

Senator Gene Davis proposes the following substitute bill:

GAME FOWL FIGHTING AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Johnny Anderson

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the fighting of animals.

Highlighted Provisions:

This bill:

- ▶ provides that game fowl fighting and specified acts related to game fowl fighting are third degree felonies;
- ▶ provides that being present at a game fowl fight is a class B misdemeanor; and
- ▶ provides definitions and cross references.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-9-301, as last amended by Laws of Utah 2008, Chapter 292

76-9-301.5, as last amended by Laws of Utah 2008, Chapter 292

ENACTS:

76-9-301.3, Utah Code Annotated 1953



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

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

76-9-301. Cruelty to animals.

(1) As used in this section:

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

(A) without providing for the care of that animal, in accordance with accepted animal husbandry practices or customary farming practices; or

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

(ii) "Abandon" does not include returning wildlife to its natural habitat.

(b) (i) "Animal" means, except as provided in Subsection (1)(b)(ii), a live, nonhuman vertebrate creature.

(ii) "Animal" does not include:

(A) a live, nonhuman vertebrate creature, if:

(I) the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices; and

(II) the creature is:

(Aa) owned or kept by a zoological park that is accredited by, or a member of, the American Zoo and Aquarium Association;

(Bb) kept, owned, or used for the purpose of training hunting dogs or raptors; or

(Cc) temporarily in the state as part of a circus or traveling exhibitor licensed by the United States Department of Agriculture under 7 U.S.C. 2133;

(B) a live, nonhuman vertebrate creature that is owned, kept, or used for rodeo purposes, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted rodeo practices;

(C) livestock, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices or customary farming practices; or

(D) wildlife, as defined in Section 23-13-2, including protected and unprotected wildlife, if the conduct toward the wildlife is in accordance with lawful hunting, fishing, or trapping practices or other lawful practices.

- 57 (c) "Companion animal" means an animal that is a domestic dog or a domestic cat.
- 58 (d) "Custody" means ownership, possession, or control over an animal.
- 59 (e) "Legal privilege" means an act that:
 - 60 (i) is authorized by state law, including Division of Wildlife Resources rules; and
 - 61 (ii) is not in violation of a local ordinance.
- 62 (f) "Livestock" means:
 - 63 (i) domesticated:
 - 64 (A) cattle;
 - 65 (B) sheep;
 - 66 (C) goats;
 - 67 (D) turkeys;
 - 68 (E) swine;
 - 69 (F) equines;
 - 70 (G) camelidae;
 - 71 (H) ratites; or
 - 72 (I) bison;
 - 73 (ii) domesticated elk, as defined in Section 4-39-102; or
 - 74 (iii) any domesticated nonhuman vertebrate creature, domestic furbearer, or domestic
 - 75 poultry, raised, kept, or used for agricultural purposes.
- 76 (g) "Necessary food, water, care, or shelter" means the following, taking into account
- 77 the species, age, and physical condition of the animal:
 - 78 (i) appropriate and essential food and water;
 - 79 (ii) adequate protection, including appropriate shelter, against extreme weather
 - 80 conditions; and
 - 81 (iii) other essential care.
- 82 (h) "Torture" means intentionally or knowingly causing or inflicting extreme physical
- 83 pain to an animal in an especially heinous, atrocious, cruel, or exceptionally depraved manner.
- 84 (2) Except as provided in Subsection (4) or (6), a person is guilty of cruelty to an
- 85 animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or
- 86 with criminal negligence:
 - 87 (a) fails to provide necessary food, water, care, or shelter for an animal in the person's

88 custody;

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

90 (c) injures an animal;

91 (d) causes any animal, not including a dog or a game fowl, to fight with another animal

92 of like kind for amusement or gain; or

93 (e) causes any animal, including a dog or a game fowl, to fight with a different kind of

94 animal or creature for amusement or gain.

95 (3) Except as provided in Section 76-9-301.7, a violation of Subsection (2) is:

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

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

98 (4) A person is guilty of aggravated cruelty to an animal if the person:

99 (a) tortures an animal;

100 (b) administers, or causes to be administered, poison or a poisonous substance to an

101 animal; or

102 (c) kills an animal or causes an animal to be killed without having a legal privilege to

103 do so.

