

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5065

62nd Legislature
2011 Regular Session

Passed by the Senate April 14, 2011
YEAS 46 NAYS 0

President of the Senate

Passed by the House April 4, 2011
YEAS 93 NAYS 2

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5065** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5065

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Carrell, Kline, Kohl-Welles, Nelson, Delvin, Tom, Shin, McAuliffe, and Kilmer)

READ FIRST TIME 02/10/11.

1 AN ACT Relating to prevention of animal cruelty; amending RCW
2 16.52.011, 16.52.015, 16.52.085, 16.52.200, and 16.52.207; and
3 prescribing penalties.

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

5 **Sec. 1.** RCW 16.52.011 and 2009 c 287 s 1 are each amended to read
6 as follows:

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

9 (2) The definitions in this section apply throughout this chapter
10 unless the 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+))~~ (g) of
10 this 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) "Food" means food or feed appropriate to the species for which
16 it is intended.

17 (g) "Humane officer" means any individual employed, contracted, or
18 appointed by an animal care and control agency or humane society as
19 authorized under RCW 16.52.025.

20 ~~((+g+))~~ (h) "Law enforcement agency" means a general authority
21 Washington law enforcement agency as defined in RCW 10.93.020.

22 ~~((+h+))~~ (i) "Necessary food" means the provision at suitable
23 intervals of wholesome foodstuff suitable for the animal's age and
24 species and that is sufficient to provide a reasonable level of
25 nutrition for the animal and is easily accessible to the animal.

26 ~~((+i+))~~ (j) "Necessary water" means water that is in sufficient
27 quantity and of appropriate quality for the species for which it is
28 intended and that is accessible to the animal.

29 (k) "Owner" means a person who has a right, claim, title, legal
30 share, or right of possession to an animal or a person having lawful
31 control, custody, or possession of an animal.

32 ~~((+j+))~~ (l) "Person" means individuals, corporations, partnerships,
33 associations, or other legal entities, and agents of those entities.

34 ~~((+k+))~~ (m) "Similar animal" means ~~((an animal classified in the~~
35 ~~same genus))~~: (i) For a mammal, another animal that is in the same
36 taxonomic order; or (ii) for an animal that is not a mammal, another
37 animal that is in the same taxonomic class.

1 (~~(1)~~) (n) "Substantial bodily harm" means substantial bodily harm
2 as defined in RCW 9A.04.110.

3 **Sec. 2.** RCW 16.52.015 and 2003 c 53 s 110 are each amended to read
4 as follows:

5 (1) Law enforcement agencies and animal care and control agencies
6 may enforce the provisions of this chapter. Animal care and control
7 agencies may enforce the provisions of this chapter in a county or city
8 only if the county or city legislative authority has entered into a
9 contract with the agency to enforce the provisions of this chapter.

10 (2) Animal control officers enforcing this chapter shall comply
11 with the same constitutional and statutory restrictions concerning the
12 execution of police powers imposed on law enforcement officers who
13 enforce this chapter and other criminal laws of the state of
14 Washington.

15 (3) Animal control officers have the following enforcement powers
16 when enforcing this chapter:

17 (a) The power to issue citations based on probable cause to
18 offenders for civil infractions and misdemeanor and gross misdemeanor
19 violations of this chapter or RCW 9.08.070 through 9.08.078 or
20 (~~(81.56.120)~~) 81.48.070;

21 (b) The power to cause a law enforcement officer to arrest and take
22 into custody any person the animal control officer has probable cause
23 to believe has committed or is committing a violation of this chapter
24 or RCW 9.08.070 or (~~(81.56.120)~~) 81.48.070. Animal control officers
25 may make an oral complaint to a prosecuting attorney or a law
26 enforcement officer to initiate arrest. The animal control officer
27 causing the arrest shall file with the arresting agency a written
28 complaint within twenty-four hours of the arrest, excluding Sundays and
29 legal holidays, stating the alleged act or acts constituting a
30 violation;

31 (c) The power to carry nonfirearm protective devices for personal
32 protection;

33 (d) The power to prepare affidavits in support of search warrants
34 and to execute search warrants when accompanied by law enforcement
35 officers to investigate violations of this chapter or RCW 9.08.070 or
36 (~~(81.56.120)~~) 81.48.070, and to seize evidence of those violations.

1 (4) Upon request of an animal control officer who has probable
2 cause to believe that a person has violated this chapter or RCW
3 9.08.070 or (~~(81.56.120)~~) 81.48.070, a law enforcement agency officer
4 may arrest the alleged offender.

5 **Sec. 3.** RCW 16.52.085 and 2009 c 287 s 2 are each amended to read
6 as follows:

7 (1) If a law enforcement officer or animal control officer has
8 probable cause to believe that an owner of a domestic animal has
9 violated this chapter or (~~(owns or possesses)~~) a person owns, cares
10 for, or resides with an animal in violation of an order issued under
11 RCW 16.52.200(~~(+3)~~) (4) and no responsible person can be found to
12 assume the animal's care, the officer may authorize, with a warrant,
13 the removal of the animal to a suitable place for feeding and care, or
14 may place the animal under the custody of an animal care and control
15 agency. In determining what is a suitable place, the officer shall
16 consider the animal's needs, including its size and behavioral
17 characteristics. An officer may remove an animal under this subsection
18 without a warrant only if the animal is in an immediate life-
19 threatening condition.

