

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 158

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

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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:

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"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.

B. Cruelty to animals consists of a person:

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

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

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

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

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

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

E. Extreme cruelty to animals consists of a person:

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

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(2) maliciously killing an animal.

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

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

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

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

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in

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accordance with commonly accepted agricultural animal husbandry practices;

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

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

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

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

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

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

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

B. If the court finds that a seized animal is being

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cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

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

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

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the animal control agency, animal shelter or animal welfare

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

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

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

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

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

(2) does not include:

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

(b) equines subject to the jurisdiction

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of the federal government pursuant to the federal Wild Free-Roaming Horses and Burros Act;

(c) canine or feline animals;

(d) feral hogs; or

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

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

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

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

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

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

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

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

(c) canine or feline animals;

(d) feral hogs; or

(e) game mammals as defined in Section

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17-2-3 NMSA 1978, except farmed cervidae;

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

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

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

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

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

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

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

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

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livestock;

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

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

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

SECTION 4. Section 77-16-1 NMSA 1978 (being Laws 1909, Chapter 70, Section 1, as amended) is amended to read:

"77-16-1. FENCES--WHEN REQUIRED.--~~[Section 1.]~~ Every gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals or wild horses, as defined in Section 77-18-5 NMSA 1978, shall make a sufficient fence about ~~[his]~~ the land in cultivation or other lands that may be so injured, the same to correspond with the requirements of the laws of this state prescribing and defining a legal fence."

M. "district" means a livestock inspection district;

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

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

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

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

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

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

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

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

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

SJC→SECTION 4. Section 77-16-1 NMSA 1978 (being Laws 1909, Chapter 70, Section 1, as amended) is amended to read:

"77-16-1. FENCES--WHEN REQUIRED.--~~[Section 1.]~~ Every gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals or wild horses, as defined in Section 77-18-5 NMSA 1978, shall make a sufficient fence about ~~[his]~~ the land in cultivation or other lands that may be so injured, the same to correspond with the requirements of the laws of this state prescribing and defining a legal fence."←SJC

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SECTION SJC→4 5←SJC. Section 77-18-5 NMSA 1978 (being

Laws 2007, Chapter 216, Section 1) is repealed and a new

Section 77-18-5 NMSA 1978 is enacted to read:

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

PROCEDURES.--

A. As used in this section:

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

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

(3) "private land" means land owned or controlled by a private person and not by an agency of the federal government or the state government or its political subdivisions;

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

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

(6) "public wild horse preserve" means land

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designated by an agency of state government or a county or a municipality as a preserve for wild horses;

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

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

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

- (1) public safety; or
- (2) animal health, as determined by the state veterinarian.

C. At the discretion of the board, a wild horse that is captured on public land pursuant to Subsection B of this section or on private land at the request of a private landowner or operator SJC→, after it is shown that fencing of the property pursuant to Section 77-16-1 NMSA 1978 has been unsuccessful,←SJC shall be humanely captured and:

(1) relocated to public land designated as wild horse range or to a public or private wild horse preserve;

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provided that a wild horse captured on public or private land may be relocated to private land if the owner of the private land agrees in writing;

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

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

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

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

F. A political subdivision may enter into an agreement with a state or federal agency; another political

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subdivision; a contract service provider; a nonprofit organization; an Indian nation, tribe or pueblo; or an owner of land designated as a private wild horse preserve to provide:

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

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

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