

Representative Scott H. Chew 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
- ▶ makes technical changes.

Money Appropriated in this Bill:

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

ENACTS:



26 **23-20-33**, Utah Code Annotated 1953



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

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

30 **23-19-1. Possession of licenses, certificates of registration, permits, and tags**
31 **required -- Nonassignability -- Exceptions -- Free fishing day.**

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

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

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

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

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

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

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

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

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

50 (a) transport wildlife;

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

52 (i) the person possessing the license, certificate of registration, permit, or tag has a
53 permanent physical impairment due to a congenital or acquired injury or disease; and

54 (ii) the injury or disease described in Subsection (3)(b)(i) results in the person having a
55 disability that renders the person physically unable to use a legal hunting weapon or fishing
56 device;

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

59 (i) the resident minor is:

60 (A) the permit holder's child, stepchild, grandchild, or legal ward, if the permit holder's
61 guardianship of the legal ward is based solely on the minor's age; or

62 (B) suffering from a life threatening medical condition; and

63 (ii) the permit holder:

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

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

67 and

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

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

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

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

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

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

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

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

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

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

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

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

93 **23-20-33. Authority to kill seriously injured wildlife.**

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

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

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

99 (c) before the killing, reports to:

100 (i) an agent of the division; or

101 (ii) if no agent of the division is available, local law enforcement, through a
102 non-emergency method of communication; and

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

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

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

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

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

111 (3) A person performing a mercy killing of seriously injured wildlife under Subsection
112 (1) is guilty of wanton destruction of wildlife, as described in Section [23-20-4](#), unless cleared
113 of the act by local law enforcement or an agent of the division.

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. Sec. 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 humanely destroys seriously injured wildlife, in accordance with
- 209 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.