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**SUBSTITUTE SENATE BILL 5065**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Carrell, Kline, Kohl-Welles, Nelson, Delvin, Tom, Shin, McAuliffe, and Kilmer)

READ FIRST TIME 02/10/11.

1       AN ACT Relating to prevention of animal cruelty; amending RCW  
2 16.52.011, 16.52.015, 16.52.085, 16.52.200, and 16.52.207; adding a new  
3 section to 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+))~~ (g) of  
10 this 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) "Food" means food or feed appropriate to the species for which  
16 it is intended.

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

20 ~~((+g+))~~ (h) "Law enforcement agency" means a general authority  
21 Washington law enforcement agency as defined in RCW 10.93.020.

22 ~~((+h+))~~ (i) "Necessary food" means the provision at suitable  
23 intervals of wholesome foodstuff suitable for the animal's age and  
24 species and that is sufficient to provide a reasonable level of  
25 nutrition for the animal and is easily accessible to the animal.

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

31 (k) "Necessary water" means water that is in sufficient quantity  
32 and of sufficient quality to sustain the animal and is easily  
33 accessible to the animal.

34 (l) "Owner" means a person who has a right, claim, title, legal  
35 share, or right of possession to an animal or a person having lawful  
36 control, custody, or possession of an animal.

37 ~~((+j+))~~ (m) "Person" means individuals, corporations, partnerships,  
38 associations, or other legal entities, and agents of those entities.

1       (~~(k)~~) (n) "Similar animal" means (~~(an animal classified in the~~  
2 ~~same genus)~~): (i) For a mammal, another animal that is in the same  
3 taxonomic order; or (ii) for an animal that is not a mammal, another  
4 animal that is in the same taxonomic class.

5       (~~(l)~~) (o) "Substantial bodily harm" means substantial bodily harm  
6 as defined in RCW 9A.04.110.

7       **Sec. 2.** RCW 16.52.015 and 2003 c 53 s 110 are each amended to read  
8 as follows:

9       (1) Law enforcement agencies and animal care and control agencies  
10 may enforce the provisions of this chapter. Animal care and control  
11 agencies may enforce the provisions of this chapter in a county or city  
12 only if the county or city legislative authority has entered into a  
13 contract with the agency to enforce the provisions of this chapter.

14       (2) Animal control officers enforcing this chapter shall comply  
15 with the same constitutional and statutory restrictions concerning the  
16 execution of police powers imposed on law enforcement officers who  
17 enforce this chapter and other criminal laws of the state of  
18 Washington.

19       (3) Animal control officers have the following enforcement powers  
20 when enforcing this chapter:

21       (a) The power to issue citations based on probable cause to  
22 offenders for civil infractions and misdemeanor and gross misdemeanor  
23 violations of this chapter or RCW 9.08.070 through 9.08.078 or  
24 (~~(81.56.120)~~) 81.48.070;

25       (b) The power to cause a law enforcement officer to arrest and take  
26 into custody any person the animal control officer has probable cause  
27 to believe has committed or is committing a violation of this chapter  
28 or RCW 9.08.070 or (~~(81.56.120)~~) 81.48.070. Animal control officers  
29 may make an oral complaint to a prosecuting attorney or a law  
30 enforcement officer to initiate arrest. The animal control officer  
31 causing the arrest shall file with the arresting agency a written  
32 complaint within twenty-four hours of the arrest, excluding Sundays and  
33 legal holidays, stating the alleged act or acts constituting a  
34 violation;

35       (c) The power to carry nonfirearm protective devices for personal  
36 protection;

1 (d) The power to prepare affidavits in support of search warrants  
2 and to execute search warrants when accompanied by law enforcement  
3 officers to investigate violations of this chapter or RCW 9.08.070 or  
4 (~~(81.56.120)~~) 81.48.070, and to seize evidence of those violations.

5 (4) Upon request of an animal control officer who has probable  
6 cause to believe that a person has violated this chapter or RCW  
7 9.08.070 or (~~(81.56.120)~~) 81.48.070, a law enforcement agency officer  
8 may arrest the alleged offender.

9 **Sec. 3.** RCW 16.52.085 and 2009 c 287 s 2 are each amended to read  
10 as follows:

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

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

31 (3) Any owner whose domestic animal is removed pursuant to this  
32 chapter shall be given written notice of the circumstances of the  
33 removal and notice of legal remedies available to the owner. The  
34 notice shall be given by posting at the place of seizure, by delivery  
35 to a person residing at the place of seizure, or by registered mail if  
36 the owner is known. In making the decision to remove an animal

1 pursuant to this chapter, the officer shall make a good faith effort to  
2 contact the animal's owner before removal.

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

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

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

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

4 **Sec. 4.** RCW 16.52.200 and 2009 c 287 s 3 are each amended to read  
5 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ~~((+6+))~~ (7) If convicted, the defendant shall also pay a civil  
21 penalty of one thousand dollars to the county to prevent cruelty to  
22 animals. These funds shall be used to prosecute offenses under this  
23 chapter and to care for forfeited animals pending trial.

24 ~~((+7+))~~ (8) If a person violates the prohibition on owning, caring  
25 for, or residing with similar animals under subsection (4) of this  
26 section, that person:

27 (a) Shall pay a civil penalty of one thousand dollars for the first  
28 violation;

29 (b) Shall pay a civil penalty of two thousand five hundred dollars  
30 for the second violation; and

31 (c) Is guilty of a gross misdemeanor for the third and each  
32 subsequent violation.

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

1       **Sec. 5.** RCW 16.52.207 and 2007 c 376 s 1 are each amended to read  
2 as follows:

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

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

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

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

15       (c) Abandons the animal and (i) as a result of being abandoned, the  
16 animal suffers bodily harm; or (ii) abandoning the animal creates an  
17 imminent and substantial risk that the animal will suffer substantial  
18 bodily harm.

19       (3)~~((a))~~ Animal cruelty in the second degree ~~((under subsection~~  
20 ~~(1), (2)(a), or (2)(b) of this section))~~ is a gross misdemeanor.

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

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

28       NEW SECTION. **Sec. 6.** A new section is added to chapter 16.52 RCW  
29 to read as follows:

30       (1) An owner who, under circumstances not amounting to animal  
31 cruelty in the first or second degree, fails to provide an animal with  
32 necessary food, water, shelter, ventilation, rest, sanitation, space,  
33 or medical attention has committed the infraction of failure to provide  
34 care.

35       (2) Failure to provide care is a class 2 civil infraction under RCW  
36 7.80.120(1)(b).

1           (3) This section does not preempt ordinances enacted by local  
2 jurisdictions that establish greater civil penalties or criminal  
3 penalties for failure to provide care.

4           (4) This section does not apply to accepted animal husbandry  
5 practices used in the commercial raising or slaughtering of livestock  
6 or poultry, or products thereof.

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