

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 the Utah Criminal Code relating to animal cruelty.

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;

- permit 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 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



- 28 of persons present at a game fowl fighting exhibition;
- 29 ▶ provides for the confiscation, custody, and disposition of property seized in relation
- 30 to a game fowl exhibition related offense; and
- 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **76-9-301**, as last amended by Laws of Utah 2008, Chapter 292

39 ENACTS:

40 **76-9-301.2**, Utah Code Annotated 1953

41 **76-9-301.3**, Utah Code Annotated 1953



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

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

45 **76-9-301. Cruelty to animals.**

46 (1) As used in this section:

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

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

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

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

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

55 (ii) "Animal" does not include:

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

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

- 59 (II) the creature is:
- 60 (Aa) owned or kept by a zoological park that is accredited by, or a member of, the
- 61 American Zoo and Aquarium Association;
- 62 (Bb) kept, owned, or used for the purpose of training hunting dogs or raptors; or
- 63 (Cc) temporarily in the state as part of a circus or traveling exhibitor licensed by the
- 64 United States Department of Agriculture under 7 U.S.C. 2133;
- 65 (B) a live, nonhuman vertebrate creature that is owned, kept, or used for rodeo
- 66 purposes, if the conduct toward the creature, and the care provided to the creature, is in
- 67 accordance with accepted rodeo practices;
- 68 (C) livestock, if the conduct toward the creature, and the care provided to the creature,
- 69 is in accordance with accepted animal husbandry practices or customary farming practices; or
- 70 (D) wildlife, as defined in Section 23-13-2, including protected and unprotected
- 71 wildlife, if the conduct toward the wildlife is in accordance with lawful hunting, fishing, or
- 72 trapping practices or other lawful practices.
- 73 (c) "Companion animal" means an animal that is a domestic dog or a domestic cat.
- 74 (d) "Custody" means ownership, possession, or control over an animal.
- 75 (e) "Legal privilege" means an act that:
- 76 (i) is authorized by state law, including Division of Wildlife Resources rules; and
- 77 (ii) is not in violation of a local ordinance.
- 78 (f) "Livestock" means:
- 79 (i) domesticated:
- 80 (A) cattle;
- 81 (B) sheep;
- 82 (C) goats;
- 83 (D) turkeys;
- 84 (E) swine;
- 85 (F) equines;
- 86 (G) camelidae;
- 87 (H) ratites; or
- 88 (I) bison;
- 89 (ii) domesticated elk, as defined in Section 4-39-102; or

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

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

94 (i) appropriate and essential food and water;

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

97 (iii) other essential care.

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

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

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

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

106 (c) injures an animal;

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

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

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

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

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

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

115 (a) tortures an animal;

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

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

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

121 Subsection (4) is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

152 animal; or

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

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

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

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

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

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

167 (d) order the animal to be placed for the purpose of adoption or care in the custody of a
168 county ~~and~~ or municipal animal control agency[;] or an animal welfare agency registered with
169 the state[;] to be sold at public auction[;] or humanely destroyed.

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

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

173 Section 2. Section **76-9-301.2** is enacted to read:

174 **76-9-301.2. Game fowl fighting -- Training game fowl for fighting -- Game fowl**
175 **fighting exhibitions.**

176 (1) As used in this section:

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

179 (b) "Game fowl" means any of several breeds of fowl reared or used for cockfighting.

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

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

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

184 (c) manufacture, buy, sell, trade, or possess an instrument designed to be attached to
185 the spur of a game fowl to enhance the ability to, or likelihood of, causing injury to a game
186 fowl; or

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

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

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

195 (5) It is unlawful for a person to knowingly and intentionally be present as a spectator
196 at any place, building, or tenement where preparations are being made for an exhibition of
197 game fowl fighting, or to knowingly and intentionally be present at a game fowl fighting
198 exhibition or any other occurrence of fighting or injury described in this section. A person who
199 violates this Subsection (5) is guilty of a class B misdemeanor.

200 (6) Nothing in this section prohibits the lawful use of livestock by the owner, the
201 owner's employees or agent, or any other person in the lawful custody of livestock.

202 Section 3. Section **76-9-301.3** is enacted to read:

203 **76-9-301.3. Game fowl fighting exhibition -- Authority to arrest and take**
204 **possession of game fowl and property.**

205 (1) A peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications,
206 may enter any place, building, or tenement where an exhibition of game fowl fighting is
207 occurring, or where preparations are being made for an exhibition of game fowl fighting, and
208 without a warrant, arrest all persons present.

209 (2) (a) Notwithstanding the provisions of Section 76-9-305, any authorized officer who
210 makes an arrest under Subsection (1) may lawfully take possession of all game fowl,
211 paraphernalia, implements, or other property or items used or employed, or to be employed, in
212 an exhibition of game fowl fighting prohibited by Subsection 76-9-301(2)(e) or Section
213 76-9-301.2.

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

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

221 (b) The affidavit shall include:

222 (i) the name of the person charged in the complaint;

223 (ii) a description of all property taken;

224 (iii) the time and place of the taking of the property;

225 (iv) the name of the person from whom the property was taken;

226 (v) the name of the person who claims to own the property, if known; and

227 (vi) a statement that the officer has reason to believe and believes that the property
228 taken was used or employed, or was to be used or employed, in violation of Section 76-9-301
229 or 76-9-301.2, and the grounds for the belief.

230 (4) (a) The officer shall deliver the confiscated property to the judge or magistrate who
231 shall, by order, place the property in the custody of the officer or any other person designated in
232 the order, and that person shall keep the property until conviction or final discharge of the
233 person against whom the complaint is made.

234 (b) A person designated in Subsection (4)(a) shall assume immediate custody of the
235 property, and retain the property until further order of the court.

236 (c) Upon conviction of the person charged, all confiscated property shall be forfeited
237 and destroyed, or otherwise disposed of, as the court may order.

238 (d) If the person charged is acquitted or discharged without conviction, the court shall,
239 on demand, order the property to be returned to its owner.

Legislative Review Note
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Office of Legislative Research and General Counsel