

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 158

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO LIVESTOCK; EXCLUDING WILD HORSES AND OTHER ANIMALS FROM THE DEFINITION OF "LIVESTOCK"; SPECIFICALLY INCLUDING WILD HORSES IN THE CRUELTY TO ANIMALS STATUTE; PROVIDING PROCEDURES TO BE FOLLOWED WHEN WILD HORSES ARE CAPTURED ON PUBLIC OR PRIVATE LAND; MAKING CONFORMING TECHNICAL CHANGES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-18-1 NMSA 1978 (being Laws 1999, Chapter 107, Section 1, as amended) is amended to read:

"30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO ANIMALS--PENALTIES--EXCEPTIONS.--

A. As used in this section, "animal" includes a wild horse as defined in Section 77-18-5 NMSA 1978 and does not include insects or reptiles.

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1 B. Cruelty to animals consists of a person:

2 (1) negligently mistreating, injuring, killing
3 without lawful justification or tormenting an animal; or

4 (2) abandoning or failing to provide necessary
5 sustenance to an animal under that person's custody or control.

6 C. As used in Subsection B of this section, "lawful
7 justification" means:

8 (1) humanely destroying a sick or injured
9 animal; or

10 (2) protecting a person or animal from death
11 or injury due to an attack by another animal.

12 D. Whoever commits cruelty to animals is guilty of
13 a misdemeanor and shall be sentenced pursuant to the provisions
14 of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent
15 conviction for committing cruelty to animals, the offender is
16 guilty of a fourth degree felony and shall be sentenced
17 pursuant to the provisions of Section 31-18-15 NMSA 1978.

18 E. Extreme cruelty to animals consists of a person:

19 (1) intentionally or maliciously torturing,
20 mutilating, injuring or poisoning an animal; or

21 (2) maliciously killing an animal.

22 F. Whoever commits extreme cruelty to animals is
23 guilty of a fourth degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978.

25 G. The court may order a person convicted for

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1 committing cruelty to animals to participate in an animal
2 cruelty prevention program or an animal cruelty education
3 program. The court may also order a person convicted for
4 committing cruelty to animals or extreme cruelty to animals to
5 obtain psychological counseling for treatment of a mental
6 health disorder if, in the court's judgment, the mental health
7 disorder contributed to the commission of the criminal offense.
8 The offender shall bear the expense of participating in an
9 animal cruelty prevention program, animal cruelty education
10 program or psychological counseling ordered by the court.

11 H. If a child is adjudicated of cruelty to animals,
12 the court shall order an assessment and any necessary
13 psychological counseling or treatment of the child.

14 I. The provisions of this section do not apply to:

15 (1) fishing, hunting, falconry, taking and
16 trapping, as provided in Chapter 17 NMSA 1978;

17 (2) the practice of veterinary medicine, as
18 provided in Chapter 61, Article 14 NMSA 1978;

19 (3) rodent or pest control, as provided in
20 Chapter 77, Article 15 NMSA 1978;

21 (4) the treatment of livestock and other
22 animals used on farms and ranches for the production of food,
23 fiber or other agricultural products, when the treatment is in
24 accordance with commonly accepted agricultural animal husbandry
25 practices;

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1 (5) the use of commonly accepted Mexican and
2 American rodeo practices, unless otherwise prohibited by law;

3 (6) research facilities licensed pursuant to
4 the provisions of 7 U.S.C. Section 2136, except when knowingly
5 operating outside provisions, governing the treatment of
6 animals, of a research or maintenance protocol approved by the
7 institutional animal care and use committee of the facility; or

8 (7) other similar activities not otherwise
9 prohibited by law.

10 J. If there is a dispute as to what constitutes
11 commonly accepted agricultural animal husbandry practices or
12 commonly accepted rodeo practices, the New Mexico livestock
13 board shall hold a hearing to determine if the practice in
14 question is a commonly accepted agricultural animal husbandry
15 practice or commonly accepted rodeo practice."

16 SECTION 2. Section 30-18-1.2 NMSA 1978 (being Laws 1999,
17 Chapter 107, Section 3, as amended) is amended to read:

18 "30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

19 A. If the court finds that a seized animal is not
20 being cruelly treated and that the animal's owner is able to
21 provide for the animal adequately, the court shall return the
22 animal to its owner.

23 B. If the court finds that a seized animal is being
24 cruelly treated or that the animal's owner is unable to provide
25 for the animal adequately, the court shall hold a hearing to

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1 determine the disposition of the animal.

2 C. An agent of the New Mexico livestock board, an
3 animal control agency operated by the state, a county or a
4 municipality or an animal shelter or other animal welfare
5 organization designated by an animal control agency or an
6 animal shelter, in the custody of which an animal that has been
7 cruelly treated has been placed may petition the court to
8 request that the animal's owner may be ordered to post security
9 with the court to indemnify the costs incurred to care and
10 provide for the seized animal pending the disposition of any
11 criminal charges of committing cruelty to animals pending
12 against the animal's owner.

