child had been previously warned by the dog's owners and the dog's growl.¹⁷⁰ These cases demonstrate that victims are prohibited from recovering under this statute if they know approaching the dog may provoke a dangerous response.¹⁷¹

Although provocation is frequently the dispositive factor in many dog bite cases, few statutes adequately define provocation or give clear legislative intent as to its meaning.¹⁷² The Minnesota statute gives no guidance as to the definition of provocation.¹⁷³ The definition and application of provocation have confused Minnesota juries, as exemplified in *Ward ex rel. Ward v. Freiderich*.¹⁷⁴ In that case, the jury asked for a dictionary, additional clarification on what "provoke" means, and whether it could award damages if it found that the victim had provoked the dog.¹⁷⁵ When juries do not have adequate information as to what provocation entails, they must either use common sense to interpret the term's meaning or deal with conflicting explanations from various animal behavior experts.¹⁷⁶ This lack of direction leads to inconsistent results overall.¹⁷⁷ Some courts have

¹⁶⁶ *Engquist*, 803 N.W.2d at 406.

¹⁶⁷ See *Grams*, 446 N.W.2d at 690 (holding that despite a jury's finding of provocation, no provocation existed in this case because the child could not have understood the danger in approaching the dog).

¹⁶⁸ *Id.* In addition to the age of the plaintiff, the court took into account the fact that the plaintiff had been given permission to approach the dog. *Id.*

¹⁶⁹ *Bailey v. Morris*, 323 N.W.2d 785, 787 (Minn. 1982) (affirming the jury's finding that the dog was provoked).

¹⁷⁰ *Id.* The plaintiff here was specifically warned about the protectiveness of mother dogs and was told not to touch the dogs by numerous people. *Id.* at 786–87.

¹⁷¹ *Engquist*, 803 N.W.2d at 406 (providing that provocation "must be voluntary, thus inviting or inducing the injury").

¹⁷² Epstein, *supra* note 33, at 135 (arguing that the lack of legislative definition of provocation leads to confusion for juries).

¹⁷³ MINN. STAT. § 347.22 (providing only that a dog owner is liable if the dog attacks or injures someone without provocation).

¹⁷⁴ *Ward ex rel. Ward v. Freiderich*, No. A05-192, 2006 WL 44280, at *2 (Minn. Ct. App. Jan. 10, 2006). (demonstrating the confusion of juries).

¹⁷⁵ *Id.* After several hours of deliberation, the jury here found that the victim did not provoke the dog and awarded \$6,000 and stipulated past medical expenses. *Id.*

¹⁷⁶ Epstein, *supra* note 33, at 135–36. In the article, Epstein points out two cases involving similar facts where a Michigan appellate court held that the dog was provoked and an Illinois appellate court held that the dog was not provoked, despite the fact that both states had similar statutes. *Id.* at 136. Indeed, Epstein argued that the only way to reconcile the cases was to look at the severity of the resulting injuries. *Id.*

¹⁷⁷ *Id.*

admitted expert testimony regarding whether the dog was provoked, but most Minnesota cases have not addressed the admissibility of testimony by animal behavior experts and rely instead on the jury's common sense when deciding whether the dog was provoked.¹⁷⁸ Minnesota continues to struggle with the definition of provocation for these reasons.¹⁷⁹

Minnesota has also dealt with the issue of whether police dogs' actions are immune from liability under the statute.¹⁸⁰ A number of dog bite liability statutes explicitly exempt police or military dogs' acts from liability when acting within the scope of police work.¹⁸¹ In *Hyatt v. Anoka Police Dept.*, the victim brought suit against the police department under the statute after a police dog bit her during her husband's arrest.¹⁸² The Minnesota Supreme Court declined to hold that the statute exempted police dogs from liability, noting the plain meaning of the statute included police dogs.¹⁸³ Thus, the only defenses to the Minnesota statute are the provocation and trespass defenses laid out in the text of the statute.¹⁸⁴

Minnesota courts have also reiterated that Minn. Stat. § 347.22 is not the exclusive remedy for dog bites, as common law negligence still remains a viable remedy.¹⁸⁵ The *Matson* court explicitly held that "the creation of statutory liability did not abolish the common-law right of recovery."¹⁸⁶ Thus, Minnesota courts have left open the door for plaintiffs to recover under

¹⁷⁸ See, e.g., *Chance v. Ringling Bros. Barnum & Bailey*, 478 P.2d 613, 618 (Or. 1970) (admitting expert testimony to explain the character and propensities of boxer dogs).

¹⁷⁹ See, e.g., *Engquist*, 803 N.W.2d at 406. (providing an example of a court trying to decide what constitutes provocation under the statute).

¹⁸⁰ See *Hyatt*, 691 N.W.2d at 824. The Minnesota Supreme Court had to decide whether a municipal owner was considered an owner under the statute because the statute did not provide a police or military dog exception. *Id.* at 826–27.

¹⁸¹ See, e.g., ARIZ. REV. STAT. ANN. § 11-1025 (2013). The Arizona statute exempts from liability any police or military dog assisting in any of the following activities:

1. In the apprehension or holding of a suspect where the employee has a reasonable suspicion of the suspect's involvement in criminal activity.
2. In the investigation of a crime or possible crime.
3. In the execution of a warrant.
4. In the defense of a peace officer or another person.

Id.

¹⁸² *Hyatt*, 691 N.W.2d at 825 (noting that the plaintiff sustained a "2-inch laceration on her right elbow and a 5-inch laceration on her left knee").

¹⁸³ *Id.* In contrast, a number of strict liability statutes specifically exclude police or military dogs from liability under the statute. See *Hodges*, *supra* note 99 (providing a summary of strict liability dog bite statutes).

¹⁸⁴ *Seim*, 306 N.W.2d at 812 (noting that a previous case held that the statute was equivalent to absolute liability except for the exceptions laid out in the statute).

¹⁸⁵ See *Lavalle*, 61 N.W.2d at 230–31 (noting that a plaintiff can pursue both a scienter and a negligence action, which operate separately).

¹⁸⁶ *Matson*, 200 N.W.2d at 148.

the statute or under common law.¹⁸⁷ Plaintiffs use this flexibility to try to recover under either theory.¹⁸⁸

3. Minnesota Case Law Regarding Cats

Since Minnesota does not currently have a statute regarding liability for cat attacks, courts have applied common law to cases involving cat attacks.¹⁸⁹ The Minnesota courts have generally allowed victims of cat attacks to recover under the doctrine of scienter.¹⁹⁰ This doctrine requires the plaintiff to prove that the cat was abnormal and dangerous and the owner knew of the cat's dangerous propensities.¹⁹¹

Minnesota also specifically addressed in *Clark* whether the dog attack liability statute can also be applied to cats.¹⁹² In that case, a babysitter argued the dog bite strict liability statute should extend injuries caused by cats after the defendants' Siamese cat bit her without warning.¹⁹³ The court rejected this argument, reasoning that courts have long judged cats to be harmless animals.¹⁹⁴ Furthermore, the court reasoned that it was the legislature's job to extend the strict liability statute to cats, rather than the court's responsibility, and that the Minnesota legislature had not done so.¹⁹⁵

The plaintiff in *Clark* argued that the legislature had impliedly extended strict liability to cats, because if the owner of one pet is held to be strictly liable, "the same statutory policy should be applied to the owner of another."¹⁹⁶ The court refused to extend such liability in the absence of statutory language, reasoning that the legislature considered the issue when

¹⁸⁷ See *id.* (explaining that victims of dog bites can bring both statutory and common law actions).

¹⁸⁸ See, e.g., *Knake v. Hund*, No. A10-278, 2010 WL 3119506, at *2-3 (Minn. Ct. App. Aug. 10, 2010). In this case, the plaintiff sued under both a negligence theory and the statute. *Id.*

¹⁸⁹ See, e.g., *Clark*, 169 N.W.2d at 412 (holding that the common law scienter requirement of prior knowledge of a cat's dangerous propensity was necessary for recovery by injured plaintiff).

¹⁹⁰ See *id.* at 409 (rejecting plaintiff's contention that the dog bite strict liability statute applies to cats as well as dogs and upholding the common law scienter requirement).

¹⁹¹ *Id.* (noting that the plaintiff has the burden of proving that the particular animal that injured her was abnormally dangerous).

¹⁹² *Id.* (rejecting the plaintiff's argument that the strict liability statute also applied to cats).

¹⁹³ *Id.* The plaintiff in this case also tried to recover under the common law but was unable to prove that the owners had knowledge of previous vicious behavior because any previous bites had occurred while playing with the cat. *Id.* at 412-13.

¹⁹⁴ *Clark*, 169 N.W.2d at 410 ("The domestic cat is by nature ordinarily harmless and docile." (quoting *Goodwin v. E. B. Nelson Grocery Co.*, 132 N.E. 51, 53 (Mass. 1921))).

¹⁹⁵ *Id.* at 411 (reasoning that it is for the legislature to change the statute if the law has "erred in interpreting mankind's experience with cats").

