

SENATE INDIAN, RURAL AND CULTURAL AFFAIRS
COMMITTEE SUBSTITUTE FOR
SENATE BILL 385

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO ANIMALS; PROVIDING PROTECTIONS, REQUIREMENTS AND PROCEDURES TO BE FOLLOWED FOR THE CAPTURE OR REMOVAL OF WILD HORSES ON PUBLIC OR PRIVATE LAND; PROVIDING FOR THE DEVELOPMENT OF WILD HORSE HERD MANAGEMENT PLANS AND COOPERATIVE AGREEMENTS TO MANAGE WILD HORSES; EXCLUDING WILD HORSES AND OTHER ANIMALS FROM THE DEFINITION OF "LIVESTOCK"; AMENDING DEFINITIONS IN THE LIVESTOCK CODE; SPECIFICALLY INCLUDING WILD HORSES IN THE CRUELTY TO ANIMALS STATUTE; MAKING TECHNICAL CHANGES; REPEALING AND REENACTING SECTION 77-18-5 NMSA 1978 (BEING LAWS 2007, CHAPTER 216, SECTION 1).

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

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1 ANIMALS--PENALTIES--EXCEPTIONS.--

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

5 B. Cruelty to animals consists of a person:

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

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

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

12 (1) humanely destroying a sick or injured
13 animal; or

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

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

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

23 (1) intentionally or maliciously torturing,
24 mutilating, injuring or poisoning an animal; or

25 (2) maliciously killing an animal.

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

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

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

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

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

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

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

25 (4) the treatment of livestock and other

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1 animals used on farms and ranches for the production of food,
2 fiber or other agricultural products, when the treatment is in
3 accordance with commonly accepted agricultural animal husbandry
4 practices;

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

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

12 (7) other similar activities not otherwise
13 prohibited by law.

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

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

22 "30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

23 A. If the court finds that a seized animal is not
24 being cruelly treated and that the animal's owner is able to
25 provide for the animal adequately, the court shall return the

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1 animal to its owner.

2 B. If the court finds that a seized animal is being
3 cruelly treated or that the animal's owner is unable to provide
4 for the animal adequately, the court shall hold a hearing to
5 determine the disposition of the animal.

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

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

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1 E. If the owner of the animal does not post
2 security within fifteen days after the issuance of the order,
3 or if, after reasonable and diligent attempts the owner cannot
4 be located, the animal may be deemed abandoned and relinquished
5 to the animal control agency, animal shelter or animal welfare
6 organization for adoption or humane destruction; provided that
7 if the animal is livestock other than poultry associated with
8 cockfighting, the animal may be sold pursuant to the procedures
9 set forth in Section 77-18-2 NMSA 1978.

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

16 G. Upon conviction, the court shall place the
17 animal with an animal shelter or animal welfare organization
18 for placement or for humane destruction.

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

23 (1) includes [~~horses, asses, mules~~] equines,
24 cattle, sheep, goats, swine, bison, poultry, ostriches, emus,
25 rheas, camelids, [~~and~~] farmed cervidae [~~but does not include~~

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1 ~~canine or feline]~~ and exotic animals in captivity; but

2 (2) does not include:

3 (a) wild horses as defined in Section
4 77-18-5 NMSA 1978;

5 (b) equines subject to the jurisdiction
6 of the federal government pursuant to the federal Wild Free-
7 Roaming Horses and Burros Act;

8 (c) canine or feline animals;

9 (d) feral hogs; or

10 (e) game mammals as defined in Section
11 17-2-3 NMSA 1978, except farmed cervidae."