13 D. The court shall determine the amount of security
14 while taking into consideration all of the circumstances of the
15 case, including the owner's ability to pay, and may conduct
16 periodic reviews of its order. If the posting of security is
17 ordered, the animal control agency, animal shelter or animal
18 welfare organization may, with permission of the court, draw
19 from the security to indemnify the costs incurred to care and
20 provide for the seized animal pending disposition of the
21 criminal charges.

22 E. If the owner of the animal does not post
23 security within fifteen days after the issuance of the order,
24 or if, after reasonable and diligent attempts the owner cannot
25 be located, the animal may be deemed abandoned and relinquished

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1 to the animal control agency, animal shelter or animal welfare
2 organization for adoption or humane destruction; provided that
3 if the animal is livestock other than poultry associated with
4 cockfighting, the animal may be sold pursuant to the procedures
5 set forth in Section 77-18-2 NMSA 1978.

6 F. Nothing in this section shall prohibit an owner
7 from voluntarily relinquishing an animal to an animal control
8 agency or shelter in lieu of posting security. A voluntary
9 relinquishment shall not preclude further prosecution of any
10 criminal charges alleging that the owner has committed felony
11 cruelty to animals.

12 G. Upon conviction, the court shall place the
13 animal with an animal shelter or animal welfare organization
14 for placement or for humane destruction.

15 H. As used in this section, "livestock" means [~~all~~]
16 domestic or domesticated animals that are used or raised on a
17 farm or ranch, [~~and exotic animals in captivity~~] including the
18 carcasses thereof, and:

19 (1) includes [~~horses, asses, mules~~] equines,
20 cattle, sheep, goats, swine, bison, poultry, ostriches, emus,
21 rheas, camelids, [~~and~~] farmed cervidae [~~but does not include~~
22 ~~canine or feline~~] and exotic animals in captivity; but

23 (2) does not include:

24 (a) wild horses as defined in Section
25 77-18-5 NMSA 1978;

1 (b) equines subject to the jurisdiction
 2 of the federal government pursuant to the federal Wild Free-
 3 Roaming Horses and Burros Act;

4 (c) canine or feline animals;

5 (d) feral hogs; or

6 (e) game mammals as defined in Section
 7 17-2-3 NMSA 1978, except farmed cervidae."

8 SECTION 3. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
 9 Chapter 248, Section 2, as amended) is amended to read:

10 "77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

11 A. "animals" or "livestock" means ~~[all]~~ domestic or
 12 domesticated animals that are used or raised on a farm or
 13 ranch, including the carcasses thereof, and ~~[exotic animals in~~
 14 ~~captivity and]~~:

15 (1) includes ~~[horses, asses, mules]~~ equines,
 16 cattle, sheep, goats, swine, bison, poultry, ostriches, emus,
 17 rheas, camelids, ~~[and]~~ farmed cervidae ~~[upon any land in New~~
 18 ~~Mexico. "Animals" or "livestock"]~~ and exotic animals in
 19 captivity; but

20 (2) does not include ~~[canine or feline~~
 21 ~~animals]~~:

22 (a) wild horses as defined in Section
 23 77-18-5 NMSA 1978;

24 (b) equines subject to the jurisdiction
 25 of the federal government pursuant to the federal Wild Free-

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1 Roaming Horses and Burros Act;

2 (c) canine or feline animals;

3 (d) feral hogs; or

4 (e) game mammals as defined in Section
5 17-2-3 NMSA 1978, except farmed cervidae;

6 B. "bill of sale" means an instrument in
7 substantially the form specified in The Livestock Code by which
8 the owner or the owner's authorized agent transfers to the
9 buyer the title to animals described in the bill of sale;

10 C. "bison" or "buffalo" means a bovine animal of
11 the species bison;

12 D. "board" means the New Mexico livestock board;

13 E. "bond" means cash or an insurance agreement from
14 a New Mexico licensed surety or insurance corporation pledging
15 surety for financial loss caused to another, including
16 certificate of deposit, letter of credit or other surety as may
17 be approved by the grain inspection, packers and stockyards
18 administration of the United States department of agriculture
19 or the board;

20 F. "brand" means a symbol or device in a form
21 approved by and recorded with the board as may be sufficient to
22 readily distinguish livestock should they become intermixed
23 with other livestock;

24 G. "brand inspector" means an inspector who is not
25 certified as a peace officer;

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1 H. "carcasses" means dead or dressed bodies of
2 livestock or parts thereof;

3 I. "cattle" means animals of the genus bos,
4 including dairy cattle, and does not include any other kind of
5 livestock;

6 J. "dairy cattle" means animals of the genus bos
7 raised not for consumption but for dairy products and
8 distinguished from meat breed cattle;

9 K. "director" means the executive director of the
10 board;

11 L. "disease" means a communicable, infectious or
12 contagious disease;

13 M. "district" means a livestock inspection
14 district;

15 N. "estrays" means livestock found running at large
16 upon public or private lands, either fenced or unfenced:

17 (1) whose owner is unknown but that exhibits
18 evidence of private ownership; or

