



28 committed in the presence of a person younger than 18 years of age.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **76-9-301**, as last amended by Chapter 7, Laws of Utah 1996, Second Special Session

36 **76-9-301.5**, as last amended by Chapter 7, Laws of Utah 1996, Second Special Session

37 **76-9-301.6**, as last amended by Chapter 282, Laws of Utah 1998

38 **76-9-301.7**, as enacted by Chapter 7, Laws of Utah 1996, Second Special Session

39 **76-10-1602**, as last amended by Chapters 104, 140 and 319, Laws of Utah 2004



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **76-9-301** is amended to read:

43 **76-9-301. Cruelty to animals -- Definitions -- Offenses -- Penalties.**

44 (1) As used in this section:

45 (a) "Abandon" means to deposit, leave, or drop off any live animal:

46 (i) without providing for the care of that animal; or

47 (ii) in a situation where conditions present an immediate, direct, and serious threat to  
48 the life, safety, or health of the animal.

49 (b) (i) "Animal" means a live, nonhuman, vertebrate creature.

50 (ii) "Animal" does not include:

51 (A) animals kept or owned for agricultural purposes and cared for in accordance with  
52 accepted husbandry practices;

53 (B) animals used for rodeo purposes and cared for in accordance with accepted  
54 husbandry practices; and

55 (C) protected and unprotected wildlife as defined in Section 23-13-2.

56 (c) "Custody" means ownership, possession, or control over an animal.

57 (d) "Legal privilege" means an act:

58 (i) authorized by state law, including Division of Wildlife Resources statutes and rules;

59 and

60 (ii) conducted in compliance with local ordinances.

61 (e) "Necessary food, water, care, and shelter" means the following, taking into account  
62 the species, age, and physical condition of the animal:

63 (i) appropriate and essential food and potable water;

64 (ii) veterinary care; and

65 (iii) adequate protection, including appropriate shelter, against extreme weather  
66 conditions, including extremes of cold, heat, and precipitation.

67 ~~[(1)]~~ (2) A person is guilty of cruelty to animals if the person intentionally, knowingly,  
68 recklessly, or with criminal negligence:

69 (a) fails to provide necessary food, water, care, or shelter for an animal in his custody;

70 (b) abandons an animal in the person's custody;

71 (c) transports or confines an animal in a cruel manner;

72 (d) injures an animal;

73 (e) causes any animal, not including a dog, to fight with another animal of like kind for  
74 amusement or gain; or

75 (f) causes any animal, including a dog, to fight with a different kind of animal or  
76 creature for amusement or gain.

77 ~~[(2)]~~ (3) A violation of Subsection ~~[(1)]~~ (2) is:

78 (a) a class B misdemeanor if committed intentionally or knowingly; and

79 (b) a class C misdemeanor if committed recklessly or with criminal negligence.

80 ~~[(3)]~~ (4) A person is guilty of aggravated cruelty to an animal if the person:

81 ~~[(a) tortures an animal;]~~

82 (a) without having a legal privilege to do so:

83 ~~[(b)]~~ (i) administers or causes to be administered poison or poisonous substances to an  
84 animal ~~[without having a legal privilege to do so]; or~~

85 (ii) knowingly or intentionally places or causes to be placed in a location accessible to  
86 an animal, a poison or poisonous substance that is attractive to one or more species of animals;

87 (b) causes to an animal serious bodily injury as defined in Section 76-1-601; or

88 (c) kills or causes to be killed an animal without having a legal privilege to do so,

89 except that causing an animal's death by torture is a third degree felony under Subsection (6).

90           ~~[(4)]~~ (5) A violation of Subsection ~~[(3)]~~ (4) is:

91           (a) a class A misdemeanor if committed intentionally or knowingly;

92           (b) a class B misdemeanor if committed recklessly; and

93           (c) a class C misdemeanor if committed with criminal negligence.

94           (6) (a) A person is guilty of felony animal cruelty if a person tortures an animal,  
95 including if the person causes the animal's death by torture.

96           (b) A violation of Subsection (6)(a) is a third degree felony.

