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SENATE BILL 5065

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Carrell, Kline, Kohl-Welles, Nelson, Delvin, Tom, Shin, McAuliffe, and Kilmer

Read first time 01/12/11. Referred to Committee on Judiciary.

1 AN ACT Relating to prevention of animal cruelty; amending RCW  
2 16.52.011, 16.52.085, 16.52.200, and 16.52.207; adding a new section to  
3 chapter 16.52 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 16.52.011 and 2009 c 287 s 1 are each amended to read  
6 as follows:

7 (1) Principles of liability as defined in chapter 9A.08 RCW apply  
8 to this chapter.

9 (2) The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (a) "Abandons" means the knowing or reckless desertion of an animal  
12 by its owner or the causing of the animal to be deserted by its owner,  
13 in any place, without making provisions for the animal's adequate care.

14 (b) "Animal" means any nonhuman mammal, bird, reptile, or  
15 amphibian.

16 (c) "Animal care and control agency" means any city or county  
17 animal control agency or authority authorized to enforce city or county  
18 municipal ordinances regulating the care, control, licensing, or  
19 treatment of animals within the city or county, and any corporation

1 organized under RCW 16.52.020 that contracts with a city or county to  
2 enforce the city or county ordinances governing animal care and  
3 control.

4 (d) "Animal control officer" means any individual employed,  
5 contracted, or appointed pursuant to RCW 16.52.025 by an animal care  
6 and control agency or humane society to aid in the enforcement of  
7 ordinances or laws regulating the care and control of animals. For  
8 purposes of this chapter, the term "animal control officer" shall be  
9 interpreted to include "humane officer" as defined in (f) of this  
10 subsection and RCW 16.52.025.

11 (e) "Euthanasia" means the humane destruction of an animal  
12 accomplished by a method that involves instantaneous unconsciousness  
13 and immediate death, or by a method that causes painless loss of  
14 consciousness, and death during the loss of consciousness.

15 (f) "Humane officer" means any individual employed, contracted, or  
16 appointed by an animal care and control agency or humane society as  
17 authorized under RCW 16.52.025.

18 (g) "Law enforcement agency" means a general authority Washington  
19 law enforcement agency as defined in RCW 10.93.020.

20 (h) "Necessary food and water" means ~~((the provision at suitable  
21 intervals of wholesome foodstuff suitable for the animal's age and  
22 species and sufficient to provide a reasonable level of nutrition for  
23 the animal))~~ food or feed appropriate to the species for which it is  
24 intended. Both food and water must be in sufficient quantity and  
25 quality to sustain the animal, and must be easily accessible to the  
26 animal.

27 (i) "Necessary shelter" means a structure that keeps the animal  
28 clean, dry, and protected from the elements, allows the animal to turn  
29 around freely, sit, stand, and lie without restriction, and does not  
30 cause injury, disfigurement, or physical impairment to the animal.

31 (j) "Owner" means a person who has a right, claim, title, legal  
32 share, or right of possession to an animal or a person having lawful  
33 control, custody, or possession of an animal.

34 ~~((+j))~~ (k) "Person" means individuals, corporations, partnerships,  
35 associations, or other legal entities, and agents of those entities.

36 ~~((+k))~~ (l) "Similar animal" means ~~((an animal classified in the  
37 same genus))~~: (i) For a mammal, another animal that is in the same

1 taxonomic order; or (ii) for an animal that is not a mammal, another  
2 animal that is in the same taxonomic class.

3 ((+1)) (m) "Substantial bodily harm" means substantial bodily harm  
4 as defined in RCW 9A.04.110.

5 **Sec. 2.** RCW 16.52.085 and 2009 c 287 s 2 are each amended to read  
6 as follows:

7 (1) If a law enforcement officer or animal control officer has  
8 probable cause to believe that an owner of a domestic animal has  
9 violated this chapter or ~~((owns or possesses))~~ a person owns, cares  
10 for, or resides with an animal in violation of an order issued under  
11 RCW 16.52.200~~((+3))~~ (4) and no responsible person can be found to  
12 assume the animal's care, the officer may authorize, with a warrant,  
13 the removal of the animal to a suitable place for feeding and care, or  
14 may place the animal under the custody of an animal care and control  
15 agency. In determining what is a suitable place, the officer shall  
16 consider the animal's needs, including its size and behavioral  
17 characteristics. An officer may remove an animal under this subsection  
18 without a warrant only if the animal is in an immediate life-  
19 threatening condition.

