

SB0052S01 compared with SB0052

~~{deleted text}~~ shows text that was in SB0052 but was deleted in SB0052S01.

inserted text shows text that was not in SB0052 but was inserted into SB0052S01.

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Senator Gene Davis proposes the following substitute bill:

GAME FOWL FIGHTING AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

LONG TITLE

General Description:

This bill ~~{amends provisions of}~~ modifies the ~~{Utah}~~ Criminal Code ~~{relating to animal cruelty}~~ regarding the fighting of animals.

Highlighted Provisions:

This bill:

- ▶ ~~{amends the offense of "cruelty to an animal" to include causing a game fowl to fight with a different kind of animal or creature for amusement or gain;~~
- ▶ ~~makes it a third degree felony for a person to:~~
 - ~~possess, keep, or train game fowl with the intent to engage game fowl in a fighting exhibition with other game fowl;~~
 - ~~cause game fowl to fight with or injure other game fowl for the purposes of amusement or gain;~~

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- ~~permit~~ provides that game fowl fighting ~~{on property controlled by the person;~~
or
- ~~control, aid, or abet game fowl fighting;~~
- ~~makes it a class B misdemeanor to knowingly and intentionally be present as a~~
~~spectator at a place where preparations for}~~ and specified acts related to game fowl
fighting are ~~{ being made or where a game fowl fighting exhibition occurs;~~
- ~~allows a peace officer to:~~
- ~~enter any place where a game fowl fighting exhibition is occurring and arrest all~~
~~persons present; and~~
- ~~take possession of property employed in game fowl fighting following an arrest~~
~~of persons}~~ third degree felonies;
 - ▶ provides that being present at a game fowl ~~{fighting exhibition;~~
- ~~provides for the confiscation, custody, and disposition of property seized in relation~~
~~to a game fowl exhibition related offense; and~~
- ~~makes technical changes}~~ 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

~~{ENACTS:~~

~~†~~ 76-9-301.3, as last amended by Laws of Utah ~~{Code Annotated 1953}~~ 2008, Chapter
292

ENACTS:

76-9-301.3, Utah Code Annotated 1953

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

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

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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.

(c) "Companion animal" means an animal that is a domestic dog or a domestic cat.

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

(e) "Legal privilege" means an act that:

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

(ii) is not in violation of a local ordinance.

(f) "Livestock" means:

(i) domesticated:

(A) cattle;

(B) sheep;

(C) goats;

(D) turkeys;

(E) swine;

(F) equines;

(G) camelidae;

(H) ratites; or

(I) bison;

(ii) domesticated elk, as defined in Section 4-39-102; or

(iii) any domesticated nonhuman vertebrate creature, domestic furbearer, or domestic poultry, raised, kept, or used for agricultural purposes.

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

(i) appropriate and essential food and water;

(ii) adequate protection, including appropriate shelter, against extreme weather conditions; and

(iii) other essential care.

(h) "Torture" means intentionally or knowingly causing or inflicting extreme physical pain to an animal in an especially heinous, atrocious, cruel, or exceptionally depraved manner.

(2) Except as provided in Subsection (4) or (6), a person is guilty of cruelty to an animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or with criminal negligence:

(a) fails to provide necessary food, water, care, or shelter for an animal in the person's custody;

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

(c) injures an animal;

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(d) causes any animal, not including a dog or a game fowl, to fight with another animal of like kind for amusement or gain; or

(e) causes any animal, including a dog or a game fowl, to fight with a different kind of animal or creature for amusement or gain.

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

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

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

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

(a) tortures an animal;

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

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

(5) Except as provided in Subsection (6) or Section 76-9-301.7, a violation of Subsection (4) is:

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

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

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

(6) A person is guilty of a third degree felony if the person intentionally or knowingly tortures a companion animal.

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

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

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

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

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

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

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

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

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

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

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

(9) This section does not affect or prohibit:

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

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

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

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

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

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

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

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

(d) order the animal to be placed for the purpose of adoption or care in the custody of a county ~~or~~ and ~~or~~ municipal animal control agency ~~or~~, ~~or~~ an animal welfare agency

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registered with the state ~~{}~~, ~~{ to be}~~ sold at public auction ~~{}~~, ~~{}~~ or humanely destroyed.

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

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

Section 2. Section 76-9-301. ~~{2}~~3 is enacted to read:

76-9-301. ~~{2}~~3. Game fowl fighting -- Training game fowl for fighting ~~{-- Game fowl fighting exhibitions}~~.

