

HB0284S03 compared with HB0284S02

~~text~~ shows text that was in HB0284S02 but was deleted in HB0284S03.

text shows text that was not in HB0284S02 but was inserted into HB0284S03.

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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: _____

LONG TITLE

General Description:

This bill addresses the humane killing of seriously injured wildlife.

Highlighted Provisions:

This bill:

- ▶ permits a person to humanely kill seriously injured wildlife under certain circumstances;
- ▶ makes humanely killing seriously injured wildlife ~~under certain circumstances~~:
 - a defense to the crime of cruelty to animals; and
 - an exception to the prohibition against discharging a firearm from or upon a highway; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

23-19-1, as last amended by Laws of Utah 2013, Chapter 418

76-9-301, as last amended by Laws of Utah 2015, Chapter 329

76-10-508, as last amended by Laws of Utah 2014, Chapter 248

ENACTS:

23-20-33, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

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

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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Wildlife Board may, by rule, make exceptions to the prohibitions described in Subsection (2) to:

- (a) transport wildlife;
 - (b) allow a person to take protected wildlife for another person if:
 - (i) the person possessing the license, certificate of registration, permit, or tag has a permanent physical impairment due to a congenital or acquired injury or disease; and
 - (ii) the injury or disease described in Subsection (3)(b)(i) results in the person having a disability that renders the person physically unable to use a legal hunting weapon or fishing device;
 - (c) allow a resident minor under 18 years of age to use the resident or nonresident hunting permit of another person if:
 - (i) the resident minor is:
 - (A) the permit holder's child, stepchild, grandchild, or legal ward, if the permit holder's guardianship of the legal ward is based solely on the minor's age; or
 - (B) suffering from a life threatening medical condition; and
 - (ii) the permit holder:
 - (A) receives no form of compensation or remuneration for allowing the minor to use the permit;
 - (B) obtains the division's prior written approval to allow the minor to use the permit; and
 - (C) accompanies the minor, for the purposes of advising and assisting during the hunt, at a distance where the permit holder can communicate with the minor, in person, by voice or visual signals; or
 - (d) subject to the requirements of Subsection (4), transfer to another person a certificate of registration to harvest brine shrimp and brine shrimp eggs, if the certificate is transferred in connection with the sale or transfer of the brine shrimp harvest operation or harvesting equipment.
- (4) A person may transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs if:
- (a) the person submits to the division an application to transfer the certificate on a form provided by the division;

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

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

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

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

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

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

(d) kill seriously injured wildlife, in accordance with Section 23-20-33.

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

23-20-33. Authority to kill seriously injured wildlife.

(1) Notwithstanding the provisions of this title, a person may kill wildlife that is seriously injured in order to prevent the animal from suffering needlessly if the person:

(a) did not intentionally cause the animal's serious injury for the purpose of having the authority to kill the animal;

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

(c) obtains the permission of an agent of the division or, if no agent of the division is available, of local law enforcement, through a non-emergency method of communication; and

(d) finds the animal, and makes the approved kill, outside of the boundaries of a municipality as that term is defined in Section 10-1-104.

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

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

(b) use a weapon that the person is prohibited from using, or in a location where use of the weapon is prohibited, under federal, state, or local law; or

(c) kill livestock, as defined in Section 4-1-8, or domestic animals.

(3) An agent of the division or local law enforcement may give the permission

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described in Subsection (1)(c) only if no agent of the division or local law enforcement can reasonably reach the animal's location in a time that will not unduly prolong the animal's suffering.

Section 3. 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. Sec. 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

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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:

(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:

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(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;

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

(e) causes any animal, including a dog or 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;

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(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[-]; or

(f) by a person who humanely destroys seriously injured wildlife, in accordance with Section 23-20-33.

(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

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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 municipal animal control agency or an animal welfare agency 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 4. Section 76-10-508 is amended to read:

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

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

(i) from an automobile or other vehicle;

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

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

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

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

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

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

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

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

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

(c) A person may discharge a dangerous weapon or firearm from or upon a highway to

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humanely kill seriously injured wildlife, in accordance with Section 23-20-33.

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

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

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

(b) specify in court at the time of sentencing the length of the revocation under Subsection 53-3-225(1)(c).

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

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

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

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

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

(ii) at no time after the discharge does the projectile that is discharged cross over or stop at a location other than within the boundaries of the firing range or training ground described in Subsection (4)(c)(i);

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

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

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