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

14 "77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

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

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

24 (2) does not include [canine or feline
25 animals]:

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1 (a) wild horses as defined in Section
2 77-18-5 NMSA 1978;

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

6 (c) canine or feline animals;

7 (d) feral hogs; or

8 (e) game mammals as defined in Section
9 17-2-3 NMSA 1978, except farmed cervidae;

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

14 C. "bison" or "buffalo" means a bovine animal of
15 the species bison;

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

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

24 F. "brand" means a symbol or device in a form
25 approved by and recorded with the board as may be sufficient to

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1 readily distinguish livestock should they become intermixed
2 with other livestock;

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

5 H. "carcasses" means dead or dressed bodies of
6 livestock or parts thereof;

7 I. "cattle" means animals of the genus bos,
8 including dairy cattle, and does not include any other kind of
9 livestock;

10 J. "dairy cattle" means animals of the genus bos
11 raised not for consumption but for dairy products and
12 distinguished from meat breed cattle;

13 K. "director" means the executive director of the
14 board;

15 L. "disease" means a communicable, infectious or
16 contagious disease;

17 M. "district" means a livestock inspection
18 district;

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

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

23 (2) that is branded with a brand that is not
24 on record in the office of the board or is a freshly branded or
25 marked offspring not with its branded or marked mother, unless

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1 other proof of ownership is produced;

2 O. "inspector" means a livestock or brand
3 inspector;

4 P. "livestock inspector" means a certified
5 inspector who is granted full law enforcement powers for
6 enforcement of The Livestock Code and other criminal laws
7 relating to livestock;

8 Q. "mark" means [~~an~~] a chip, ear tag or ownership
9 mark that is not a brand;

10 R. "meat" means the edible flesh of poultry, birds
11 or animals sold for human consumption and includes livestock,
12 poultry and livestock and poultry products;

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

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

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

20 "77-18-5. [NEW MATERIAL] WILD HORSES--PROTECTION--
21 DISPOSITION PROCEDURES.--

22 A. A state agency, county, municipality or
23 political subdivision with jurisdiction over the land on which
24 a wild horse is found, or a person that owns, leases or
25 administers land on which a wild horse is found, may request

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1 the board to capture the wild horse if:

2 (1) the wild horse presents a serious and
3 persistent threat of physical harm to, or has physically
4 harmed, the health and safety of a human or domestic animal;

5 (2) the wild horse requires veterinary care,
6 the application of immunocontraception or sterilization; or

7 (3) the wild horse range occupied by the wild
8 horse has exceeded its carrying capacity.

9 B. A wild horse that has been captured shall be
10 returned to the wild horse range on which the wild horse was
11 found whenever reasonably possible.

12 C. A wild horse may only be permanently removed
13 from its wild horse range if:

14 (1) the wild horse is too unhealthy or injured
15 to return to its range, as determined by the state
16 veterinarian; or

17 (2) a state agency, county, municipality or
18 political subdivision with jurisdiction over any portion of the
19 wild horse range:

20 (a) conducts or contracts with an entity
21 to conduct a wild horse herd study that determines the wild
22 horse range has exceeded its carrying capacity;

23 (b) develops and implements a wild horse
24 herd management plan; and

25 (c) upon review of the wild horse herd

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1 study and wild horse herd management plan, develops a proposal
2 for wild horse removal and disposition options and approves the
3 proposal after a thirty-day public comment period, holding a
4 public hearing and duly considering all relevant input and
5 information.

6 D. A wild horse herd study shall:

7 (1) include:

8 (a) a wild horse population survey using
9 science-based methods;

10 (b) a determination of the wild horse
11 range's carrying capacity, taking into account factors
12 including available water and forage and other wildlife and
13 domestic animal pressures on the landscape and excluding
14 consideration of private property; provided that pursuant to
15 Subsection J of this section, an owner of private property may
16 by agreement have the owner's private property considered in
17 determining the wild horse range's carrying capacity; and

18 (c) a determination of the minimum and
19 maximum number of wild horses that can be sustained on the wild
20 horse range; and

21 (2) be conducted by an individual who has:

22 (a) at minimum, a bachelor's degree in
23 animal science, equine science or range science or a closely
24 related field of study;

25 (b) experience in New Mexico habitat

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1 issues with specific experience with carrying capacity
2 analyses;

3 (c) knowledge of New Mexico land status
4 designations and associated management agencies; and

5 (d) knowledge of the New Mexico statutes
6 annotated relating to livestock, wildlife, conservation and
7 property rights.

