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**SUBSTITUTE SENATE BILL 5402**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Tom, Carrell, Shin, Delvin, Kline, Fraser, Roach, Kohl-Welles, and Marr)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to prevention of animal cruelty; amending RCW  
2 16.52.011, 16.52.085, and 16.52.200; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 16.52.011 and 2007 c 376 s 2 are each amended to read  
5 as follows:

6 (1) Principles of liability as defined in chapter 9A.08 RCW apply  
7 to this chapter.

8 (2) (~~Unless the context clearly requires otherwise,~~) The  
9 definitions in this section apply throughout this chapter unless the  
10 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) of this  
10 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) "Humane officer" means any individual employed, contracted, or  
16 appointed by an animal care and control agency or humane society as  
17 authorized under RCW 16.52.025.

18 (g) "Law enforcement agency" means a general authority Washington  
19 law enforcement agency as defined in RCW 10.93.020.

20 (h) "Necessary food" means the provision at suitable intervals of  
21 wholesome foodstuff suitable for the animal's age and species and  
22 sufficient to provide a reasonable level of nutrition for the animal.

23 (i) "Owner" means a person who has a right, claim, title, legal  
24 share, or right of possession to an animal or a person having lawful  
25 control, custody, or possession of an animal.

26 (j) "Person" means individuals, corporations, partnerships,  
27 associations, or other legal entities, and agents of those entities.

28 (k) "Similar animal" means an animal classified in the same genus.

29 (l) "Substantial bodily harm" means substantial bodily harm as  
30 defined in RCW 9A.04.110.

31 **Sec. 2.** RCW 16.52.085 and 1994 c 261 s 6 are each amended to read  
32 as follows:

33 (1) If a law enforcement officer or animal control officer has  
34 probable cause to believe that an owner of a domestic animal has  
35 violated this chapter or owns or possesses an animal in violation of an  
36 order issued under RCW 16.52.200(3) and no responsible person can be  
37 found to assume the animal's care, the officer may authorize, with a

1 warrant, the removal of the animal to a suitable place for feeding and  
2 care, or may place the animal under the custody of an animal care and  
3 control agency. In determining what is a suitable place, the officer  
4 shall consider the animal's needs, including its size and behavioral  
5 characteristics. An officer may remove an animal under this subsection  
6 without a warrant only if the animal is in an immediate life-  
7 threatening condition.

8 (2) If a law enforcement officer or an animal control officer has  
9 probable cause to believe a violation of this chapter has occurred, the  
10 officer may authorize an examination of a domestic animal allegedly  
11 neglected or abused in violation of this chapter by a veterinarian to  
12 determine whether the level of neglect or abuse in violation of this  
13 chapter is sufficient to require removal of the animal. This section  
14 does not condone illegal entry onto private property.

15 (3) Any owner whose domestic animal is removed pursuant to this  
16 chapter shall be given written notice of the circumstances of the  
17 removal and notice of legal remedies available to the owner. The  
18 notice shall be given by posting at the place of seizure, by delivery  
19 to a person residing at the place of seizure, or by registered mail if  
20 the owner is known. In making the decision to remove an animal  
21 pursuant to this chapter, the officer shall make a good faith effort to  
22 contact the animal's owner before removal.

23 (4) The agency having custody of the animal may euthanize the  
24 animal or may find a responsible person to adopt the animal not less  
25 than fifteen business days after the animal is taken into custody. A  
26 custodial agency may euthanize severely injured, diseased, or suffering  
27 animals at any time. An owner may prevent the animal's destruction or  
28 adoption by: (a) Petitioning the district court of the county where  
29 the animal was seized for the animal's immediate return subject to  
30 court-imposed conditions, or (b) posting a bond or security in an  
31 amount sufficient to provide for the animal's care for a minimum of  
32 thirty days from the seizure date. If the custodial agency still has  
33 custody of the animal when the bond or security expires, the animal  
34 shall become the agency's property unless the court orders an  
35 alternative disposition. If a court order prevents the agency from  
36 assuming ownership and the agency continues to care for the animal, the  
37 court shall order the owner to renew a bond or security for the  
38 agency's continuing costs for the animal's care. When a court has

1 prohibited the owner from owning or possessing a similar animal under  
2 RCW 16.52.200(3), the agency having custody of the animal may assume  
3 ownership upon seizure and the owner may not prevent the animal's  
4 destruction or adoption by petitioning the court or posting a bond.

5 (5) If no criminal case is filed within fourteen business days of  
6 the animal's removal, the owner may petition the district court of the  
7 county where the animal was removed for the animal's return. The  
8 petition shall be filed with the court, with copies served to the law  
9 enforcement or animal care and control agency responsible for removing  
10 the animal and to the prosecuting attorney. If the court grants the  
11 petition, the agency which seized the animal must deliver the animal to  
12 the owner at no cost to the owner. If a criminal action is filed after  
13 the petition is filed but before the animal is returned, the petition  
14 shall be joined with the criminal matter.

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

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

22 **Sec. 3.** RCW 16.52.200 and 2003 c 53 s 113 are each amended to read  
23 as follows:

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

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

31 (3) In addition to the penalties imposed by the court, the court  
32 shall order the forfeiture of all animals held by law enforcement or  
33 animal care and control authorities under the provisions of this  
34 chapter if any one of the animals involved dies as a result of a  
35 violation of this chapter or if the defendant has a prior conviction  
36 under this chapter. In other cases the court may enter an order  
37 requiring the owner to forfeit the animal if the court deems the

1 animal's treatment to have been severe and likely to reoccur. If  
2 forfeiture is ordered, the owner shall be prohibited from owning or  
3 caring for any similar animals for a period of (~~two years~~) time as  
4 follows:

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

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

9 (c) Permanently for a second conviction of animal cruelty, except  
10 as provided in subsection (4) of this section.

11 (4) If a person has two convictions of animal cruelty and both  
12 convictions are for cruelty in the second degree, the person may  
13 petition the sentencing court in which the most recent animal cruelty  
14 conviction occurred, for a restoration of the right to own or possess  
15 a similar animal five years after the date of the second conviction.  
16 In determining whether to grant the petition, the court shall consider,  
17 but not be limited to, the following:

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

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

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

23 (d) Any other matters the court finds reasonable and material to  
24 consider in determining whether the person is likely to abuse another  
25 animal.

26 The court may delay its decision on forfeiture under (~~this~~)  
27 subsection (3) of this section until the end of the probationary  
28 period.

29 (~~(4)~~) (5) In addition to fines and court costs, the defendant,  
30 only if convicted or in agreement, shall be liable for reasonable costs  
31 incurred pursuant to this chapter by law enforcement agencies, animal  
32 care and control agencies, or authorized private or public entities  
33 involved with the care of the animals. Reasonable costs include  
34 expenses of the investigation, and the animal's care, euthanization, or  
35 adoption.

36 (~~(5)~~) (6) If convicted, the defendant shall also pay a civil  
37 penalty of one thousand dollars to the county to prevent cruelty to

1 animals. These funds shall be used to prosecute offenses under this  
2 chapter and to care for forfeited animals pending trial.

3 ~~((6))~~ (7) As a condition of the sentence imposed under this  
4 chapter or RCW 9.08.070 through 9.08.078, the court may also order the  
5 defendant to participate in an available animal cruelty prevention or  
6 education program or obtain available psychological counseling to treat  
7 mental health problems contributing to the violation's commission. The  
8 defendant shall bear the costs of the program or treatment.

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