¹⁹⁶ *Id.* (arguing that if the owner of one pet is held liable under the statute, the same statutory policy should apply to all other pets).

enacting the statute and chose to limit strict liability to dog owners.¹⁹⁷ The court noted that Minnesota courts had continued to apply the scienter action to domestic animals other than dogs since the passage of the dog bite statute in 1951.¹⁹⁸ The court held that cats should be held to the same traditional common law standard as other domestic animals because of these previous cases.¹⁹⁹ Lastly, the court noted that other jurisdictions that had adopted a strict liability statute for dogs had continued to apply the scienter action to cat cases.²⁰⁰ This trend suggested that courts throughout the country have reasoned that such statutes are specifically meant to extend a heightened standard of liability solely to dogs.²⁰¹

Although the court refused to let the cat bite victim recover under the statute, the court affirmed that the plaintiff could possibly recover with her common law scienter cause of action.²⁰² The court noted that the scienter standard is attainable because the plaintiff does not have the responsibility of proving that the owner knew the cat was dangerous.²⁰³ The plaintiff only had to prove knowledge of a dangerous propensity, by showing that the animal had at least once “throw[n] off the habits of domesticity and tameness, and . . . put on a savage nature.”²⁰⁴ However, some conduct will not be enough to prove knowledge of the dangerous propensity of the cat.²⁰⁵ For example, Minnesota courts have held that a previous attack by a cat excited by play is not enough to satisfy the knowledge requirement.²⁰⁶

Furthermore, previous scratching incidents cannot satisfy the knowledge of a dangerous propensity required to recover under the common

¹⁹⁷ *Id.* at 412 (noting that there would have been no difficulty in extending the strict liability statute to cats at the time of the statute’s enactment).

¹⁹⁸ *Id.* at 411. The court noted that the scienter standard had been applied to a horse ridden for pleasure and a bull. *Harris v. Breezy Point Lodge, Inc.*, 56 N.W.2d 655 (horse); *Anderson*, 107 N.W.2d (bull).

¹⁹⁹ *Clark*, 169 N.W.2d at 411.

²⁰⁰ *See id.* (noting that courts in both Massachusetts and Connecticut refused to extend liability under their dog bite strict liability statutes to cats and required a showing of the owner’s knowledge of the previous dangerous propensity of the cat).

²⁰¹ *Id.*

²⁰² *Id.* at 412 (considering whether the plaintiff made a jury issue as to her scienter action).

²⁰³ *See id.* (noting that the cat did not have to frequently engage in dangerous behavior for the victim to recover under the common law).

²⁰⁴ *Clark*, 169 N.W.2d at 412 (citing *Kittredge v. Elliot*, 16 N.H. 77, 82 (1844)) (greatly lessening the burden on the cat bite victim).

²⁰⁵ *See, e.g., Judd v. Zupon*, 209 N.W.2d 423 (Minn. 1973) (holding that the cat owners did not have knowledge of a dangerous propensity of the cat when the cat had only before scratched a neighbor who had been playing with them).

²⁰⁶ *See Clark*, 169 N.W.2d at 412 (noting that a superficial bite inflicted by a cat when playing with a spool and a string was insufficient to demonstrate the dangerous nature of the cat).

law when the attack was superficial and provoked.²⁰⁷ For instance, the cat in *Clark* scratched the owners on numerous occasions, usually while playing, but the court refused to find sufficient knowledge of the danger posed by the cat.²⁰⁸ The court in *Clark* found that most of these scratches were provoked because they were inflicted while in play and were too superficial to require that the cat be categorized as dangerous.²⁰⁹ Likewise, the court in *Judd v. Zupon* refused to find knowledge where the cat had previously scratched a child during play.²¹⁰ The fact that the owners contained the cat was not enough to prove knowledge of the dangerous propensity of the cat, as the cat may be contained for a number of other reasons, such as the preservation of furniture.²¹¹ Thus, while a plaintiff may pursue a scienter action against a cat owner, Minnesota courts have largely delineated what previous conduct of the cat will be insufficient to establish knowledge on the part of the owner.²¹²

C. Cats Versus Dogs

While cats and dogs were traditionally treated as a part of the same category of domestic animals, many important behavioral and physical differences distinguish cats from dogs.²¹³ Cats respond quite differently to humans than dogs and have different relationships with humans.²¹⁴ Cats generally are indifferent to whether they are pleasing humans whereas dogs want to please humans.²¹⁵ Furthermore, important physical characteristics

²⁰⁷ See *id.* at 413 (stating that previous, superficial injuries inflicted by the cat when being picked up or played with were insufficient to support a finding that the cat was dangerous).

²⁰⁸ *Id.* (noting that the cat was provoked and did not inflict serious injuries).

²⁰⁹ *Id.* Furthermore, the court found the fact that the cat owners kept the cat in the basement most of the time was not enough to support a finding of the dangerous nature of the cat because the owners' children frequently played in the basement with the cat and the owners testified that the cat was in the basement to protect the furniture).

²¹⁰ See *Judd*, 209 N.W.2d at 423 (holding that there was not enough evidence to prove the dangerous nature of the cats because there were no previous incidents and the cats were new mothers protecting their kittens).

²¹¹ *Clark*, 169 N.W.2d at 413. Here, the plaintiff argued that knowledge of the dangerous nature of the cat should be inferred because the owners kept the cat confined in the basement, but the court held that this was insufficient to prove knowledge because evidence showed that the children frequently played in the basement and the cat was kept in the basement primarily to preserve the rest of the house. *Id.*

²¹² See *Judd*, 209 N.W.2d at 424 (holding that knowledge of scratching during play is not enough); *Clark*, 169 N.W.2d at 413 (holding that confining cats to a certain area of the house is not enough to prove knowledge).

²¹³ See CELIA HADDON, CATS BEHAVING BADLY: WHY CATS DO THE NAUGHTY THINGS THEY DO 32–33 (Thomas Dunne Books 1st ed. 2012) (explaining that the evolution of cats into domestic pets is quite distinct from that of dogs, and society and animal behavior experts have overlooked the important differences between dogs and cats).

²¹⁴ See *id.* at 33 (arguing that cats are fundamentally different than dogs).

²¹⁵ *Id.* (pointing out the differences between cats and dogs).

distinguish cats from dogs.²¹⁶ Cats typically weigh anywhere from five to twenty pounds.²¹⁷ Dogs exhibit the largest diversity in size of any animal and are frequently much larger than cats.²¹⁸ Dogs can weigh anywhere from three to one hundred and seventy-five pounds.²¹⁹ Different breeds of dogs also exhibit vast variations in strength, abilities, predilections, and temperament.²²⁰

1. Diseases Caused by Cats

Cats have the capacity to seriously harm humans in certain situations.²²¹ One major concern associated with cat bites or scratches is cat-scratch disease (CSD).²²² Approximately 24,000 cases of CSD occur each year in the United States.²²³ CSD is transmitted to humans through cat scratches.²²⁴ Cats that transmit CSD seem to be healthy, but they carry a disease that may actually cause serious symptoms and long-lasting infections in humans.²²⁵ Fever, headache, and malaise are common as a result of CSD, but systemic illness is relatively uncommon.²²⁶ More serious symptoms, such as arthritis, pneumonia, and encephalitis with coma and seizure are also possible.²²⁷ The disease is even more dangerous to those people with

²¹⁶ See *Domestic Cat*, NAT'L GEOGRAPHIC, <http://animals.nationalgeographic.com/animals/mammals/domestic-cat/> (last visited Oct. 26, 2013) (noting the size of cats).

²¹⁷ *Id.*

²¹⁸ See Krishna Ramanujan, *Cornell Researchers Help Identify Gene That Plays Role in Size of Dogs—and Probably in Humans*, CORNELL CHRON. (Apr. 5, 2007), available at <http://www.news.cornell.edu/stories/2007/04/researchers-identify-gene-plays-key-role-size-dogs> (noting the physical differences between different breeds of dogs).

²¹⁹ *Domestic Dog*, NAT'L GEOGRAPHIC, <http://animals.nationalgeographic.com/animals/mammals/domestic-dog/> (last visited Oct. 26, 2013) (noting the variation in size of different breeds of dogs).

²²⁰ WENDY CHRISTENSEN, *HUMANE SOC'Y OF U.S., COMPLETE GUIDE TO CAT CARE* 30 (2002) (stating that the various behavioral and physical differences between dogs reflect the roles that their respective breeds have been assigned through long association with humans).

²²¹ See, e.g., *Jackson v. Mateus*, 70 P.3d 78, 80 (Utah 2003) (noting that a cat's bite aggravated the victim's pre-existing autoimmune disorder, causing her to undergo multiple surgeries and incur over \$40,000 in medical expenses).

²²² KAREN L. OVERALL, *CLINICAL BEHAVIORAL MEDICINE FOR SMALL ANIMALS* 138 (1997) (discussing the possibility of contracting cat-scratch disease (CSD) from cats).

²²³ *Id.* (noting the prevalence of CSD).

²²⁴ *Id.* (describing the possibility of transmission of CSD to humans).

²²⁵ *Id.* (noting the danger posed to humans and other cats by the apparent health of infected cats).

²²⁶ *Id.* (discussing the possible symptoms of CSD).

²²⁷ *Id.*

compromised immune systems.²²⁸ CSD most commonly affects children and young adults, although adults can be infected as well.²²⁹

Cat bites can also transmit rabies.²³⁰ A number of cases have involved bites by rabid or allegedly rabid cats.²³¹ In August 2013, a two-year-old in Tampa was bitten by a stray cat exhibiting signs of rabies, causing the child to undergo rabies shots and putting the entire neighborhood on alert.²³² Though rabies is a serious concern, more than ninety percent of rabid animals are wild animals.²³³ However, more rabid cats are reported than rabid dogs.²³⁴ This likely stems from the fact that cats are more likely to be in contact with both humans and wildlife and that cats are less likely to receive veterinary care than dogs.²³⁵ Veterinarians recommend vaccinating all cats to help reduce the risk of contracting rabies, and many states require such vaccinations.²³⁶

In addition, humans may contract the plague from cats.²³⁷ Cats are susceptible to the plague and are a common cause of plague in humans.²³⁸ In June 2012, a man in Oregon was infected with the plague after being bitten by a stray cat.²³⁹ As a result of the bite, the man was admitted to the hospital

²²⁸ OVERALL, *supra* note 223, at 138 (stating which populations are most vulnerable to CSD).

²²⁹ Terry Riordan et al., *Cat Scratch Disease*, 324 BRIT. MED. J. 1199 (2002) (noting that eighty percent of cases of CSD affect those under the age of twenty-one).