19 (2) that is branded with a brand that is not
20 on record in the office of the board or is a freshly branded or
21 marked offspring not with its branded or marked mother, unless
22 other proof of ownership is produced;

23 O. "inspector" means a livestock or brand
24 inspector;

25 P. "livestock inspector" means a certified

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1 inspector who is granted full law enforcement powers for
2 enforcement of The Livestock Code and other criminal laws
3 relating to livestock;

4 Q. "mark" means an ear tag or ownership mark that
5 is not a brand;

6 R. "meat" means the edible flesh of poultry, birds
7 or animals sold for human consumption and includes livestock,
8 poultry and livestock and poultry products;

9 S. "mule" means a hybrid resulting from the cross
10 of a horse and ~~[an ass]~~ a burro; and

11 T. "person" means an individual, firm, partnership,
12 association, corporation or similar legal entity."

13 SECTION 4. Section 77-18-5 NMSA 1978 (being Laws 2007,
14 Chapter 216, Section 1) is repealed and a new Section 77-18-5
15 NMSA 1978 is enacted to read:

16 "77-18-5. [NEW MATERIAL] WILD HORSES--DISPOSITION
17 PROCEDURES.--

18 A. As used in this section:

19 (1) "adoption" means adoption by a qualified
20 individual who can ensure humane treatment and care of the
21 animal, including proper transportation, feeding and handling;

22 (2) "operator" means a person that controls
23 the day-to-day management and decision-making of private
24 property;

25 (3) "private land" means land owned or

1 controlled by a private person and not by an agency of the
2 federal government or the state government or its political
3 subdivisions;

4 (4) "private wild horse preserve" means
5 private land designated by the owner of that land as a preserve
6 for wild horses upon a determination in writing by the state
7 veterinarian that the landowner can ensure proper care of the
8 horses;

9 (5) "public land" means land controlled or
10 supervised by an agency of the state government or its
11 political subdivisions but does not mean private land or state
12 trust land controlled by the state land office, unless the
13 commissioner of public lands designates land as wild horse
14 range;

15 (6) "public wild horse preserve" means land
16 designated by an agency of state government or a county or a
17 municipality as a preserve for wild horses;

18 (7) "wild horse" means a horse that is
19 unclaimed and without obvious brands or without other evidence
20 of private ownership, but "wild horse" does not include horses
21 that are subject to the jurisdiction of the federal government
22 pursuant to the federal Wild Free-Roaming Horses and Burros
23 Act; and

24 (8) "wild horse range" means pasture with
25 adequate land mass, water and vegetation to support wild

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1 horses.

2 B. A wild horse may be captured on public land at
3 the request of the agency that has jurisdiction over the public
4 land for the following reasons:

5 (1) public safety; or

6 (2) animal health, as determined by the state
7 veterinarian.

8 C. At the discretion of the board, a wild horse
9 that is captured on public land pursuant to Subsection B of
10 this section or on private land at the request of a private
11 landowner or operator shall be humanely captured and:

12 (1) relocated to public land designated as
13 wild horse range or to a public or private wild horse preserve;
14 provided that a wild horse captured on public or private land
15 may be relocated to private land if the owner of the private
16 land agrees in writing;

17 (2) transferred to a wild horse rescue or
18 retirement facility; or

19 (3) adopted for private maintenance upon
20 payment of an adoption fee that shall not exceed the cost of
21 caring for the wild horse while it was under the control of the
22 board; provided that not more than four wild horses may be
23 adopted per year by any individual unless the state
24 veterinarian determines in writing that the individual is
25 capable of humanely caring for more than four wild horses,

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1 including the transportation of the horses by the adopting
2 party.

3 D. If the board captures a horse on public or
4 private land and the board determines that the horse is subject
5 to the jurisdiction of the federal government pursuant to the
6 federal Wild Free-Roaming Horses and Burros Act, the board
7 shall transfer the horse to the federal bureau of land
8 management or the United States forest service, as appropriate.

9 E. If authorized by the state veterinarian, a wild
10 horse may be humanely euthanized by a licensed veterinarian if
11 it is determined to be medically necessary to prevent suffering
12 from life-threatening illness or injury. Euthanasia shall not
13 be used for the purpose of controlling or reducing a wild horse
14 population.

15 F. A political subdivision may enter into an
16 agreement with a state or federal agency; another political
17 subdivision; a contract service provider; a nonprofit
18 organization; an Indian nation, tribe or pueblo; or an owner of
19 land designated as a private wild horse preserve to provide:

- 20 (1) wild horse range;
- 21 (2) identification and herd monitoring;
- 22 (3) supplemental feed or veterinary care;
- 23 (4) on-range fertility control;
- 24 (5) public safety measures; or
- 25 (6) consultations or resources to prevent

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1 unwanted damage to private property, including fencing or
2 deterrents."

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