104 (5) Except as provided in Subsection (6) or Section 76-9-301.7, a violation of

105 Subsection (4) is:

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

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

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

109 (6) A person is guilty of a third degree felony if the person intentionally or knowingly

110 tortures a companion animal.

111 (7) It is a defense to prosecution under this section that the conduct of the actor towards
112 the animal was:

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

114 (b) directly related to bona fide experimentation for scientific research, provided that if

115 the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless

116 directly necessary to the veterinary purpose or scientific research involved;

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

118 (d) by a person who humanely destroys any animal found suffering past recovery for

119 any useful purpose; or

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

122 (8) For purposes of Subsection (7)(d), before destroying the suffering animal, the
123 person who is not the owner of the animal shall obtain:

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

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

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

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

131 (9) This section does not affect or prohibit:

132 (a) the training, instruction, and grooming of animals, if the methods used are in
133 accordance with accepted animal husbandry practices or customary farming practices;

134 (b) the use of an electronic locating or training collar by the owner of an animal for the
135 purpose of lawful animal training, lawful hunting practices, or protecting against loss of that
136 animal; or

137 (c) the lawful hunting of, fishing for, or trapping of, wildlife.

138 (10) County and municipal governments may not prohibit the use of an electronic
139 locating or training collar.

140 (11) Upon conviction under this section, the court may in its discretion, in addition to
141 other penalties:

142 (a) order the defendant to be evaluated to determine the need for psychiatric or
143 psychological counseling, to receive counseling as the court determines to be appropriate, and
144 to pay the costs of the evaluation and counseling;

145 (b) require the defendant to forfeit any rights the defendant has to the animal subjected
146 to a violation of this section and to repay the reasonable costs incurred by any person or agency
147 in caring for each animal subjected to violation of this section;

148 (c) order the defendant to no longer possess or retain custody of any animal, as
149 specified by the court, during the period of the defendant's probation or parole or other period

150 as designated by the court; and

151 (d) order the animal to be placed for the purpose of adoption or care in the custody of a
152 county and municipal animal control agency, an animal welfare agency registered with the
153 state, sold at public auction, or humanely destroyed.

154 (12) This section does not prohibit the use of animals in lawful training.

155 (13) A veterinarian who, acting in good faith, reports a violation of this section to law
156 enforcement may not be held civilly liable for making the report.

157 Section 2. Section **76-9-301.3** is enacted to read:

158 **76-9-301.3. Game fowl fighting -- Training game fowl for fighting.**

159 (1) As used in this section "game fowl" means any of several breeds of fowl reared or
160 used for fighting other fowl.

161 (2) It is unlawful for any person to:

162 (a) own, possess, keep, or train game fowl with the intent to engage it in fighting with
163 another game fowl;

164 (b) cause a game fowl to fight with or injure another game fowl;

165 (c) manufacture, buy, sell, trade, or possess an instrument designed to enhance the
166 ability to, or likelihood of, causing injury to a game fowl with the intent that the instrument be
167 used in game fowl fighting or game fowl training; or

168 (d) permit or allow any act that violates Subsection (2)(a), (b), or (c) on any premises
169 under the person's charge.

170 (3) A person who violates Subsection (2) is guilty of a third degree felony.

171 (4) This section does not prohibit the lawful use of livestock by the owner, the owner's
172 employees or agent, or any other person in the lawful custody of livestock.

173 (5) Any property, material, or device used or possessed in violation of this section is
174 subject to criminal or civil forfeiture under the procedures and substantive protections
175 established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

176 Section 3. Section **76-9-301.5** is amended to read:

177 **76-9-301.5. Spectator at organized animal fighting exhibitions.**

178 It is unlawful for a person to knowingly be present as a spectator at any place, building,
179 or tenement where preparations are being made for an exhibition of the fighting of animals, as
180 prohibited by Subsections 76-9-301(2)(d) and (e) or Section 76-9-301.3, or to be present at

181 [~~such~~] an animal fighting exhibition, regardless of whether any entrance fee has been charged.

182 A person who violates this section is guilty of a class B misdemeanor.