²³⁰ *The Burden of Rabies*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/features/dsrabies/> (last visited Feb. 10, 2014) (noting that people are most frequently exposed to rabies through contact with cats or dogs).

²³¹ See, e.g., *Jones v. S. Ry. Co.*, 90 S.E. 183 (S.C. 1916); *Thomas*, 605 S.E.2d 244 (holding that defendants were not liable where the plaintiff was unable to prove any negligence on the part of the defendants).

²³² Beau Zimmer, *Suspected Rabid Cat Bites 2-year-old in Northdale*, WTSP 10 NEWS (Aug. 2, 2013), www.wtsp.com/news/local/story.aspx?storyid=328298.

²³³ See *The Burden of Rabies*, *supra* note 230 (explaining that wild animals such as raccoons, skunks, foxes, and bats are the main animals that contract rabies).

²³⁴ *Id.* A few Minnesota courts have, however, had to deal with the threat of rabies from dog bites. See, e.g., *Engquist*, 803 N.W.2d at 402 (noting that the injured child had received a rabies vaccination in case the dog that bit her was rabid); *Gohdes v. Rick*, No. C8-01-2187, 2002 WL 1546057, at *1 (Minn. Ct. App. July 16, 2002) (affirming the award of damages for the cost of the rabies shots to the plaintiff who was bit twice in the knee by a dog).

²³⁵ See *The Burden of Rabies*, *supra* note 230. In 2009, the Center for Disease Control and Prevention reported that there were 300 confirmed cases of rabies in cats and eighty-one confirmed cases of rabies in dogs in the United States. *Id.*

²³⁶ See CHRISTENSEN, *supra* note 220, at 249 (noting that veterinarians recommend the rabies vaccination for all cats, and laws often require the vaccination and booster shots, which are needed approximately every one to three years).

²³⁷ *Plague: Information for Veterinarians*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/plague/healthcare/veterinarians.html> (last visited Feb. 26, 2014).

²³⁸ *Id.*

²³⁹ *Plague Confirmed in Oregon Man Bitten by Stray Cat*, NBC NEWS (June 15, 2012), www.nbcnews.com/id/47832395/ns/health-health_care/t/plague-confirmed-oregon-man-bitten-stray-cat/#.Uj3vZcasjPM.

in critical condition.²⁴⁰ While cases of the plague are rare, cats can come into contact with fleas or rodents carrying the disease when they roam outdoors.²⁴¹

In addition to transferring disease, cat bites may cause physical damage.²⁴² Cat bites are more likely to cause infection than dog bites because “they are usually puncture wounds and can’t be thoroughly cleaned.”²⁴³ Case law throughout the nation serves as a testimony to the severity and expense that can be caused by a cat attack.²⁴⁴ In an Arkansas case, the plaintiff sued for \$39,000 in personal injuries due to being bitten on the finger by his neighbor’s cat.²⁴⁵ As a result of the bite, the plaintiff was fitted with a plastic finger joint and underwent four surgeries.²⁴⁶ In another case, a cat seriously scratched a seven-year-old girl on her forehead.²⁴⁷ The scratch required stitches and was clearly visible five years later.²⁴⁸

A number of stories in the media also attest to the prominence of cat bites and the serious injuries that may result.²⁴⁹ A veterinarian required several surgeries and was unable to work for three months after being bitten in the knuckle by a cat.²⁵⁰ Dr. David Maloney, another veterinarian, stated two fellow veterinary students and an intern were sent to the hospital after being bitten by a cat when trying to administer pain medication.²⁵¹ These are only a few examples of the three to five million cat bites that occur in the United States every year.²⁵²

Although the harms caused by cats are significant, it is important to remember that many wild and domestic animals can also transmit diseases to

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Animal Bites: First Aid*, MAYO CLINIC, <http://www.mayoclinic.com/health/first-aid-animal-bites/FA00044> (last visited Oct. 6, 2013) (noting that cats cause puncture wounds).

²⁴³ *Id.*

²⁴⁴ *See, e.g., Clark*, 169 N.W.2d at 408 (noting that the victim brought the action for extensive injuries caused by a Siamese cat).

²⁴⁵ *Van Houten v. Pritchard*, 870 S.W.2d 377, 378 (Ark. 1994).

²⁴⁶ *Id.* In this case, the jury awarded the plaintiff \$80,000 at the trial court under a negligence theory. *Id.* The Arkansas Supreme Court, however, found that the trial court erred by ruling that there was a cause of action for allowing a domestic animal to run at large, reasoning that only owners of animals that could cause substantial damage when allowed to run at large were liable for injuries that resulted, absent previous knowledge of any dangerous propensity. *Id.* at 380.

²⁴⁷ *Rickrode v. Wistinghausen*, 340 N.W.2d 83, 85 (Mich. 1983).

²⁴⁸ *Id.*

²⁴⁹ *See Amelia Nielson-Stowell, Cat Bites, Infection Risk ‘Are No Joke,’* DESERET NEWS (Dec. 6, 2005), www.deseretnews.com/article/635166674/Cat-bites-infection-risk-are-no-joke.html?pg=all (noting the serious injuries sustained by a veterinarian).

²⁵⁰ *Id.* (demonstrating the potential serious effects of a seemingly minor injury).

²⁵¹ *Id.* (showing that even animal professionals can suffer serious injuries inflicted by cats).

²⁵² *Id.* (demonstrating how common cat bites are).

humans.²⁵³ Dogs, for example, can also transmit diseases.²⁵⁴ Some of the germs that dogs can carry can cause rashes or illnesses in people.²⁵⁵ Furthermore, dogs bite people much more frequently than cats.²⁵⁶ Indeed, dog bites account for eighty to ninety percent of animal bites, while cat bites account for only five to fifteen percent.²⁵⁷ Although dog bites are relatively common, only a few Minnesota cases discuss the potential to contract a disease from a dog bite.²⁵⁸ One of the most critical factors that distinguishes dogs from other animals is that their bites are likely to cause more severe injuries than the injuries that can be inflicted by the other most common pet, the cat.

2. Likelihood of Fatality Caused by Attack

Much of the concern about dog attacks stems from the prevalence of stories of dogs mauling and, in some cases, killing people.²⁵⁹ Approximately twenty deaths per year result from dog attacks.²⁶⁰ The only reports of possible deaths caused by cats are reports of cats napping or sitting on infants and inadvertently smothering them.²⁶¹ Reports of such fatalities are extremely rare and are not the result of any malicious behavior of the cat.²⁶²

²⁵³ See *Healthy Pets, Healthy People: Introduction*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/healthypets/> (last visited Oct. 27, 2013) (explaining that some animals can transmit diseases, known as zoonoses, to humans).

²⁵⁴ *Diseases from Dogs*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/healthypets/animals/dogs.htm> (last visited Feb. 3, 2014) (stating that dogs can transmit rabies, leptospirosis, and a bacteria that causes diarrhea in humans, among others).

²⁵⁵ See *id.* (explaining that a number of parasites and germs, such as the bacterium *Campylobacter* and the bacterium *Leptospira*, can cause harm to humans).

²⁵⁶ Nielson-Stowell, *supra* note 249 (explaining that dog bites constitute eighty to ninety percent of total animal bites).

²⁵⁷ *Id.* (explaining the frequency of dog bites relative to cat bites).

²⁵⁸ See *Engquist*, 803 N.W.2d at 402 (noting that the injured child had received a rabies vaccination in case the dog that bit her was rabid). See also *Gohdes*, 2002 WL 1546057, at *1 (affirming the award of \$2,100 in damages for the cost of the rabies shots in addition to \$10,000 past damages for pain, disfigurement, and emotional distress).

²⁵⁹ See, e.g., Kim Gebbia, *6 Year Old Killed by Service Dog That Attacked*, NEWS CHANNEL 5 (Jan. 31, 2012), www.newschannel5.com/story/16645526/dog-trainers-say-even-medical-service-dogs-can-attack (reporting that a child was fatally mauled by a trained Medical Service Dog at the residence of a family friend).

²⁶⁰ Epstein, *supra* note 33, at 130 (arguing that fatal dog attacks are rare and that legislatures have overreacted to the harm posed by dogs by imposing strict liability statutes).

²⁶¹ See David Landes, *Napping Cat May Have Killed Sleeping Infant*, LOCAL (Nov. 10, 2009), www.thelocal.se/23180/20091110/ (noting that the cause of the Swedish infant's death was unclear and may have been either caused by the cat or by SIDS); *Cat Smothers a Little Child*, N.Y. TIMES (Nov. 8, 1894), <http://query.nytimes.com/mem/archive-free/pdf?res=9402EFD61531E033A2575BC0A9679D94659ED7CF> (reporting that the infant had been discovered in the morning dead with the cat on her face).

²⁶² The author's Google search of cats smothering babies or otherwise fatally injuring humans turned up no results other than the two cases cited *supra* in note 261.

However, stories of dogs fatally attacking children or even able-bodied adults are commonly found in the media.²⁶³ In 2013, a thirty-five-year-old woman was attacked by her German shepherd and later died from her injuries.²⁶⁴ The more common dog attack stories are those of children being mauled to death by dogs.²⁶⁵ A five-year-old survivor of the Moore, Oklahoma, tornado was mauled to death only months later by a bullmastiff.²⁶⁶ The dog reportedly attacked the boy because the boy was crying, which the dog interpreted as an aggressive act.²⁶⁷

Part of the policy behind strict liability statutes is ensuring that pet owners are responsible for their pets.²⁶⁸ The California Supreme Court recognized that its statute “is designed ‘to prevent dogs from becoming a hazard to the community’ by holding dog owners to such a standard of care, and assigning strict liability for its breach.”²⁶⁹ Neighborhood dogs have killed people who were walking on public sidewalks.²⁷⁰ Indeed, a large percentage of fatal dog attacks result from an owner’s failure to properly restrain the dog on his or her property.²⁷¹ These facts suggest that the concerns that have driven dog regulation and the heightened standard of liability for dogs are inapplicable to cats.