8 E. A wild horse herd management plan shall be a
9 comprehensive plan for managing, protecting and maintaining
10 wild horses and shall include:

11 (1) the methodology and results of any
12 relevant wild horse herd study;

13 (2) non-lethal on-range management, which may
14 include immunocontraceptives, for any wild horses that will
15 remain on the wild horse range;

16 (3) restrictions and regulation of artificial
17 or supplemental feed and water for wild horses on the wild
18 horse range;

19 (4) a proposal for the disposition of removed
20 wild horses, including fiscal impacts and funding sources; and

21 (5) due consideration of other conflict
22 mitigation as appropriate, including traffic collision
23 prevention, private land deterrence measures, range restoration
24 projects and reduction in domestic animals on the wild horse
25 range.

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1 F. A wild horse permanently removed from its wild
2 horse range shall be:

3 (1) relocated to a wild horse range that has
4 not exceeded its carrying capacity, as allowed by law;

5 (2) transferred to a horse rescue or
6 retirement facility, licensed by the board, to:

7 (a) make the horse available for
8 adoption or foster care;

9 (b) transfer the horse to another
10 qualified rescue or retirement facility; or

11 (c) provide lifelong sanctuary for the
12 horse; or

13 (3) relocated to a wild horse preserve, with
14 the agreement of the preserve owner or operator.

15 G. A wild horse shall not be harmed, harassed or
16 sold for the purpose of slaughter for consumption.

17 H. If the board captures a horse and the board
18 determines that the horse is subject to the jurisdiction of the
19 federal government pursuant to the federal Wild Free-Roaming
20 Horses and Burros Act, the board shall transfer the horse to
21 the federal bureau of land management or the United States
22 forest service, as appropriate.

23 I. A political subdivision may enter into an
24 agreement with a state or federal agency; another political
25 subdivision; a contract service provider; a nonprofit

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1 organization; an Indian nation, tribe or pueblo; or an owner of
2 land designated as a private wild horse preserve to provide:

- 3 (1) wild horse range;
- 4 (2) identification and herd monitoring;
- 5 (3) supplemental feed or veterinary care;
- 6 (4) on-range fertility control;
- 7 (5) public safety measures; or
- 8 (6) consultations or resources to prevent
9 unwanted damage to private property, including fencing or
10 deterrents.

11 J. An owner of private property contiguous with
12 public property that is part of a wild horse range may enter
13 into an agreement with the state agency, county, municipality
14 or political subdivision that is undertaking a wild horse herd
15 study to have the private property considered in the
16 determination of the wild horse range's carrying capacity. The
17 agreement shall be a restriction on the private property and
18 shall:

- 19 (1) be recorded as an easement in the office
20 of the county clerk and run with the land;
- 21 (2) have a term of no less than five years and
22 be irrevocable during the term of the agreement;
- 23 (3) include a legal description of what part
24 of the private property is subject to the restriction; and
- 25 (4) prohibit the owner of the private property

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1 from taking any action to impede access by wild horses to that
2 part of the private property subject to the easement or to
3 alter or impair conditions on the private property that were
4 used in determining the wild horse range's carrying capacity,
5 in addition to any other terms agreed to by the parties.

6 K. As used in this section:

7 (1) "adoption" means adoption by a qualified
8 individual who has demonstrated the capacity and intent to
9 provide humane treatment and lifelong care of the animal,
10 including proper transportation, feeding and handling;

11 (2) "carrying capacity" means the number of
12 animals that can be sustained on a given amount of land;

13 (3) "wild horse" means a horse that is
14 unclaimed and without obvious brands or without other evidence
15 of private ownership, but does not include horses that are
16 subject to the jurisdiction of the federal government pursuant
17 to the federal Wild Free-Roaming Horses and Burros Act;

18 (4) "wild horse preserve" means land
19 designated by a state or federal agency, county, municipality
20 or other political subdivision, or the owner or operator of
21 private land, and approved by the board, as a refuge for non-
22 reproducing wild horse herds with perimeter fencing, necessary
23 infrastructure to ensure availability of water, feed or forage
24 and adequate acreage for horse health and room to roam; and

25 (5) "wild horse range" means the general area

1 or territory occupied by a wild horse where the wild horse's
2 herd or family band is or has been located."

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