97           ~~[(5)]~~ (7) It is a defense to prosecution under this section that the conduct of the actor  
98 towards the animal was:

99           (a) by a licensed veterinarian using accepted veterinary practice;

100           (b) directly related to bona fide experimentation for scientific research, provided that if  
101 the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless  
102 directly necessary to the veterinary purpose or scientific research involved;

103           (c) permitted under Section 18-1-3;

104           (d) by a person who humanely destroys any animal found suffering past recovery for  
105 any useful purpose; or

106           (e) by a person who humanely destroys any apparently abandoned animal found on the  
107 person's property.

108           ~~[(6)]~~ (8) For purposes of Subsection ~~[(5)]~~ (7)(d), before destroying the suffering  
109 animal, the person who is not the owner of the animal shall obtain:

110           (a) the judgment of a veterinarian of the animal's nonrecoverable condition;

111           (b) the judgment of two other persons called by the person to view the unrecoverable  
112 condition of the animal in the person's presence;

113           (c) the consent from the owner of the animal to the destruction of the animal; or

114           (d) a reasonable conclusion that the animal's suffering is beyond recovery, through the  
115 person's own observation, if the person is in a location or circumstance where the person is  
116 unable to contact another person.

117           ~~[(7)]~~ (9) This section does not affect or prohibit the training, instruction, and grooming  
118 of animals, so long as the methods used are in accordance with accepted husbandry practices.

119           ~~[(8)]~~ (10) (a) This section does not affect or prohibit the use of an electronic locating or  
120 training collar by the owner of an animal for the purpose of lawful animal training, lawful

121 hunting practices, or protecting against loss of that animal.

122 (b) County and municipal governments may not prohibit the use of an electronic  
123 locating or training collar.

124 ~~[(9)] (11)(a)~~ Upon conviction under this section, the court ~~[may in its discretion, in~~  
125 ~~addition to other]~~ shall order that the defendant comply with the requirements in Subsections  
126 (11)(b) and (c) unless the court states on the record the reasons the court finds imposition of  
127 any of the provisions to be inappropriate. The court may impose any additional penalties[-] as  
128 the court finds appropriate to the case before it.

129 ~~[(a)] (b)~~ The court shall order the defendant:

130 ~~(i) to [be evaluated to determine the need for psychiatric or]~~ undergo a psychological  
131 ~~[counseling, to]~~ evaluation and receive ~~[counseling as the court determines to be appropriate,]~~  
132 treatment addressing the issues involved in animal abuse, and to pay the costs of the evaluation  
133 and [counseling] treatment to the extent the court finds the defendant is able to do so;

134 ~~[(b) require the defendant]~~ (ii) to forfeit any rights the defendant has to the animal  
135 subjected to a violation of this section [and];

136 (iii) to repay the reasonable costs incurred by any person or agency in caring for each  
137 animal subjected to violation of this section; and

138 ~~[(c) order the defendant]~~ (iv) to no longer possess or retain custody of any animal, as  
139 specified by the court, during the period of the defendant's probation or parole or other period  
140 as designated by the court[-; and].

141 ~~[(d)] (c)~~ The court shall order the animal to be ~~[placed]~~ cared for or disposed of in the  
142 following order of priority, with Subsection (11)(c)(i) being the first priority:

143 (i) place the animal for the purpose of adoption or care in the custody of a county and  
144 municipal animal control agency[-; or an animal welfare agency registered with the state[-;  
145 ~~sold];~~

146 (ii) sell the animal at public auction[-; or ~~humanely destroyed]; or~~

147 (iii) euthanize the animal humanely.

148 ~~[(10)] (12)~~ This section does not prohibit the use of animals in lawful training.

149 ~~[(11) As used in this section:]~~

150 ~~[(a) "Abandons" means to intentionally deposit, leave, or drop off any live animal:]~~

151 ~~[(i) without providing for the care of that animal; or]~~

152 ~~[(ii) in a situation where conditions present an immediate, direct, and serious threat to~~  
153 ~~the life, safety, or health of the animal.]~~

154 ~~[(b) (i) "Animal" means a live, nonhuman vertebrate creature.]~~

155 ~~[(ii) "Animal" does not include animals kept or owned for agricultural purposes and~~  
156 ~~cared for in accordance with accepted husbandry practices, animals used for rodeo purposes,~~  
157 ~~and does not include protected and unprotected wildlife as defined in Section 23-13-2.]~~