3. Harms Caused by Other Domestic Animals

Although dogs and cats are the focus of this discussion, significant harms can be caused by other animals whose owners are not subject to

²⁶³ See, e.g., *Woman Dies After Being Attacked by Family Dog*, ABC 6 ON YOUR SIDE (May 6, 2013), www.abc6onyourside.com/shared/news/features/top-stories/stories/wsyx_coshoc-ton-woman-attacked-family-dog-23548.shtml (noting that a woman was killed by a family dog).

²⁶⁴ *Id.* (demonstrating that even adults may be killed by dogs).

²⁶⁵ See, e.g., M. Alex Johnson, *5-year-old Oklahoma Tornado Survivor Killed by Family Friend’s Dog* (June 10, 2013), usnews.nbcnews.com/_news/2013/06/10/18886323-5-year-old-oklahoma-tornado-survivor-killed-by-family-friends-dog?lite (reporting that a small boy was mauled to death by a dog).

²⁶⁶ *Id.* The 150-pound dog belonged to family friends that the boy and his family were staying with after the tornado. *Id.*

²⁶⁷ *Id.* (demonstrating the danger of dogs misinterpreting human behavior).

²⁶⁸ Megan K. Reese, Note, *Kentucky Courts Have Taken the “Bite” Out of Dog-Bite Legislation: Reforming the Law to Impose Strict Liability on Dog Owners*, 47 U. LOUISVILLE L. REV. 215, 236 (2011) (arguing that strict liability statutes may prompt dog owners to purchase homeowners’ or renters’ insurance to cover injuries inflicted by dogs and thereby protecting themselves and potential victims).

²⁶⁹ *Priebe v. Nelson*, 47 Cal. Rptr. 3d 553, 559 (Cal. 2006) (citing *Davis v. Gaschler*, 11 Cal. Rptr. 2d 679, 684 (Cal. Ct. App. 1992) (explaining the purpose of the California statute)).

²⁷⁰ *Boy Attacked by Two Pit Bull Mixes Dies*, WJHG NEWS CHANNEL 7 (Apr. 8, 2013), www.wjhg.com/home/headlines/Boy-Attacked-By-Two-Pit-Bull-Mixes-Dies-201839271.html (noting that the boy was playing outside his home when he was attacked by two dogs that did not belong to his family).

²⁷¹ Epstein, *supra* note 33, at 144 (“The duty to supervise becomes paramount as dog bite cases are frequently occurring outside the home.”).

common law strict liability due to their pets' categorization as domestic animals.²⁷² The flu can be spread among pigs and eventually infect humans, as evidenced by the 2009 H1N1 flu pandemic.²⁷³ Domestic animals can also kill people; in some cases, cows have aggressively attacked humans by charging or goring them.²⁷⁴ Likewise, numerous examples exist in the news of people killed by a kicking horse.²⁷⁵ Bites from horses can also transmit infectious diseases to humans, such as salmonellosis, cryptosporidiosis, or rabies.²⁷⁶ Even horse bites have the potential to cause far greater physical damage than a cat could ever inflict.²⁷⁷ Indeed, courts have recognized that "by virtue of their size alone, horses in their normal activities pose a distinct type of threat to small children . . . distinguishable in kind from the dangers presented by house pets such as dogs and cats."²⁷⁸ Cats are different from these other animals because of the difference in size; cats simply cannot inflict the same degree of injury upon a person as a larger animal. The proposed Minnesota bill, however, would subject cat owners to a greater standard of liability than owners of these large domestic animals.

4. Roaming Outdoors

Another distinguishing feature about cats is that their owners often allow them to roam outside independently.²⁷⁹ The fact that cats are often permitted to run at large reflects the long-standing notion that since some

²⁷² See, e.g., *Farmer Attacked by 47st Pig*, TELEGRAPH (June 2, 2006), <http://www.telegraph.co.uk/news/uknews/1520076/Farmer-attacked-by-47st-pig.html> (reporting on a farmer who was mauled by his pig, causing injuries which required seven hours of surgery).

²⁷³ *What People Who Raise Pigs Need to Know About Influenza*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/flu/swineflu/people-raise-pigs-flu.htm> (last visited Feb. 3, 2014) (explaining how the disease is spread and its symptoms).

²⁷⁴ Denise Grady, *Dangerous Cows*, N.Y. TIMES (July 31, 2009), tierneylab.blogs.nytimes.com/2009/07/31/dangerous-cows/?_r=0 (noting that twenty-one cases of deaths caused by cattle reported on in the Center for Disease Control and Prevention's Morbidity and Mortality Weekly Report were caused by bulls, cows, and multiple cattle). Two-thirds of the deaths were caused by cattle that had not been aggressive in the past. *Id.*

²⁷⁵ See, e.g., Paul Sims, *Stable Girl Killed by a Kick from a Horse Giving Birth*, DAILY MAIL (July 9, 2011), www.dailymail.co.uk/news/article-453478/Stable-girl-killed-kick-horse-giving-birth.html; *Fla. Man Dies After Being Kicked by Horse*, WCTV.TV (Feb. 24, 2013), www.wctv.tv/home/headlines/Fla-Man-Dies-After-Being-Kicked-By-Horse-192725491.html.

²⁷⁶ *Diseases from Horses*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/healthypets/animals/horse.htm> (last visited Apr. 5, 2014).

²⁷⁷ See, e.g., *Hagerty*, 37 N.W.2d at 822. In this case, the horse, without provocation, bit a twelve year-old girl's hand, severing the fourth and fifth fingers. *Id.*

²⁷⁸ *Thomas*, 605 S.E.2d at 247 (quoting *Schwartz v. Erpf Estate*, 688 N.Y.S.2d 55, 59 (N.Y. App. Div. 1999)).

²⁷⁹ See *Home, Sweet Home: Bringing an Outside Cat In*, HUMANE SOC'Y OF U.S. (Oct. 2, 2013), http://www.humanesociety.org/animals/cats/tips/bringing_outside_cat_indoors.html (explaining that a large percentage of cats spend a lot of time outside).

domestic animals are so unlikely to do harm when allowed to run at large, the animals should do so with limited regulation.²⁸⁰ The Humane Society estimates that about two-thirds of non-feral cats spend all or the majority of their time inside.²⁸¹ Therefore, at least one-third of owned cats spend a significant portion of time outside.²⁸² Furthermore, the cats who spend most of their time indoors also venture outside at times.²⁸³ The owners who allow their cats to venture outside do so despite the serious risks involved, including acquiring parasites, catching diseases from encounters with other cats, being hit by cars, being stolen by strangers, and being attacked by predators.²⁸⁴

Although dogs are more likely than cats to bite humans, cats roam farther than dogs, largely because many city ordinances prohibit dogs running at large.²⁸⁵ For example, Minnesota's statute allows towns to "make orders and bylaws on restraining horses, cattle, sheep, swine, and other domestic animals from going at large on roads."²⁸⁶ Through the powers authorized by this statute, many towns have adopted ordinances prohibiting dogs from roaming unsupervised.²⁸⁷ For instance, the city of Saint Paul, Minnesota, has enacted an ordinance providing that the owner of a dog shall not allow the dog to run at large.²⁸⁸ While towns have the power to enact ordinances prohibiting cats from roaming, such ordinances have been relatively rare and occasionally highly controversial.²⁸⁹

A number of reported cat bites and attacks result when a person touches a neighbor's cat.²⁹⁰ However, most of the reported instances of

²⁸⁰ RESTATEMENT (SECOND) OF TORTS § 518 cmt. j (1977) (explaining that traditionally cats, dogs, pigeons, bees, and, in some places, poultry were allowed to roam freely).

²⁸¹ *Home, Sweet Home: Bringing an Outside Cat In*, *supra* note 279 (noting the prevalence of cats roaming outside).

²⁸² *Id.*

²⁸³ *See id.* (noting the prevalence of owned cats wandering outside).

²⁸⁴ *Id.* The fact that cat owners allow their cats to be exposed to such dangers is probably largely due to the fact that cats maintain remarkable control over their own lives, including going where they please and choosing their own mates. *See* John Bradshaw, *More Than a Feline*, 219 NEW SCIENTIST 44 (2013).

²⁸⁵ Lynn Marmer, *The New Breed of Municipal Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067, 1073 (1984) (stating that the United States Supreme Court has approved the notion that legislatures have broad police powers to control dogs).

²⁸⁶ MINN. STAT. § 365.10 (2013) (supplying an example of a state police power to regulate dogs).

²⁸⁷ *See, e.g.*, ROCHESTER, MINN. CODE § 106A.08 (2014). This city ordinance is interesting in that it prohibits any animals, except a licensed cat, from running at large. *Id.*

²⁸⁸ SAINT PAUL, MINN. CODE § 200.05 (2013) (providing an example of a city ordinance prohibiting dogs from running at large).

²⁸⁹ *See, e.g.*, Verne R. Smith, *The Law and Feral Cats*, 3 J. ANIMAL L. & ETHICS 7, 17 (2009) (discussing Akron, Ohio's ordinance that prohibited cats from running at large and made them "subject to confiscation and death at Akron's shelters").

