

1 SENATE BILL 385

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Pat Woods and Brenda McKenna

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10 AN ACT

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

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

25 "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.

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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

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 wild horse may be captured using bait traps by
23 the board, or its agent, with the permission of the state or
24 federal agency, entity or individual that owns, leases or
25 administers the land on which the wild horse is found if:

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

4 (2) the wild horse requires veterinary care or
5 the application of immunocontraception by a licensed
6 individual; 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 the wild horse
19 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

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 be conducted by an
7 individual with demonstrated expertise in wild horses or
8 wildlife habitat and include:

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

11 (2) a determination of the land's carrying
12 capacity, taking into account factors including available water
13 and forage and other wildlife and domestic animal pressures on
14 the landscape; and

15 (3) a determination of the minimum and maximum
16 number of wild horses that can be sustained on the wild horse
17 range.

18 E. A wild horse herd management plan shall be a
19 comprehensive plan for managing, protecting and maintaining
20 wild horses and shall include:

21 (1) the methodology and results of any
22 relevant wild horse herd study;

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

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

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

6 (5) due consideration of other conflict
7 mitigation as appropriate, including traffic collision
8 prevention, private land deterrence measures, range restoration
9 projects and reduction in domestic animals on the wild horse
10 range.

11 F. A wild horse permanently removed from its wild
12 horse range shall be:

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

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

17 (a) make the horse available for
18 adoption or foster care;

19 (b) transfer the horse to another
20 qualified rescue or retirement facility; or

21 (c) provide lifelong sanctuary for the
22 horse; or

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

25 G. A wild horse shall not be harmed, harassed or

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1 sold for the purpose of slaughter for consumption.

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

8 I. A political subdivision may enter into an
9 agreement with a state or federal agency; another political
10 subdivision; a contract service provider; a nonprofit
11 organization; an Indian nation, tribe or pueblo; or an owner of
12 land designated as a private wild horse preserve to provide:

- 13 (1) wild horse range;
- 14 (2) identification and herd monitoring;
- 15 (3) supplemental feed or veterinary care;
- 16 (4) on-range fertility control;
- 17 (5) public safety measures; or
- 18 (6) consultations or resources to prevent
19 unwanted damage to private property, including fencing or
20 deterrents.

21 J. As used in this section:

- 22 (1) "adoption" means adoption by a qualified
23 individual who has demonstrated the capacity and intent to
24 provide humane treatment and lifelong care of the animal,
25 including proper transportation, feeding and handling;

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