20 (2) If a law enforcement officer or an animal control officer has  
21 probable cause to believe a violation of this chapter has occurred, the  
22 officer may authorize an examination of a domestic animal allegedly  
23 neglected or abused in violation of this chapter by a veterinarian to  
24 determine whether the level of neglect or abuse in violation of this  
25 chapter is sufficient to require removal of the animal. This section  
26 does not condone illegal entry onto private property.

27 (3) Any owner whose domestic animal is removed pursuant to this  
28 chapter shall be given written notice of the circumstances of the  
29 removal and notice of legal remedies available to the owner. The  
30 notice shall be given by posting at the place of seizure, by delivery  
31 to a person residing at the place of seizure, or by registered mail if  
32 the owner is known. In making the decision to remove an animal  
33 pursuant to this chapter, the officer shall make a good faith effort to  
34 contact the animal's owner before removal.

35 (4) The agency having custody of the animal may euthanize the  
36 animal or may find a responsible person to adopt the animal not less  
37 than fifteen business days after the animal is taken into custody. A

1 custodial agency may euthanize severely injured, diseased, or suffering  
2 animals at any time. An owner may prevent the animal's destruction or  
3 adoption by: (a) Petitioning the district court of the county where  
4 the animal was seized for the animal's immediate return subject to  
5 court-imposed conditions, or (b) posting a bond or security in an  
6 amount sufficient to provide for the animal's care for a minimum of  
7 thirty days from the seizure date. If the custodial agency still has  
8 custody of the animal when the bond or security expires, the animal  
9 shall become the agency's property unless the court orders an  
10 alternative disposition. If a court order prevents the agency from  
11 assuming ownership and the agency continues to care for the animal, the  
12 court shall order the owner to renew a bond or security for the  
13 agency's continuing costs for the animal's care. When a court has  
14 prohibited the owner from owning (~~(or possessing)~~), caring for, or  
15 residing with a similar animal under RCW 16.52.200(~~(+3)~~) (4), the  
16 agency having custody of the animal may assume ownership upon seizure  
17 and the owner may not prevent the animal's destruction or adoption by  
18 petitioning the court or posting a bond.

19 (5) If no criminal case is filed within fourteen business days of  
20 the animal's removal, the owner may petition the district court of the  
21 county where the animal was removed for the animal's return. The  
22 petition shall be filed with the court, with copies served to the law  
23 enforcement or animal care and control agency responsible for removing  
24 the animal and to the prosecuting attorney. If the court grants the  
25 petition, the agency which seized the animal must deliver the animal to  
26 the owner at no cost to the owner. If a criminal action is filed after  
27 the petition is filed but before the animal is returned, the petition  
28 shall be joined with the criminal matter.

29 (6) In a motion or petition for the animal's return before a trial,  
30 the burden is on the owner to prove by a preponderance of the evidence  
31 that the animal will not suffer future neglect or abuse and is not in  
32 need of being restored to health.

33 (7) Any authorized person treating or attempting to restore an  
34 animal to health under this chapter shall not be civilly or criminally  
35 liable for such action.

36 **Sec. 3.** RCW 16.52.200 and 2009 c 287 s 3 are each amended to read  
37 as follows:

1 (1) The sentence imposed for a misdemeanor or gross misdemeanor  
2 violation of this chapter may be deferred or suspended in accordance  
3 with RCW 3.66.067 and 3.66.068, however the probationary period shall  
4 be two years.

5 (2) In case of multiple misdemeanor or gross misdemeanor  
6 convictions, the sentences shall be consecutive, however the  
7 probationary period shall remain two years.

8 (3) In addition to the penalties imposed by the court, the court  
9 shall order the forfeiture of all animals held by law enforcement or  
10 animal care and control authorities under the provisions of this  
11 chapter if any one of the animals involved dies as a result of a  
12 violation of this chapter or if the defendant has a prior conviction  
13 under this chapter. In other cases the court may enter an order  
14 requiring the owner to forfeit the animal if the court deems the  
15 animal's treatment to have been severe and likely to reoccur. (~~(If~~  
16 ~~forfeiture is ordered, the owner)~~)

17 (4) Any person convicted of animal cruelty shall be prohibited from  
18 owning (~~(or)~~), caring for, or residing with any similar animals for a  
19 period of time as follows:

20 (a) Two years for a first conviction of animal cruelty in the  
21 second degree under RCW 16.52.207;

22 (b) Permanently for a first conviction of animal cruelty in the  
23 first degree under RCW 16.52.205;

24 (c) Permanently for a second or subsequent conviction of animal  
25 cruelty, except as provided in subsection (~~(+4)~~) (5) of this section.