²⁹⁰ *See, e.g.*, *Fellers v. Carson* 356 S.E.2d 658, 659 (Ga. Ct. App. 1987) (denying the liability of cat owners whose cat bit a neighbor who was attempting to remove the cat from her yard).

diseases contracted through exposure to a cat involve exposure to stray cats.²⁹¹ People are more likely to encounter a roaming cat than a roaming dog because dogs are required to be accompanied by a person and be on a leash.²⁹² While cats may run at large more frequently than dogs, the fact remains that dogs can inflict serious or even fatal injuries on innocent passersby when they are not effectively contained.²⁹³ Furthermore, cats are unlikely to approach strangers, therefore lessening the possibility of a person being injured by a free-roaming cat.²⁹⁴

D. Proposed Minnesota Legislation

In March 2013, Minnesota State Representative JoAnn Ward introduced a bill in the Minnesota House that would expand the dog attack strict liability statute to include cats.²⁹⁵ The bill would change the word “dog” to “animal” and would define “animal” as including both cats and dogs.²⁹⁶ Although many jurisdictions have adopted strict liability statutes for dogs and some have adopted statutes applicable to any animal, none have specifically singled out cats.²⁹⁷ Thus, if enacted, the bill would make Minnesota cat owners subject to stricter standards of liability than cat owners anywhere else in the country.²⁹⁸

²⁹¹ See, e.g., Zimmer, *supra* note 232 (reporting that a stray cat suspected of having rabies bit a small child). “Free-roaming cats account for the most cases of human rabies exposure among domestic animals, and are the source for one-third of rabies post-exposure treatments in the United States.” *US Feral Cats Spreading “Serious Public Health Diseases,”* WILDLIFE EXTRA (Sept. 2012), <http://www.wildlifeextra.com/go/news/feral-cat-disease.html#cr>.

²⁹² See SAINT PAUL, MINN. CODE § 200.05 (deeming any dog not contained by a fence or restrained by a leash or a chain to be running at large).

²⁹³ See *supra* Part II.C.2 (describing the relative frequency of fatal attacks by dogs); see also Jeffrey J. Sacks et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 J. AM. VETERINARY MED. ASS’N 836, 837 (2000) (noting that sixty-seven percent of deaths between 1979 and 1998 resulted from unrestrained dogs on the owner’s property and nineteen percent of the deaths resulted from unrestrained dogs off the owner’s property).

²⁹⁴ See Bradshaw, *supra* note 284, at 45 (stating that cats have not abandoned many of their wild instincts and thus go where they please when they please).

²⁹⁵ H.R. 1087, 88th Leg. (Minn. 2013). This statute would be the first to explicitly include cats in a strict liability statute. See Hodges, *supra* note 99 (summarizing the strict liability dog bite statutes).

²⁹⁶ See H.R. 1087, 88th Leg. (Minn 2013) (providing the proposed changes to the statute’s text).

²⁹⁷ See Hodges, *supra* note 99 (providing the text of all of the dog bite liability statutes, none of which mentions cats).

²⁹⁸ *Id.* Although some of the statutes extend liability to any animal, none specifically mention cats.

III. ANALYSIS: THE ARGUMENT AGAINST EXTENDING THE STATUTE TO CATS

Minnesota should not be the first state to adopt a strict liability statute for cats. The bill is unnecessary because victims of cat bites can pursue either a scienter or a negligence cause of action.²⁹⁹ Since the proposed bill's extension of liability is unnecessary and potentially unworkable, as well as contrary to common sense understandings of the relative dangers posed by cats and dogs, the statute should not be extended to cat owners.

A. Harms Caused by Cats Are Insufficient to Justify Strict Liability

Providing relief to dog bite victims was a driving force behind the strict liability statutes, and the same policy underlies the cat bite strict liability bill.³⁰⁰ The strict liability statute should not be extended to cats, because cats are not generally capable of inflicting as much harm as dogs.³⁰¹ Additionally, the diseases cats may transmit are not significantly more serious than diseases transmitted by other animals not included in strict liability statutes.³⁰² Extending the statute to cats is illogical because the injuries that can be inflicted by cat bites and attacks are not severe enough to merit a general imposition of liability.³⁰³ Finally, cats are incapable of fatally injuring humans, which is one of the primary concerns underlying the dog bite strict liability standards.³⁰⁴

1. Diseases Transmitted by Cats Do Not Merit Imposition of Strict Liability

The fact that cats may transmit diseases to people does not merit imposition of strict liability for cats because diseases transmitted by cats are no more serious than diseases that may be transmitted by other domestic animals.³⁰⁵ Although the seriousness of the diseases transmitted by cats should not be overlooked, the fact remains that most animals can transmit

²⁹⁹ See *infra* Part III.B.4 (noting the potential problems with extending the legislation to cats and the existing remedies for victims of cat bites).

³⁰⁰ See *supra* Part II.B.1 (noting the policy behind the adoption of the Minnesota statute).

³⁰¹ See *supra* Part II.C.2 (discussing the fact that dogs attack and kill a number of humans every year).

³⁰² See *infra* Part III.A.1 (arguing that the bill will not effectively provide relief for cat bite victims who contract diseases).

³⁰³ See *infra* Part III.A.2 (asserting that cat bites and attacks are far less severe than the harms caused by dogs, thereby do not justify the imposition of the same heightened standard of liability).

³⁰⁴ See *infra* Part III.A.3 (arguing that the dog bite statutes in large part are created to prompt dog owners to properly contain their dogs so that fatal attacks do not occur).

³⁰⁵ See *supra* text accompanying notes 273–276 (describing some of the diseases that may be transmitted to humans by pigs and horses).

diseases to humans.³⁰⁶ Furthermore, the bill will not be able to provide a remedy to a large number of victims who contract diseases because many cats transmitting diseases to people are stray or feral.³⁰⁷ Thus, the bill will unnecessarily single out pet cats for heightened liability, despite the fact that other domestic animals may transmit diseases and most victims who contract diseases will be unable to recover under the statute.³⁰⁸

Minnesota's proposed statute extending strict liability to cats does not help plaintiffs recover from cat-transmitted diseases.³⁰⁹ A large percentage of rabid cats are non-domesticated and have no owner, effectively leaving cat-bite victims without any party to sue.³¹⁰ Many of the stories reporting cases of serious diseases transmitted to humans by cats, such as rabies or the plague, involve interactions with stray or feral cats, not with pet cats.³¹¹ Since no one owns the cats that inflict many of these harms, the extension of the statute to cats would be ineffective.³¹²

Even if a person can bring a claim against the cat's owner for transmitting an infection, strict liability is unnecessary because the person can pursue a negligence cause of action.³¹³ Cats are more likely than dogs to be infected with rabies because dog owners are more likely to get their dogs vaccinated.³¹⁴ Victims of cat bites who develop diseases may be able to pursue other causes of action against cat owners for their negligence in not vaccinating their cats, which renders an extension of the dog bite statute unnecessary.³¹⁵ Since the cat owners chose not to get their cats vaccinated, victims of cat bites will have a stronger case of negligence, particularly since veterinarians recommend that all cats receive the rabies vaccination.³¹⁶ The negligence action is superior to a strict liability statute in this situation because even trespassing plaintiffs may be able to recover for their

³⁰⁶ See *supra* text accompanying note 253 (explaining that many animals can transmit diseases to humans).

³⁰⁷ See *supra* note 291 and accompanying text (noting the frequency of people contracting diseases through exposure to a stray cat).

³⁰⁸ See *supra* notes 253–254 and accompanying text (pointing out that dogs and other animals can transmit serious diseases to humans).

³⁰⁹ See *supra* text accompanying note 124 (providing the proponents of the original statute who were primarily concerned with providing a remedy for the injuries inflicted by dogs, not the diseases that might result).

³¹⁰ See *supra* text accompanying note 233 (explaining that over ninety percent of confirmed rabid animals each year are wild animals).

³¹¹ See *supra* text accompanying notes 232–240 (discussing a number of recent news stories involving diseases transmitted to humans through stray cats).

³¹² See *supra* text accompanying note 138 (noting that the statute allows the victim to recover from the owner of the animal).

³¹³ See *supra* Part II.A.2 (explaining the common law negligence cause of action).

³¹⁴ See *supra* text accompanying note 235 (providing that lack of veterinary care and increased contact with other animals explain the higher rates of infection in cats).

³¹⁵ See *supra* Part II.A.1–2 (describing the common law scienter and negligence actions which may be brought against the owner of a domestic animal).

³¹⁶ See *supra* text accompanying note 236 (providing that veterinarians recommend and some states require that all cats receive the rabies vaccine).

damages.³¹⁷ Negligence adequately holds cat owners liable and serves the policy of prompting cat owners to vaccinate their cats.³¹⁸

Moreover, extending the dog bite statute to cats will still not allow plaintiffs to recover for cat-transmitted diseases.³¹⁹ Although the proposed statute appears to be broad enough to cover diseases transmitted by dogs and cats through bites or scratches, such harms do not seem to be the underlying focus of the statute.³²⁰ The original proponents of the Minnesota dog bite statute were individuals concerned about recovering damages for dog attacks occurring while the individuals were lawfully on another's land during the scope of employment.³²¹ These original proponents were not concerned about infections or diseases that may be spread by dogs; rather, they were concerned about the physical injuries that can be inflicted by dog attacks.³²² The statute is not intended to cover diseases.³²³ Therefore, the statute will be ineffective for plaintiffs seeking to recover for cat-transmitted diseases because the statute is not designed to protect them from diseases resulting from dog bites or attacks.³²⁴

Although Minnesota courts have been applying the dog bite statute for over sixty years, only a few cases have discussed awarding damages for potential exposure to a disease.³²⁵ Minnesota has only peripherally addressed the statute's applicability to disease transmission, which suggests that the courts may face new problems if cat bite victims bring suit for recovery of damages for disease transmission.³²⁶ Furthermore, no other cases in Minnesota interpreting the statute have been founded on or have even considered harm to the plaintiff through transmission of a disease. The statute may be construed to cover possible exposure to disease because it

³¹⁷ See *supra* text accompanying note 184 (noting that the Minnesota strict liability statute contains a trespass exception exempting cat owners from liability to trespassing plaintiffs).

³¹⁸ See *supra* Part II.A.2 (explaining the common law negligence cause of action).

