

**Representative David E. Lifferth** proposes the following substitute bill:

**INJURED WILDLIFE AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David E. Lifferth**

Senate Sponsor: David P. Hinkins

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**LONG TITLE**

**General Description:**

This bill addresses the killing of an animal that is seriously injured in a motor vehicle accident.

**Highlighted Provisions:**

This bill:

- ▶ permits a person to humanely kill an animal that is seriously injured in a motor vehicle accident under certain circumstances;
- ▶ makes the conduct described in the preceding paragraph:
  - a defense to the crime of cruelty to animals; and
  - an exception to the prohibition of discharging a firearm from, upon, or across a highway; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 **23-19-1**, as last amended by Laws of Utah 2013, Chapter 418  
27 **76-9-301**, as last amended by Laws of Utah 2015, Chapter 329  
28 **76-10-508**, as last amended by Laws of Utah 2014, Chapter 248

29 ENACTS:

30 **23-20-33**, Utah Code Annotated 1953



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

33 Section 1. Section **23-19-1** is amended to read:

34 **23-19-1. Possession of licenses, certificates of registration, permits, and tags**  
35 **required -- Nonassignability -- Exceptions -- Free fishing day.**

36 (1) Except as provided in Subsection (5), a person may not take, hunt, fish, or seine  
37 protected wildlife or sell, trade, or barter protected wildlife or wildlife parts unless the person:

38 (a) procures the necessary licenses, certificates of registration, permits, or tags required  
39 under this title, by rule made by the Wildlife Board under this title, or by an order or  
40 proclamation issued in accordance with a rule made by the Wildlife Board under this title; and

41 (b) carries in the person's possession while engaging in the activities described in  
42 Subsection (1) the license, certificate of registration, permit, or tag required under this title, by  
43 rule made by the Wildlife Board under this title, or by an order or proclamation issued in  
44 accordance with a rule made by the Wildlife Board under this title.

45 (2) Except as provided in Subsection (3) a person may not:

46 (a) lend, transfer, sell, give, or assign:

47 (i) a license, certificate of registration, permit, or tag belonging to the person; or

48 (ii) a right granted by a license, certificate of registration, permit, or tag; or

49 (b) use or attempt to use a license, certificate of registration, permit, or tag of another  
50 person.

51 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
52 Wildlife Board may, by rule, make exceptions to the prohibitions described in Subsection (2)  
53 to:

54 (a) transport wildlife;

55 (b) allow a person to take protected wildlife for another person if:

56 (i) the person possessing the license, certificate of registration, permit, or tag has a

57 permanent physical impairment due to a congenital or acquired injury or disease; and  
58 (ii) the injury or disease described in Subsection (3)(b)(i) results in the person having a  
59 disability that renders the person physically unable to use a legal hunting weapon or fishing  
60 device;

61 (c) allow a resident minor under 18 years of age to use the resident or nonresident  
62 hunting permit of another person if:

63 (i) the resident minor is:

64 (A) the permit holder's child, stepchild, grandchild, or legal ward, if the permit holder's  
65 guardianship of the legal ward is based solely on the minor's age; or  
66 (B) suffering from a life threatening medical condition; and

67 (ii) the permit holder:

68 (A) receives no form of compensation or remuneration for allowing the minor to use  
69 the permit;

70 (B) obtains the division's prior written approval to allow the minor to use the permit;

71 and

72 (C) accompanies the minor, for the purposes of advising and assisting during the hunt,  
73 at a distance where the permit holder can communicate with the minor, in person, by voice or  
74 visual signals; or

75 (d) subject to the requirements of Subsection (4), transfer to another person a certificate  
76 of registration to harvest brine shrimp and brine shrimp eggs, if the certificate is transferred in  
77 connection with the sale or transfer of the brine shrimp harvest operation or harvesting  
78 equipment.

79 (4) A person may transfer a certificate of registration to harvest brine shrimp and brine  
80 shrimp eggs if:

81 (a) the person submits to the division an application to transfer the certificate on a form  
82 provided by the division;

83 (b) the proposed transferee meets all requirements necessary to obtain an original  
84 certificate of registration; and

85 (c) the division approves the transfer of the certificate.

86 (5) A person is not required to obtain a license, certificate of registration, permit, or tag  
87 to:

88 (a) fish on a free fishing day that the Wildlife Board may establish each year by rule  
89 made by the Wildlife Board under this title or by an order or proclamation issued in accordance  
90 with a rule made by the Wildlife Board under this title;

91 (b) fish at a private fish pond operated in accordance with Section 23-15-10; [or]

92 (c) hunt birds on a commercial hunting area that the owner or operator is authorized to  
93 propagate, keep, and release for shooting in accordance with a certificate of registration issued  
94 under Section 23-17-6[-]; or

95 (d) kill an animal that is seriously injured in a motor vehicle accident, in accordance  
96 with Section 23-20-33.