26 (~~(+4)~~) (5) If a person has no more than two convictions of animal  
27 cruelty and each conviction is for animal cruelty in the second degree,  
28 the person may petition the sentencing court in which the most recent  
29 animal cruelty conviction occurred, for a restoration of the right to  
30 own or possess a similar animal five years after the date of the second  
31 conviction. In determining whether to grant the petition, the court  
32 shall consider, but not be limited to, the following:

33 (a) The person's prior animal cruelty in the second degree  
34 convictions;

35 (b) The type of harm or violence inflicted upon the animals;

36 (c) Whether the person has completed the conditions imposed by the  
37 court as a result of the underlying convictions; (~~and~~)

1       (d) Whether the person complied with the prohibition on owning,  
2 caring for, or residing with similar animals; and

3       (e) Any other matters the court finds reasonable and material to  
4 consider in determining whether the person is likely to abuse another  
5 animal.

6       The court may delay its decision on forfeiture under subsection  
7 (3) of this section until the end of the probationary period.

8       (~~(+5)~~) (6) In addition to fines and court costs, the defendant,  
9 only if convicted or in agreement, shall be liable for reasonable costs  
10 incurred pursuant to this chapter by law enforcement agencies, animal  
11 care and control agencies, or authorized private or public entities  
12 involved with the care of the animals. Reasonable costs include  
13 expenses of the investigation, and the animal's care, euthanization, or  
14 adoption.

15       (~~(+6)~~) (7) If convicted, the defendant shall also pay a civil  
16 penalty of one thousand dollars to the county to prevent cruelty to  
17 animals. These funds shall be used to prosecute offenses under this  
18 chapter and to care for forfeited animals pending trial.

19       (~~(+7)~~) (8) If a person violates the prohibition on owning, caring  
20 for, or residing with similar animals under subsection (4) of this  
21 section, that person shall pay a civil penalty of one thousand dollars  
22 for the first violation and two thousand five hundred dollars for the  
23 second violation. On the third and each subsequent violation of  
24 subsection (4) of this section, that person is guilty of a gross  
25 misdemeanor.

26       (9) As a condition of the sentence imposed under this chapter or  
27 RCW 9.08.070 through 9.08.078, the court may also order the defendant  
28 to participate in an available animal cruelty prevention or education  
29 program or obtain available psychological counseling to treat mental  
30 health problems contributing to the violation's commission. The  
31 defendant shall bear the costs of the program or treatment.

32       **Sec. 4.** RCW 16.52.207 and 2007 c 376 s 1 are each amended to read  
33 as follows:

34       (1) A person is guilty of animal cruelty in the second degree if,  
35 under circumstances not amounting to first degree animal cruelty, the  
36 person knowingly, recklessly, or with criminal negligence inflicts  
37 unnecessary suffering or pain upon an animal.

1 (2) An owner of an animal is guilty of animal cruelty in the second  
2 degree if, under circumstances not amounting to first degree animal  
3 cruelty, the owner knowingly, recklessly, or with criminal negligence:

4 (a) Fails to provide the animal with necessary shelter, rest,  
5 sanitation, space, or medical attention and the animal suffers  
6 unnecessary or unjustifiable physical pain as a result of the failure;

7 (b) Under circumstances not amounting to animal cruelty in the  
8 second degree under (c) of this subsection, abandons the animal; or

9 (c) Abandons the animal and (i) as a result of being abandoned, the  
10 animal suffers bodily harm; or (ii) abandoning the animal creates an  
11 imminent and substantial risk that the animal will suffer substantial  
12 bodily harm.

13 (3)((~~a~~)) Animal cruelty in the second degree (~~under subsection~~  
14 ~~(1), (2)(a), or (2)(b) of this section~~) is a gross misdemeanor.

15 (~~(b) Animal cruelty in the second degree under subsection (2)(c)~~  
16 ~~of this section is a gross misdemeanor.~~)

17 (4) In any prosecution of animal cruelty in the second degree under  
18 subsection (1) or (2)(a) of this section, it shall be an affirmative  
19 defense, if established by the defendant by a preponderance of the  
20 evidence, that the defendant's failure was due to economic distress  
21 beyond the defendant's control.

22 NEW SECTION. Sec. 5. A new section is added to chapter 16.52 RCW  
23 to read as follows:

24 (1) An owner who fails to provide an animal with necessary food,  
25 water, shelter, ventilation, rest, sanitation, space, or medical  
26 attention may be charged with failure to provide care.

27 (2) Failure to provide care is a class 2 civil infraction under RCW  
28 7.80.120(1)(b).

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