³¹⁹ See *supra* text accompanying notes 99–101 (noting that the strict liability statutes were designed specifically to apply to dog owners).

³²⁰ See *supra* Part II.B.1 (discussing the legislative intent behind the original statute upon its enactment in 1951).

³²¹ See *supra* text accompanying notes 123–126 (noting that among the original proponents of the bill were a number of mailmen, a fireman, and a representative from a labor union).

³²² See *supra* text accompanying notes 123–126 (mentioning nothing about the risk of disease when explaining the concerns behind the bill's enactment).

³²³ See *supra* text accompanying notes 123–126 (noting the concern about providing a remedy to people who lawfully enter the land of another)

³²⁴ See *supra* text accompanying note 125 (explaining that the legislature was primarily concerned with providing a remedy for the physical injuries sustained when a person lawfully enters the property of another).

³²⁵ See *supra* note 234 (discussing the two Minnesota cases applying the dog bite statute which discussed the administration of the rabies shot as part of the damages or harm suffered by the victim).

³²⁶ See *supra* note 234 (noting that the cases which discuss the issue of disease transmission are rare in Minnesota courts).

states that the dog owner is liable “to the full extent of the injury sustained.”³²⁷ However, cases even mentioning the possibility of infection caused by a dog bite are rare.³²⁸ The only cases involving disease have considered awarding damages to the victim for the cost of the shots to prevent the disease, not damages for the contracting the disease itself.³²⁹ If the courts adhere to precedent, the extension of the statute will be unfavorable to plaintiffs who contracted cat-transmitted diseases because it severely limits recovery for disease transmission.³³⁰ Thus, extension of the dog bite statute to cats cannot be justified by claiming that the statute will allow recovery for diseases transmitted by cats.³³¹

2. Cat Bites and Attacks Should Not Be Subject to Heightened Liability

Singling out cats for a heightened standard of liability is inconsistent with the common law’s traditional understanding of the harm posed by domestic animals.³³² The basic premise of the common law’s distinction between domestic and wild animals is that most domestic animals are generally safe, while wild animals pose additional dangers.³³³ Some legislatures carved out an exception to this general rule by enacting strict liability statutes for dogs.³³⁴ The harm posed by cats is not severe enough to justify removing cats from the general category of domestic animals and creating a special exception for them.³³⁵

Given this general background, it is unnecessary to expand Minnesota’s strict liability statute to cats. Cats are much smaller and far less powerful than other domestic animals, such as horses, cows, and pigs, all of

³²⁷ See *supra* text accompanying note 138 (providing the text of the current Minnesota statute).

³²⁸ See *supra* note 234 (providing a rare example of cases that discuss rabies shots).

³²⁹ *Gohdes*, 2002 WL 1546057, at *1 (awarding damages for the cost of the rabies shots).

³³⁰ See *supra* note 234 (noting that only a few Minnesota courts have discussed disease transmission when awarding damages, and those that have only discussed the cost of preventative measures).

³³¹ See *supra* text accompanying note 125 (noting that the proponents of the bill were primarily concerned with prompting dog owners to properly restrain their dogs and providing a remedy for the physical injuries caused by dogs).

³³² See *supra* Part II.A.1 (discussing the reasons behind the common law distinction between wild and domestic animals).

³³³ See *supra* text accompanying notes 37–40 (explaining that traditionally domestic animals are considered to be safe, allowing their owners to be subject to a lesser degree of liability than wild animals, which are considered inherently dangerous).

³³⁴ See *supra* text accompanying notes 99–103 (exploring the reasons why more than half of jurisdictions in the United States have chosen to adopt statutes subjecting dog owners to strict liability).

³³⁵ See *supra* Part II.C.2 (discussing the numerous fatalities each year caused by dog attacks).

which are subject to a lower standard of liability.³³⁶ The sheer difference in size distinguishes cats from these domestic animals, but the proposed statute would hold owners of cats to the same standard of liability as owners of animals that can cause serious harm merely by stepping on or walking into a person.³³⁷ Cats are much less dangerous than other domestic animals, the owners of which remain liable only under the common law scienter and negligence rules.³³⁸ Although dogs are domestic animals that have been singled out for heightened liability, most dogs are larger than cats and are frequently capable of inflicting much more serious harm than cats.³³⁹ The distinction between dogs and other large domestic animals is justified by the fact that dogs are owned by a large number of households and are frequently exposed to the public.³⁴⁰ Since the statute is primarily aimed at providing a remedy for injuries caused by dog attacks, it would be inconsistent to hold cat owners to a higher standard than the owners of other, larger domestic animals that are more dangerous to humans because of their size.³⁴¹

Extending strict liability to cats also does not further the policy of increasing pet owners' supervision of their animals.³⁴² By heightening the standard of liability for dog owners, the legislature intended to increase owners' supervision and control over their dogs, hopefully leading to fewer attacks.³⁴³ In contrast, the long-standing notion has been that cats are so unlikely to do harm that they may run at large without regulation, as reflected in the relative infrequency of statutes prohibiting cats from running at large.³⁴⁴ Cats generally do not attack people, even when roaming outside of their owners' property.³⁴⁵ Hence the harm that the legislature was trying to

³³⁶ See *supra* Part II.C.3 (discussing the various harms caused by other domestic animals, including horses, cows, and pigs).

³³⁷ See *supra* text accompanying note 278 (explaining that courts recognize the threat that larger animals pose to children is far greater than the danger that cats or dogs pose to them).

³³⁸ See *supra* Part II.C.3 (describing the harms caused by other domestic animals, including fatalities).

³³⁹ See *supra* text accompanying notes 217–219 (noting that while cats are relatively similar in size across all breeds, dogs can vary in size from three to one hundred and seventy-five pounds). See *supra* Part II.C.2 (discussing the fatalities that result from dog bites and dog attacks each year).

³⁴⁰ See *supra* note 10 and accompanying text (noting the prevalence of dog ownership).

³⁴¹ See *supra* Part II.C.2 (noting the fact that dogs can kill healthy adult people).

³⁴² See *supra* Part II.C.4 (describing the general acceptance of cats roaming free).

³⁴³ See *supra* text accompanying note 271 (explaining that many fatal attacks are caused by owners failing to properly restrain their dogs on their property).

³⁴⁴ See *supra* Part II.C.4 (discussing the general lack of regulations prohibiting cats from running at large).

³⁴⁵ See *supra* Part II.C.4 (noting the general tolerance for cats running at large). See also *supra* text accompanying note 294 (noting that cats are generally unlikely to approach strangers).

mitigate through the dog bite statute is inapplicable to cats.³⁴⁶ Mandating strict liability for cat owners goes against the fact that cats roaming at will pose a minimal risk of harm to humans.³⁴⁷

3. Strict Liability Is Unnecessary Because Cat Attacks Are Not Fatal

The law should not subject cat owners to the same liability as dog owners, because there have not been any recorded deaths from cat attacks. Comparatively, a number of deaths result from dog attacks each year.³⁴⁸ Minnesota, like other states, originally enacted its statute to allow victims of dog bites to more easily recover damages.³⁴⁹ The public pressure for victim-friendly laws undoubtedly resulted from the prominence of news stories describing horrific injuries or deaths caused by dogs.³⁵⁰ Public pressure for stricter victim-friendly laws for cat bite victims is not very strong because people do not perceive cats to be a serious threat.³⁵¹ The lack of risk posed by cats is also demonstrated by the general acceptance of cats roaming at large.³⁵² Cats should not be subjected to the same standard of liability as other pets that kill a number of people each year.³⁵³

While other domestic animals are also quite capable of killing people, by both aggressive and non-aggressive behavior, dogs are distinguished from these other domestic animals because dogs are part of a large proportion of households.³⁵⁴ While cats and dogs are both close to humans, the public safety concerns underlying the imposition of strict liability for dog owners is inapplicable to cats because cats are generally incapable of inflicting serious physical injuries on or killing people.³⁵⁵ The behavioral and physical differences between dogs and cats suggest that a

³⁴⁶ See *supra* text accompanying note 294 (asserting that cats are less likely to approach humans than dogs because cats have still retained many of their wild instincts).

³⁴⁷ See *supra* Part II.C.4 (noting that most of the running at large prohibitions are directed at dogs).

³⁴⁸ See *supra* text accompanying notes 260–261. Although a few reports exist of cats which may have smothered infants, such deaths cannot accurately be categorized as the result of cat attacks, as the cats were not acting in any way that could be considered to be attacking or injuring under the statutory definition.

³⁴⁹ See *supra* text accompanying note 126 (stating that the Minnesota legislature wanted to allow dog bite victims to recover more easily).

³⁵⁰ See *supra* Part II.C.2 (discussing the relative frequency of fatal dog attacks).

³⁵¹ See *supra* notes 261–262 and accompanying text (noting that there are no reported cases of a human dying as the result of the aggressive behavior of a domestic cat).

³⁵² See *supra* Part II.C.4 (noting the relative infrequency of ordinances prohibiting cats from running at large).

³⁵³ See *supra* Part II.C.2 (stating that dogs kill approximately twenty people each year, while there have been no reports of deaths caused by cats acting maliciously).

³⁵⁴ See *supra* Part II.C.3 (noting numerous injuries and deaths caused by a number of large livestock animals). See also *supra* text accompanying notes 123–126 (noting that the intent of the statute was to protect people who are subject to immediate harm from dogs).

³⁵⁵ See *supra* Part II.C.2 (describing the numerous fatalities and serious injuries that result from dog bites).

statute providing an equal degree of liability for cat owners as for dog owners may be oversimplifying the matter.³⁵⁶

B. Legal Considerations Support Not Extending the Statute

Legal considerations provide an additional reason to resist extending the statute to cat owners. Including cats in the strict liability dog bite statute would certainly allow the victims of cat bites to more easily recover damages, as has been seen with the advent of strict liability dog bite statutes.³⁵⁷ Extending the strict liability statute to cats, however, overlooks a number of important differences between applying the statute to dogs and applying it to cats.