(1) As used in this section ~~{~~:

~~—— (a) "Cockfighting" means the practice of setting two game fowl, fitted with sharp instruments attached to the spur of each game fowl, to fight each other.~~

~~—— (b) "Game" "game fowl" means any of several breeds of fowl reared or used for ~~{cockfighting}~~ fighting other fowl.~~

(2) It is unlawful for any person to:

(a) own, possess, keep, or train ~~{a game fowl to fight with or injure another }~~ game fowl with the intent to engage it in ~~{an exhibition of}~~ fighting with another game fowl;

(b) cause a game fowl to fight with or injure another game fowl ~~{ for amusement or gain}~~;

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

(d) permit or allow any act that violates Subsection (2)(a), (b), or (c) on any premises under the person's charge ~~{ or to control, aid, or abet that act.~~

~~—— (3) Possession of an instrument described in Subsection (1)(c), or related paraphernalia, together with evidence that the instrument or paraphernalia is being used or intended for use in the unlawful training of a game fowl to fight with another game fowl, is prima facie evidence of a violation of Subsections (2)(a), (b), and (c).~~

~~—— (4) .~~

~~—— (3) A person who violates Subsection (2) is guilty of a third degree felony ~~{, and any fine imposed may not exceed \$25,000.~~~~

~~—— (5) It is unlawful for a person to knowingly and intentionally be present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of~~

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~~game fowl fighting, or to knowingly and intentionally be present at a game fowl fighting exhibition or any other occurrence of fighting or injury described in this section. A person who violates this Subsection (5) is guilty of a class B misdemeanor.~~

~~_____ (6) Nothing in this section prohibits}.~~

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

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

Section 3. Section ~~76-9-301.~~76-9-301.5 is ~~{enacted}~~amended to read:

~~{_____}~~76-9-301.5. { Game fowl} **Spectator at organized animal** fighting
~~{exhibition -- Authority to arrest and take possession of game fowl and property.~~

~~_____ (1) A peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications, may enter}~~exhibitions.

It is unlawful for a person to knowingly be present as a spectator at any place, building, or tenement ~~{ where an exhibition of game fowl fighting is occurring, or }~~ where preparations are being made for an exhibition of ~~{ game fowl fighting, and without a warrant, arrest all persons present:~~

~~_____ (2) (a) Notwithstanding the provisions of Section 76-9-305, any authorized officer who makes an arrest under Subsection (1) may lawfully take possession of all game fowl, paraphernalia, implements, or other property or items used or employed, or to be employed, in an exhibition of game fowl fighting}~~the fighting of animals, as prohibited by ~~{Subsection}~~Subsections 76-9-301(2)(d) and (e) or Section 76-9-301.~~{2.~~

~~_____ (b) The officer, at the time of the taking of property pursuant to Subsection (2)(a), shall state the officer's name and provide other identifying information to the person in charge of the game fowl or property taken.~~

~~_____ (3) (a) After taking possession of game fowl, paraphernalia, implements, or other property or items under Subsection (2), the officer shall file an affidavit with the judge or magistrate before whom a complaint has been made against any person arrested under this section.~~

~~_____ (b) The affidavit shall include:~~

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- ~~—— (i) the name of the person charged in the complaint;~~
- ~~—— (ii) a description of all property taken;~~
- ~~—— (iii) the time and place of the taking of the property;~~
- ~~—— (iv) the name of the person from whom the property was taken;~~
- ~~—— (v) the name of the person who claims to own the property, if known; and~~
- ~~—— (vi) a statement that the officer has reason to believe and believes that the property taken was used or employed, or was to be used or employed, in violation of Section 76-9-301 or 76-9-301.2, and the grounds for the belief.~~
- ~~—— (4) (a) The officer shall deliver the confiscated property to the judge or magistrate who shall, by order, place the property in the custody of the officer or any other person designated in the order, and that person shall keep the property until conviction or final discharge of the person against whom the complaint is made.~~
- ~~—— (b) A person designated in Subsection (4)(a) shall assume immediate custody of the property, and retain the property until further order of the court.~~
- ~~—— (c) Upon conviction of the person charged, all confiscated property shall be forfeited and destroyed, or otherwise disposed of, as the court may order.~~
- ~~—— (d) If the person charged is acquitted or discharged without conviction, the court shall, on demand, order the property to be returned to its owner.~~

Legislative Review Note

~~—— as of 1-28-13 2:01 PM~~

Office of Legislative Research and General Counsel 3, or to be present at [such] an animal fighting exhibition, regardless of whether any entrance fee has been charged. A person who violates this section is guilty of a class B misdemeanor.