97 Section 2. Section 23-20-33 is enacted to read:

98 **23-20-33. Authority to kill an animal seriously injured in a motor vehicle**  
99 **accident.**

100 (1) Notwithstanding the provisions of this title, a person may kill an animal that is  
101 seriously injured in a motor vehicle accident in order to prevent the animal from suffering  
102 needlessly, if the person:

103 (a) did not intentionally cause the motor vehicle accident that seriously injured the  
104 animal for the purpose of having the authority to kill the animal;

105 (b) has the means, skill, and intent to kill the animal humanely; and

106 (c) reports the killing before or, if necessary, immediately after the killing, to:

107 (i) local law enforcement, through a non-emergency method of communication; or

108 (ii) an agent of the division.

109 (2) This section does not authorize a person to:

110 (a) destroy an injured animal in violation of federal law or in a manner or location that  
111 violates federal, state, or local law; or

112 (b) use a weapon that the person is prohibited from using under federal, state, or local  
113 law.

114 Section 3. Section 76-9-301 is amended to read:

115 **76-9-301. Cruelty to animals.**

116 (1) As used in this section:

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

118 (A) without providing for the care of that animal, in accordance with accepted animal

119 husbandry practices or customary farming practices; or

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

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

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

125 (ii) "Animal" does not include:

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

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

129 (II) the creature is:

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

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

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

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

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

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

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

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

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

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

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

148 (f) "Livestock" means:

149 (i) domesticated:

- 150 (A) cattle;
- 151 (B) sheep;
- 152 (C) goats;
- 153 (D) turkeys;
- 154 (E) swine;
- 155 (F) equines;
- 156 (G) camelidae;
- 157 (H) ratites; or
- 158 (I) bison;
- 159 (ii) domesticated elk, as defined in Section 4-39-102; or
- 160 (iii) any domesticated nonhuman vertebrate creature, domestic furbearer, or domestic
- 161 poultry, raised, kept, or used for agricultural purposes.
- 162 (g) "Necessary food, water, care, or shelter" means the following, taking into account
- 163 the species, age, and physical condition of the animal:
- 164 (i) appropriate and essential food and water;
- 165 (ii) adequate protection, including appropriate shelter, against extreme weather
- 166 conditions; and
- 167 (iii) other essential care.
- 168 (h) "Torture" means intentionally or knowingly causing or inflicting extreme physical
- 169 pain to an animal in an especially heinous, atrocious, cruel, or exceptionally depraved manner.
- 170 (2) Except as provided in Subsection (4) or (6), a person is guilty of cruelty to an
- 171 animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or
- 172 with criminal negligence:
- 173 (a) fails to provide necessary food, water, care, or shelter for an animal in the person's
- 174 custody;
- 175 (b) abandons an animal in the person's custody;
- 176 (c) injures an animal;
- 177 (d) causes any animal, not including a dog or game fowl, to fight with another animal
- 178 of like kind for amusement or gain; or
- 179 (e) causes any animal, including a dog or game fowl, to fight with a different kind of
- 180 animal or creature for amusement or gain.

- 181 (3) Except as provided in Section 76-9-301.7, a violation of Subsection (2) is:
- 182 (a) a class B misdemeanor if committed intentionally or knowingly; and
- 183 (b) a class C misdemeanor if committed recklessly or with criminal negligence.
- 184 (4) A person is guilty of aggravated cruelty to an animal if the person:
- 185 (a) tortures an animal;
- 186 (b) administers, or causes to be administered, poison or a poisonous substance to an
- 187 animal; or
- 188 (c) kills an animal or causes an animal to be killed without having a legal privilege to
- 189 do so.
- 190 (5) Except as provided in Subsection (6) or Section 76-9-301.7, a violation of
- 191 Subsection (4) is:
- 192 (a) a class A misdemeanor if committed intentionally or knowingly;
- 193 (b) a class B misdemeanor if committed recklessly; and
- 194 (c) a class C misdemeanor if committed with criminal negligence.
- 195 (6) A person is guilty of a third degree felony if the person intentionally or knowingly
- 196 tortures a companion animal.
- 197 (7) It is a defense to prosecution under this section that the conduct of the actor towards
- 198 the animal was:
- 199 (a) by a licensed veterinarian using accepted veterinary practice;
- 200 (b) directly related to bona fide experimentation for scientific research, provided that if
- 201 the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless
- 202 directly necessary to the veterinary purpose or scientific research involved;
- 203 (c) permitted under Section 18-1-3;
- 204 (d) by a person who humanely destroys any animal found suffering past recovery for
- 205 any useful purpose; [or]
- 206 (e) by a person who humanely destroys any apparently abandoned animal found on the
- 207 person's property[-]; or
- 208 (f) by a person who destroys an animal that is seriously injured in a motor vehicle
- 209 accident, in accordance with Section 23-20-33.
- 210 (8) For purposes of Subsection (7)(d),
- 211 before destroying the suffering animal, the person who is not the owner of the animal