1. Lessening the Burden on the Victim Is Inconsistent with the Harm Posed by Cats

By categorically ignoring the traditional common law classification of cats, the statute would create a standard that is incongruent with the lesser degree of harm that can be inflicted by a cat.³⁵⁸ Although the Minnesota cat liability bill would allow victims of cat bites or scratches to more easily recover for their injuries, it would do so at the expense of legal clarity.³⁵⁹ Lessening the victim's burden does not accurately reflect the harms that cats can inflict.³⁶⁰ The abandonment of the scienter requirement would subject a cat owner to liability, even if the owner had no knowledge of the injury or of any previous injuries caused by the cat.³⁶¹ Thus, cat owners, like dog owners, would be subject to almost absolute liability for the injuries caused by their cats.³⁶² Absolute liability is only justified when the animal poses a substantial threat to innocent humans, but cats—unlike dogs—do not pose a serious

³⁵⁶ See *supra* text accompanying notes 213–215 (noting the behavioral differences between cats and dogs). See also *supra* text accompanying notes 216–219 (describing the differences in size among breeds of dogs and between cats and dogs).

³⁵⁷ See *supra* text accompanying notes 101–103 (explaining that the strict liability dog bite statutes were largely introduced in order to allow dog bite victims to recover from the dog owners more easily).

³⁵⁸ See *supra* text accompany notes 101–103 (explaining that legislatures passed dog bite strict liability statutes in many states in response to public pressure to create laws more friendly to victims of dog bites by removing the knowledge requirement needed in common law scienter actions). See also *supra* text accompanying notes 35–43 (noting the traditional distinction between wild and domestic animals and observing that cats were traditionally classified as domestic animals).

³⁵⁹ See *supra* Part II.A.4 (describing the effects of creating a strict liability statute on the liability of dog owners).

³⁶⁰ See *supra* Part II.C.2 (noting that dogs may inflict serious or fatal injuries).

³⁶¹ See *supra* text accompanying notes 101–103 (noting that one of the impetuses behind the adoption of strict liability statutes was concern that it was too difficult for dog bite victims to recover).

³⁶² See *supra* note 159 and accompanying text (explaining that the dog bite liability statutes subject dog owners to absolute liability).

threat to humans.³⁶³ While society recognizes the danger posed by dogs with numerous legal restrictions placed on dogs, the lack of laws regarding cats suggests society has determined that the existing remedies for cat bite victims are adequate.³⁶⁴

Furthermore, dog bite strict liability statutes have proven to be complicated to apply in practice.³⁶⁵ These statutes have led to inconsistent results because it is difficult to determine when a dog's conduct is excused under the statute.³⁶⁶ Such confusion will be exacerbated by the fact that little case law exists regarding provocation of cats or cat behavior.³⁶⁷ Though the statute would lessen the burden on the victim initially, it would lead to complications when determining if any of the exceptions to the statute applied.³⁶⁸

2. Courts and Juries Will Struggle to Define Provocation

Minnesota courts will struggle with the concept of provocation as it applies to cats, just as they have struggled with its application to dogs.³⁶⁹ The issue of provocation is primarily a question of fact for the jury, and juries struggle with what constitutes provocation.³⁷⁰ If the statute is extended to cats, juries will continue to debate the term provocation because the statute provides no guidance on the issue.³⁷¹ Since the issue of provocation is already so fraught in the context of dog bite litigation, one may reasonably presume that such tension will be heightened in a new context.³⁷²

Minnesota courts have had few chances to consider what constitutes provocation of a cat, because cat bite cases arise far less frequently than dog

³⁶³ See *supra* Part II.C.2 (discussing the relatively frequent occurrence of fatal dog attacks).

³⁶⁴ See *supra* Part II.A.4 (explaining the policy behind enacting strict liability statutes for dogs); see also *supra* Part II.C.4 (noting the prevalence of statutes prohibiting dogs from running at large).

³⁶⁵ See *supra* text accompanying notes 172–179 (describing the problems applying the statute to cases).

³⁶⁶ See *supra* notes 176–177 and accompanying text (noting inconsistent verdicts resulting from unclear statutes and inadequate guidance to juries).

³⁶⁷ See *supra* text accompanying note 214 (explaining that cats react to humans differently than dogs).

³⁶⁸ See *supra* text accompanying note 179 (noting that Minnesota has struggled with the definition of provocation since the enactment of the dog bite strict liability statute).

³⁶⁹ See *supra* text accompanying notes 172–179 (describing the lack of statutory definition of provocation and the implications of such sparse indicia of legislative intent).

³⁷⁰ See *supra* text accompanying note 162 (noting that in most jurisdictions provocation is a question for the jury); see also *supra* notes 175–176 and accompanying text (describing one Minnesota jury's attempt to understand provocation).

³⁷¹ See *supra* note 173 and accompanying text (noting that the Minnesota statute only says that an owner is not liable if the dog is provoked).

³⁷² See *supra* text accompanying note 176 (describing the inconsistencies and general difficulties in determining what provocation is in dog bite cases).

bite cases.³⁷³ Moreover, courts have not determined what constitutes provocations even in more frequently occurring dog bite cases.³⁷⁴ Thus, Minnesota juries will resort to relying on their common sense in applying the standard of provocation in cat bite cases, a practice which will certainly lead to unpredictable and inconsistent results, depending on the jury's experience and relationship with cats.³⁷⁵ Furthermore, cat owners will struggle to understand whether their cats' actions fall within the scope of the statute because there is so little case law on the issue.³⁷⁶

Implementing the strict liability standard will not be more administrable than the scienter standard, because the issue of provocation will still rise to the forefront of most cases.³⁷⁷ Like dog owners, cat owners will eventually have to resort to animal behaviorists to explain why their cats reacted in a particular way to certain stimuli, complicating the overall litigation.³⁷⁸ Juries will be subject to conflicting testimonies of animal behaviorists attempting to explain the psyche of the dog or cat and then asked to muddle through the explanations of the behavior.³⁷⁹ The presentation of conflicting testimony will likely lead juries to resort to common sense in determining whether the animal was provoked, which will lead to inconsistent verdicts.³⁸⁰

Furthermore, consideration of animal behaviorists' testimony about the dog or cat psyche may lead the jury back to considering the propensity of the particular animal.³⁸¹ Discussions of cats' or dogs' propensities or the propensities of particular breeds are reminiscent of those trying to establish whether plaintiffs have established the requirements of scienter.³⁸² By delving into the propensity of the animal, the absolute liability imposed by

³⁷³ See *supra* text accompanying note 209 (explaining that Minnesota courts were unwilling to find that a cat had a dangerous propensity when the previous minor injuries were inflicted in play).

³⁷⁴ See *supra* notes 175–176 and accompanying text (describing the confusion regarding what type of conduct constitutes provocation).

³⁷⁵ See *supra* text accompanying note 107 (explaining that in the absence of a statutory definition of provocation, juries must resort to using common sense in order to determine if the victim provoked the cat or dog).

³⁷⁶ See *supra* Part II.B.3 (delineating the few Minnesota cases brought by victims of cat bites or attacks).

³⁷⁷ See *supra* text accompanying note 106 (noting that provocation is frequently the determinative issue in a case involving a strict liability statute).

³⁷⁸ See *supra* text accompanying note 107 (explaining that using animal behaviorists in court to determine whether the animal was provoked can be problematic and confusing for juries).

³⁷⁹ See *supra* text accompanying note 107 (explaining the confusion that exists because of the lack of statutory definition of provocation).

³⁸⁰ See *supra* text accompanying note 107 (noting that juries are often forced to rely on common sense because the statutes lack a definition of what constitutes provocation).

³⁸¹ See *supra* note 178 and accompanying text (noting that expert testimony was allowed to explain the propensity of Boxer dogs).

³⁸² See *supra* note 189 and accompanying text (explaining that in a scienter action, the victim must prove prior knowledge of a cat's dangerous propensity).

the statute is weakened.³⁸³ In turn, the scienter requirement of previous knowledge of the animals' dangerous propensity seems to be revived.³⁸⁴ Though the burden of proof has shifted, both parties will undoubtedly introduce experts arguing about the propensity of the animal in cases where provocation is the issue, which will be the majority of cases.³⁸⁵ Thus, imposing a strict liability statute will not lessen the necessity to delve into the propensity of the animal, despite its claim to impose absolute liability.³⁸⁶

The existing case law regarding provocation for dogs will likely be largely irrelevant as applied to cats, because cats are inherently different than dogs and react in different ways.³⁸⁷ Anyone who has interacted with these animals can testify that cats and dogs will respond to various situations differently.³⁸⁸ Though both cats and dogs will likely be considered to be provoked if they injure someone in play, what constitutes play is certainly different for cats and dogs because of the inherent behavioral differences.³⁸⁹ Many states have chosen to accept this cost of adopting strict liability statutes for dogs in return for providing more victim-friendly laws.³⁹⁰ While subjecting all dogs to one standard of liability might be the cost of providing a victim-friendly law for dog bite victims, the harm caused by cats does not merit the same kind of all-encompassing categorization.³⁹¹ The fact that no other state has included cats in its strict liability statute suggests that society is not yet willing to group all cats together under a blanket standard of liability.³⁹²

³⁸³ See *supra* note 178 and accompanying text (providing an example of when testimony about the propensity of the particular breed of dog was admitted in attempt to justify why the dog reacted in a certain way).

³⁸⁴ See *supra* note 178 and accompanying text (noting the admittance of testimony to explain the propensity of Boxer dogs in particular).