158 ~~[(c) "Custody" means ownership, possession, or control over an animal.]~~

159 ~~[(d) "Legal privilege" means an act authorized by state law, including Division of~~  
160 ~~Wildlife Resources statutes and rules, and conducted in conformance with local ordinances.]~~

161 ~~[(e) "Necessary food, care, and shelter" means appropriate and essential food and other~~  
162 ~~needs of the animal, including veterinary care, and adequate protection against extreme weather~~  
163 ~~conditions.]~~

164 Section 2. Section **76-9-301.5** is amended to read:

165 **76-9-301.5. Spectator at organized animal fighting exhibitions.**

166 (1) It is unlawful for a person to knowingly be present as a spectator at any place,  
167 building, or tenement where preparations are being made for an exhibition of the fighting of  
168 animals, as prohibited by ~~[Subsection]~~ Subsections 76-9-301~~[(+)]~~(2)(e) and (f), or to be present  
169 at such exhibition, regardless of whether any entrance fee has been charged.

170 (2) A person who violates this ~~[subsection]~~ section is guilty of a class B misdemeanor.

171 Section 3. Section **76-9-301.6** is amended to read:

172 **76-9-301.6. Dog fighting exhibition -- Authority to arrest and take possession of**  
173 **dogs and property.**

174 (1) A peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications,  
175 may enter any place, building, or tenement where an exhibition of dog fighting is occurring, or  
176 where preparations are being made for such an exhibition and, without a warrant, arrest all  
177 persons present.

178 (2) (a) Notwithstanding the provisions of Section 76-9-305, any authorized officer who  
179 makes an arrest under Subsection (1) may lawfully take possession of all dogs, paraphernalia,  
180 implements, or other property or things used or employed, or to be employed, in an exhibition  
181 of dog fighting prohibited by Subsection 76-9-301~~[(+)]~~(2)(f) or Section 76-9-301.1.

182 (b) The officer, at the time of the taking of property pursuant to Subsection (2)(a), shall

183 state his name and provide other identifying information to the person in charge of the dogs or  
184 property taken.

185 (3) (a) After taking possession of dogs, paraphernalia, implements, or other property or  
186 things under Subsection (2), the officer shall file an affidavit with the judge or magistrate  
187 before whom a complaint has been made against any person arrested under this section.

188 (b) The affidavit shall include:

189 (i) the name of the person charged in the complaint;

190 (ii) a description of all property taken;

191 (iii) the time and place of the taking of the property;

192 (iv) the name of the person from whom the property was taken;

193 (v) the name of the person who claims to own the property, if known; and

194 (vi) a statement that the officer has reason to believe and believes that the property  
195 taken was used or employed, or was to be used or employed, in violation of Section 76-9-301  
196 or 76-9-301.1, and the grounds for the belief.

197 (4) (a) The officer shall deliver the confiscated property to the judge or magistrate who  
198 shall, by order, place the property in the custody of the officer or any other person designated in  
199 the order, and that person shall keep the property until conviction or final discharge of the  
200 person against whom the complaint was made.

201 (b) The person designated in Subsection (4)(a) shall assume immediate custody of the  
202 property, and retain the property until further order of the court.

203 (c) Upon conviction of the person charged, all confiscated property shall be forfeited  
204 and destroyed or otherwise disposed of, as the court may order.

205 (d) If the person charged is acquitted or discharged without conviction, the court shall,  
206 on demand, order the property to be returned to its owner.

207 Section 4. Section **76-9-301.7** is amended to read:

208 **76-9-301.7. Cruelty to animals -- Enhanced penalties.**

209 (1) "Conviction":

210 (a) means a conviction by plea [~~or by~~] of guilty, nolo contendere, guilty and mentally  
211 ill, or no contest, or a verdict[:] of guilty; and

212 (b) includes a plea that is held in abeyance under Title 77, Chapter 2a, Pleas in  
213 Abeyance, even if the charge has been subsequently reduced or dismissed in accordance with

214 the plea in abeyance agreement.

215 (2) A person who commits any violation of Section 76-9-301, Section 76-9-301.5, or  
216 Subsection 76-9-301.1(1) or (4) within the state and on at least one previous occasion has been  
217 convicted of violating Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(1) or  
218 (4) ~~shall be~~ or has been convicted in another jurisdiction of an offense that is substantially  
219 similar to any of these offenses is subject to an enhanced penalty [as provided in] under  
220 Subsection [~~(3)~~] (4).