212 shall obtain:

- 213 (a) the judgment of a veterinarian of the animal's nonrecoverable condition;
- 214 (b) the judgment of two other persons called by the person to view the unrecoverable  
215 condition of the animal in the person's presence;
- 216 (c) the consent from the owner of the animal to the destruction of the animal; or
- 217 (d) a reasonable conclusion that the animal's suffering is beyond recovery, through the  
218 person's own observation, if the person is in a location or circumstance where the person is  
219 unable to contact another person.

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

- 221 (a) the training, instruction, and grooming of animals, if the methods used are in  
222 accordance with accepted animal husbandry practices or customary farming practices;
- 223 (b) the use of an electronic locating or training collar by the owner of an animal for the  
224 purpose of lawful animal training, lawful hunting practices, or protecting against loss of that  
225 animal; or
- 226 (c) the lawful hunting of, fishing for, or trapping of, wildlife.

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

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

- 231 (a) order the defendant to be evaluated to determine the need for psychiatric or  
232 psychological counseling, to receive counseling as the court determines to be appropriate, and  
233 to pay the costs of the evaluation and counseling;
- 234 (b) require the defendant to forfeit any rights the defendant has to the animal subjected  
235 to a violation of this section and to repay the reasonable costs incurred by any person or agency  
236 in caring for each animal subjected to violation of this section;
- 237 (c) order the defendant to no longer possess or retain custody of any animal, as  
238 specified by the court, during the period of the defendant's probation or parole or other period  
239 as designated by the court; and
- 240 (d) order the animal to be placed for the purpose of adoption or care in the custody of a  
241 county or municipal animal control agency or an animal welfare agency registered with the  
242 state to be sold at public auction or humanely destroyed.

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

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

246 Section 4. Section **76-10-508** is amended to read:

247 **76-10-508. Discharge of firearm from a vehicle, near a highway, or in direction of**  
248 **any person, building, or vehicle -- Penalties.**

249 (1) (a) A person may not discharge any kind of dangerous weapon or firearm:

250 (i) from an automobile or other vehicle;

251 (ii) from, upon, or across any highway, except as provided in Subsection (1)(c);

252 (iii) at any road signs placed upon any highways of the state;

253 (iv) at any communications equipment or property of public utilities including  
254 facilities, lines, poles, or devices of transmission or distribution;

255 (v) at railroad equipment or facilities including any sign or signal;

256 (vi) within Utah State Park buildings, designated camp or picnic sites, overlooks, golf  
257 courses, boat ramps, and developed beaches; or

258 (vii) without written permission to discharge the dangerous weapon from the owner or  
259 person in charge of the property within 600 feet of:

260 (A) a house, dwelling, or any other building; or

261 (B) any structure in which a domestic animal is kept or fed, including a barn, poultry  
262 yard, corral, feeding pen, or stockyard.

263 (b) It is a defense to any charge for violating this section that the person being accused  
264 had actual permission of the owner or person in charge of the property at the time in question.

265 (c) A person may discharge a dangerous weapon or firearm from or upon a highway to  
266 kill an animal that is seriously injured in a motor vehicle accident, in accordance with Section  
267 23-20-33.

268 (2) A violation of any provision of Subsection (1) is a class B misdemeanor.

269 (3) In addition to any other penalties, the court shall:

270 (a) notify the Driver License Division of the conviction for purposes of any revocation,  
271 denial, suspension, or disqualification of a driver license under Subsection 53-3-220(1)(a)(xi);  
272 and

273 (b) specify in court at the time of sentencing the length of the revocation under

274 Subsection 53-3-225(1)(c).

275 (4) This section does not apply to a person who:

276 (a) discharges any kind of firearm when that person is in lawful defense of self or  
277 others;

278 (b) is performing official duties as provided in Section 23-20-1.5 and Subsections  
279 76-10-523(1)(a) through (e) and as otherwise provided by law; or

280 (c) discharges a dangerous weapon or firearm from an automobile or other vehicle, if:

281 (i) the discharge occurs at a firing range or training ground;

282 (ii) at no time after the discharge does the projectile that is discharged cross over or  
283 stop at a location other than within the boundaries of the firing range or training ground

284 described in Subsection (4)(c)(i);

285 (iii) the discharge is made as practice or training for a lawful purpose;

286 (iv) the discharge and the location, time, and manner of the discharge are approved by  
287 the owner or operator of the firing range or training ground prior to the discharge; and

288 (v) the discharge is not made in violation of Subsection (1).