³⁸⁵ See *supra* text accompanying note 106 (explaining that provocation often becomes the decisive factor in determining liability in a dog bite case under a strict liability statute).

³⁸⁶ See *supra* note 178 and accompanying text (noting the admittance of animal behaviorist testimony explaining the propensity of the particular breed of dog).

³⁸⁷ See *supra* note 213 and accompanying text (stating that veterinarians and animal behaviorists have frequently treated cats as being like dogs, despite their different behaviors and responses).

³⁸⁸ See *supra* text accompanying note 214 (noting that dogs and cats have different relationships with humans).

³⁸⁹ See *supra* text accompanying note 210 (noting that cats are not dogs, despite their similar treatment by animal behaviorists in the past).

³⁹⁰ See *supra* text accompanying notes 101–103 (explaining that many legislatures passed dog bite strict liability statutes in response to concern that victims of dog bites had too hard of a time recovering against dog owners when the victims were required to prove that the dog owner had prior knowledge of the dangerous propensity of the dog).

³⁹¹ See *supra* Part II.C (describing the harms that are caused by dogs or other large domestic animals).

³⁹² See *supra* text accompanying notes 115–118 (explaining that most strict liability statutes are explicitly limited to dogs, although a few apply to the owners of any vicious animal).

The problems that have already been demonstrated in dog bite cases will be exacerbated when applied to cats because cats react in different ways than dogs.³⁹³ Including cats and dogs under an all-encompassing standard of provocation may be both under-inclusive and over-inclusive, holding cat owners liable for acts where a reasonable person would have understood the cat to be provoked and excusing liability when the cat's actions were not provoked.³⁹⁴ Thus, legislatures seeking to define provocation would likely be unable to craft a standard that adequately defines provocation for both cats and dogs.³⁹⁵ This difficulty is highly probable, considering that legislatures are unable to create a standard of provocation that leads to reliable and predictable jury verdicts in dog bite cases.³⁹⁶ If the legislature chooses not to define provocation, as is the case in Minnesota, juries will likely end up imputing their own definitions of provocation, leading to inconsistent verdicts.³⁹⁷

3. The Statute Will Not Have a Substantial Impact on Making Cat Owners More Responsible for Their Pets

The extension of strict liability to cats is likely to have minimal impact on cat owners, thus not fulfilling the underlying policy of encouraging pet owners to adequately supervise their pets.³⁹⁸ Even though cats are more likely than dogs to run at large under city ordinances, cats cannot inflict as much damage as dogs can, so the public is much less concerned about cat bites.³⁹⁹ Furthermore, society is generally willing to accept the risk of roaming cats, demonstrated by the general lack of restrictions on cats and the overall general understanding that the harm posed by cats is minimal.⁴⁰⁰ Cats are less likely than dogs to approach people and

³⁹³ See *supra* note 213 and accompanying text (explaining that cats are different from dogs in many ways).

³⁹⁴ See *supra* text accompanying note 214 (noting that dogs and cats react differently in their interactions with humans).

³⁹⁵ See *supra* text accompanying note 213 (stating that there are important behavioral differences between cats and dogs).

³⁹⁶ See *supra* text accompanying notes 172–179 (noting that many statutes do not define provocation, which results in a confused jury).

³⁹⁷ See *supra* text accompanying notes 106–107 (stating that although provocation is often the decisive factor in determining liability, juries frequently have little guidance on how to apply the standard to the facts of a particular case).

³⁹⁸ See *supra* text accompanying notes 268–271 (noting that the public policy behind holding dog owners to a heightened standard of liability is creating an incentive to keep control of their dogs, in order to avoid serious and potentially fatal attacks).

³⁹⁹ See *supra* text accompanying notes 259–261 (noting that dog attacks may be fatal, while virtually no deaths are attributable to cat attacks).

⁴⁰⁰ See *supra* text accompanying note 280 (explaining that cats are generally permitted to run at large because of the long-standing notion that domestic animals are unlikely to do harm).

attack them.⁴⁰¹ Therefore, while the statute would make cat owners responsible for the conduct of their cats, cat owners will not respond by confining their cats, because they are accustomed to a society that tolerates wandering cats.⁴⁰² The risk of fatalities from free-roaming dogs, likewise, is not present with free-roaming cats.⁴⁰³ The public policy favoring holding pet owners responsible for the actions of their pets, though moderately applicable to cats, is far more relevant for dog owners.⁴⁰⁴

4. Suitable Causes of Action Already Exist for Cat Bite Victims

The existing remedies for cat bite victims are sufficient to maintain a balance between holding the cat owner responsible for the cat's wrongdoing and allowing the cat owner to enjoy the cat without fear of strict liability.⁴⁰⁵ As discussed above, various common law remedies allow victims of cat attacks to recover for their injuries, including the scienter action and the negligence action.⁴⁰⁶ Although the victim must establish that the cat owner had knowledge of the cat's dangerousness in a scienter action, such a standard is appropriate because the harm caused by cats does not merit an automatic finding of liability.⁴⁰⁷ The cat attack victim also has the option to proceed under a negligence theory, in which case the knowledge of the cat owner is not determinative.⁴⁰⁸ The negligence theory is especially appropriate in cases involving disease, where the cat owner had a duty to vaccinate the cat and harm resulted from failure to do so.⁴⁰⁹ The fact that these remedies have been utilized in the majority of jurisdictions for a number of years suggests their applicability and reflection of societal expectations.⁴¹⁰

⁴⁰¹ See *supra* note 294 and accompanying text (stating that cats are less likely to approach strangers than dogs).

⁴⁰² See *supra* note 284 and accompanying text (noting that cat owners allow their cats to go outside despite the risks because cats largely remain in control of their own lives).

⁴⁰³ See *supra* text accompanying notes 268–271 (explaining that many fatal dog attacks occur when the dog is not properly restrained).

⁴⁰⁴ See *supra* Part II.A.4 (noting the reasons behind the advent of strict liability dog bite statutes).

⁴⁰⁵ See *supra* Part II.B.3 (discussing the application of the common law causes of action for cat bite victims in Minnesota).

⁴⁰⁶ See *supra* Parts II.A.1–2 (exploring the common law scienter and negligence actions).

⁴⁰⁷ See *supra* Part II.C.2 (noting the fact that dogs are capable of killing people, while cats are generally not).

⁴⁰⁸ See *supra* text accompanying note 59 (noting that knowledge of the owner is not a determinative factor in a negligence action).

⁴⁰⁹ See *supra* text accompanying notes 235–236 (discussing the fact that cats should be vaccinated for rabies and in some states are required to be vaccinated but are less likely to receive veterinary care than dogs).

⁴¹⁰ See *supra* notes 194–195 and accompanying text (demonstrating courts' willingness to continue to apply the common law scienter and negligence standards to cat bite cases).

5. Extending Strict Liability to Cats Is Contrary to the Original Legislative Intent

Finally, extension of the dog bite strict liability statute is inconsistent with the statute's original legislative intent.⁴¹¹ Since Minnesota's statute was originally enacted in response to the concerns of mail carriers and others who would lawfully be on another party's property, extending the statute to cats is unnecessary and contrary to legislative intent.⁴¹² Furthermore, the fact that no other state has specifically singled out cats in their strict liability statutes suggests cats are not perceived to be such a threat to people that imposition of a strict liability statute is merited.⁴¹³ The legislature's exclusion of cats when it first considered the strict liability dog bite statute in 1951 reflects the common sense notion that dogs and cats behave differently.⁴¹⁴ Since dogs and cats possess different behaviors and dogs are generally much larger than cats, dogs pose a greater risk of harm to humans and thus must be regulated more strictly than cats.⁴¹⁵

IV. CONCLUSION

In conclusion, the harms posed by cats are not significant enough to warrant an extension of Minnesota's strict liability statute.⁴¹⁶ Minnesota's strict liability statute overlooks the problems that courts have with interpreting the statute.⁴¹⁷ Minnesota courts rejected extending the statute to cats in *Clark v. Brings*, reasoning that the legislature had chosen to limit such statute to dogs and that courts have generally considered cats to be harmless.⁴¹⁸ Minnesota did not extend the statute in *Clark* because it was imprudent to do so, and it is still unnecessary because appropriate remedies

⁴¹¹ See *supra* text accompanying notes 123–125 (noting that the main proponents of the bill were mailmen and other people who had to enter the land of another as a part of their occupation).

⁴¹² See *supra* text accompanying note 126 (stating that Minnesota's statute was originally enacted in response to concerns about the availability of recovery for victims of dog bites who were lawfully on the premises of another).

⁴¹³ See *supra* text accompanying notes 115–118 (explaining that most strict liability statutes are explicitly limited to dogs, although a few apply to the owners of any vicious animal).

⁴¹⁴ See *supra* text accompanying note 213 (noting that cats and dogs have different relationships with humans).

⁴¹⁵ See, e.g., *supra* Part II.C.2 (noting the occurrence of fatal dog attacks).

⁴¹⁶ See, e.g., *supra* Part II.C.2 (discussing the relative frequency of fatal dog attacks).

⁴¹⁷ See *supra* text accompanying notes 174–177 (explaining the difficulties that courts have in applying the concept of provocation to cases brought under the statute).

⁴¹⁸ See *supra* text accompanying notes 192–200 (noting that the court considered the victim's argument that the strict liability statute extends to cats and explicitly rejected it).

exist for cat bite victims.⁴¹⁹ By extending the statute, the Minnesota legislature will defy common sense by imposing a stricter standard of liability upon cat owners than owners of domestic animals, such as horses and cows. Such an outcome places cats in the category of abnormally dangerous animals and ignores the important role they play as human companions.⁴²⁰

⁴¹⁹ See *supra* text accompanying note 189 (explaining that cat bite victims have access to common law causes of action).

⁴²⁰ See *supra* text accompanying note 11 (noting that most cat owners consider their cats to be part of their families).