221 (3) A person who commits any violation of Section 76-9-301, or Subsection  
222 76-9-301.1 (1) or (4) in the immediate presence of a person younger than 18 years of age,  
223 regardless of where the act occurs, is subject to an enhanced penalty under Subsection (4).

224 [~~(3)~~] (4) The enhanced degree of offense for offenses committed under this section are:

225 (a) if the offense is a class C misdemeanor, it is a class B misdemeanor; ~~and~~

226 (b) if the offense is a class B misdemeanor, it is a class A misdemeanor[.];

227 (c) if the offense is a class A misdemeanor, it is a third degree felony; and

228 (d) if the offense is a third degree felony, it is a second degree felony.

229 [~~(4)~~] (5) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall  
230 provide written notice upon the information or indictment that the defendant is subject to an  
231 enhanced degree of offense or penalty under Subsection [~~(3)~~] (4). The notice shall be served  
232 upon the defendant or his attorney not later than ten days prior to trial.

233 (b) If the notice is not included initially, the court may subsequently allow the  
234 prosecutor to amend the charging document to include the notice if the court finds:

235 (i) that the amended charging documents, including any statement of probable cause,  
236 provide notice that the defendant is subject to an enhanced penalty provided under this section;  
237 and

238 (ii) that the defendant has not otherwise been substantially prejudiced by the  
239 amendment.

240 Section 5. Section **76-10-1602** is amended to read:

241 **76-10-1602. Definitions.**

242 As used in this part:

243 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
244 business trust, association, or other legal entity, and any union or group of individuals

245 associated in fact although not a legal entity, and includes illicit as well as licit entities.

246 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
247 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
248 have the same or similar purposes, results, participants, victims, or methods of commission, or  
249 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
250 demonstrate continuing unlawful conduct and be related either to each other or to the  
251 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
252 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
253 activity as defined by this part shall have occurred within five years of the commission of the  
254 next preceding act alleged as part of the pattern.

255 (3) "Person" includes any individual or entity capable of holding a legal or beneficial  
256 interest in property, including state, county, and local governmental entities.

257 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
258 command, encourage, or intentionally aid another person to engage in conduct which would  
259 constitute any offense described by the following crimes or categories of crimes, or to attempt  
260 or conspire to engage in an act which would constitute any of those offenses, regardless of  
261 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
262 or a felony:

263 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
264 Recording Practices Act;

265 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
266 Code, Sections 19-1-101 through 19-7-109;

267 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
268 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife  
269 Resources Code of Utah, or Section 23-20-4;

270 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False  
271 Claims Act, Sections 26-20-1 through 26-20-12;

272 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal  
273 Offenses;

274 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
275 Land Sales Practices Act;

- 276 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
277 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
278 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
279 Clandestine Drug Lab Act;
- 280 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
281 Securities Act;
- 282 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah  
283 Procurement Code;
- 284 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 285 (k) a terroristic threat, Section 76-5-107;
- 286 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 287 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 288 (n) sexual exploitation of a minor, Section 76-5a-3;
- 289 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 290 (p) causing a catastrophe, Section 76-6-105;
- 291 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 292 (r) burglary of a vehicle, Section 76-6-204;
- 293 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 294 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 295 (u) theft, Section 76-6-404;
- 296 (v) theft by deception, Section 76-6-405;
- 297 (w) theft by extortion, Section 76-6-406;
- 298 (x) receiving stolen property, Section 76-6-408;
- 299 (y) theft of services, Section 76-6-409;
- 300 (z) forgery, Section 76-6-501;
- 301 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 302 (bb) deceptive business practices, Section 76-6-507;
- 303 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
304 criticism of goods, Section 76-6-508;
- 305 (dd) bribery of a labor official, Section 76-6-509;
- 306 (ee) defrauding creditors, Section 76-6-511;

- 307 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 308 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 309 (hh) bribery or threat to influence contest, Section 76-6-514;
- 310 (ii) making a false credit report, Section 76-6-517;
- 311 (jj) criminal simulation, Section 76-6-518;
- 312 (kk) criminal usury, Section 76-6-520;
- 313 (ll) fraudulent insurance act, Section 76-6-521;
- 314 (mm) computer crimes, Section 76-6-703;
- 315 (nn) identity fraud, Section 76-6-1102;
- 316 (oo) sale of a child, Section 76-7-203;
- 317 (pp) bribery to influence official or political actions, Section 76-8-103;
- 318 (qq) threats to influence official or political action, Section 76-8-104;
- 319 (rr) receiving bribe or bribery by public servant, Section 76-8-105;
- 320 (ss) receiving bribe or bribery for endorsement of person as public servant, Section
- 321 76-8-106;
- 322 (tt) official misconduct, Sections 76-8-201 and 76-8-202;
- 323 (uu) obstruction of justice, Section 76-8-306;
- 324 (vv) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 325 (ww) false or inconsistent material statements, Section 76-8-502;
- 326 (xx) false or inconsistent statements, Section 76-8-503;
- 327 (yy) written false statements, Section 76-8-504;
- 328 (zz) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 329 (aaa) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 330 (bbb) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 331 (ccc) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 332 76-8-1205;
- 333 (ddd) unemployment insurance fraud, Section 76-8-1301;
- 334 (eee) intentionally or knowingly causing one animal to fight with another, Subsection
- 335 76-9-301[~~(1)(f)~~](2)(e) or (f) or Section 76-9-301.1;
- 336 (fff) possession, use, or removal of explosives, chemical, or incendiary devices or
- 337 parts, Section 76-10-306;

338 (ggg) delivery to common carrier, mailing, or placement on premises of an incendiary  
339 device, Section 76-10-307;

340 (hhh) possession of a deadly weapon with intent to assault, Section 76-10-507;

341 (iii) unlawful marking of pistol or revolver, Section 76-10-521;

342 (jjj) alteration of number or mark on pistol or revolver, Section 76-10-522;

343 (kkk) forging or counterfeiting trademarks, trade name, or trade device, Section  
344 76-10-1002;

345 (lll) selling goods under counterfeited trademark, trade name, or trade devices, Section  
346 76-10-1003;

347 (mmm) sales in containers bearing registered trademark of substituted articles, Section  
348 76-10-1004;

349 (nnn) selling or dealing with article bearing registered trademark or service mark with  
350 intent to defraud, Section 76-10-1006;

351 (ooo) gambling, Section 76-10-1102;

352 (ppp) gambling fraud, Section 76-10-1103;

353 (qqq) gambling promotion, Section 76-10-1104;

354 (rrr) possessing a gambling device or record, Section 76-10-1105;

355 (sss) confidence game, Section 76-10-1109;

356 (ttt) distributing pornographic material, Section 76-10-1204;

357 (uuu) inducing acceptance of pornographic material, Section 76-10-1205;

358 (vvv) dealing in harmful material to a minor, Section 76-10-1206;

359 (www) distribution of pornographic films, Section 76-10-1222;

360 (xxx) indecent public displays, Section 76-10-1228;

361 (yyy) prostitution, Section 76-10-1302;

362 (zzz) aiding prostitution, Section 76-10-1304;

363 (aaaa) exploiting prostitution, Section 76-10-1305;

364 (bbbb) aggravated exploitation of prostitution, Section 76-10-1306;

365 (cccc) communications fraud, Section 76-10-1801;

366 (dddd) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,  
367 Money Laundering and Currency Transaction Reporting Act;

368 (eeee) any act prohibited by the criminal provisions of the laws governing taxation in

369 this state; and  
370 (fff) any act illegal under the laws of the United States and enumerated in Title 18,  
371 Section 1961 (1)(B), (C), and (D) of the United States Code.

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**Legislative Review Note**  
**as of 1-28-05 9:35 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0242**

**Criminal Penalty for Animal Cruelty**

*04-Feb-05*

*10:55 AM*

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**State Impact**

There may be additional expense for prosecution to both state and local government. It is estimated that this can be handled in existing budgets.

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**Individual and Business Impact**

Persons convicted of crimes under the provisions of this bill could spend more time incarcerated reducing their ability to generate personal income. They may also be required to pay fines up to \$5,000.

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**Office of the Legislative Fiscal Analyst**