20 (2) If a law enforcement officer or an animal control officer has
21 probable cause to believe a violation of this chapter has occurred, the
22 officer may authorize an examination of a domestic animal allegedly
23 neglected or abused in violation of this chapter by a veterinarian to
24 determine whether the level of neglect or abuse in violation of this
25 chapter is sufficient to require removal of the animal. This section
26 does not condone illegal entry onto private property.

27 (3) Any owner whose domestic animal is removed pursuant to this
28 chapter shall be given written notice of the circumstances of the
29 removal and notice of legal remedies available to the owner. The
30 notice shall be given by posting at the place of seizure, by delivery
31 to a person residing at the place of seizure, or by registered mail if
32 the owner is known. In making the decision to remove an animal
33 pursuant to this chapter, the officer shall make a good faith effort to
34 contact the animal's owner before removal.

35 (4) The agency having custody of the animal may euthanize the
36 animal or may find a responsible person to adopt the animal not less
37 than fifteen business days after the animal is taken into custody. A

1 custodial agency may euthanize severely injured, diseased, or suffering
2 animals at any time. An owner may prevent the animal's destruction or
3 adoption by: (a) Petitioning the district court of the county where
4 the animal was seized for the animal's immediate return subject to
5 court-imposed conditions, or (b) posting a bond or security in an
6 amount sufficient to provide for the animal's care for a minimum of
7 thirty days from the seizure date. If the custodial agency still has
8 custody of the animal when the bond or security expires, the animal
9 shall become the agency's property unless the court orders an
10 alternative disposition. If a court order prevents the agency from
11 assuming ownership and the agency continues to care for the animal, the
12 court shall order the owner to renew a bond or security for the
13 agency's continuing costs for the animal's care. When a court has
14 prohibited the owner from owning (~~(or possessing)~~), caring for, or
15 residing with a similar animal under RCW 16.52.200(~~(+3)~~) (4), the
16 agency having custody of the animal may assume ownership upon seizure
17 and the owner may not prevent the animal's destruction or adoption by
18 petitioning the court or posting a bond.

19 (5) If no criminal case is filed within fourteen business days of
20 the animal's removal, the owner may petition the district court of the
21 county where the animal was removed for the animal's return. The
22 petition shall be filed with the court, with copies served to the law
23 enforcement or animal care and control agency responsible for removing
24 the animal and to the prosecuting attorney. If the court grants the
25 petition, the agency which seized the animal must deliver the animal to
26 the owner at no cost to the owner. If a criminal action is filed after
27 the petition is filed but before the animal is returned, the petition
28 shall be joined with the criminal matter.

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

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

36 **Sec. 4.** RCW 16.52.200 and 2009 c 287 s 3 are each amended to read
37 as follows:

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

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

8 (3) In addition to the penalties imposed by the court, the court
9 shall order the forfeiture of all animals held by law enforcement or
10 animal care and control authorities under the provisions of this
11 chapter if any one of the animals involved dies as a result of a
12 violation of this chapter or if the defendant has a prior conviction
13 under this chapter. In other cases the court may enter an order
14 requiring the owner to forfeit the animal if the court deems the
15 animal's treatment to have been severe and likely to reoccur. (~~(If~~
16 ~~forfeiture is ordered, the owner)~~)

17 (4) Any person convicted of animal cruelty shall be prohibited from
18 owning (~~(or)~~), caring for, or residing with any similar animals for a
19 period of time as follows:

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

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

24 (c) Permanently for a second or subsequent conviction of animal
25 cruelty, except as provided in subsection (~~(+4)~~) (5) of this section.

26 (~~(+4)~~) (5) If a person has no more than two convictions of animal
27 cruelty and each conviction is for animal cruelty in the second degree,
28 the person may petition the sentencing court in which the most recent
29 animal cruelty conviction occurred, for a restoration of the right to
30 own or possess a similar animal five years after the date of the second
31 conviction. In determining whether to grant the petition, the court
32 shall consider, but not be limited to, the following:

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

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

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

1 (d) Whether the person complied with the prohibition on owning,
2 caring for, or residing with similar animals; and

3 (e) Any other matters the court finds reasonable and material to
4 consider in determining whether the person is likely to abuse another
5 animal.

6 The court may delay its decision on forfeiture under subsection
7 (3) of this section until the end of the probationary period.

8 (~~(+5)~~) (6) In addition to fines and court costs, the defendant,
9 only if convicted or in agreement, shall be liable for reasonable costs
10 incurred pursuant to this chapter by law enforcement agencies, animal
11 care and control agencies, or authorized private or public entities
12 involved with the care of the animals. Reasonable costs include
13 expenses of the investigation, and the animal's care, euthanization, or
14 adoption.

15 (~~(+6)~~) (7) If convicted, the defendant shall also pay a civil
16 penalty of one thousand dollars to the county to prevent cruelty to
17 animals. These funds shall be used to prosecute offenses under this
18 chapter and to care for forfeited animals pending trial.

19 (~~(+7)~~) (8) If a person violates the prohibition on owning, caring
20 for, or residing with similar animals under subsection (4) of this
21 section, that person:

22 (a) Shall pay a civil penalty of one thousand dollars for the first
23 violation;

24 (b) Shall pay a civil penalty of two thousand five hundred dollars
25 for the second violation; and

26 (c) Is guilty of a gross misdemeanor for the third and each
27 subsequent violation.

28 (9) As a condition of the sentence imposed under this chapter or
29 RCW 9.08.070 through 9.08.078, the court may also order the defendant
30 to participate in an available animal cruelty prevention or education
31 program or obtain available psychological counseling to treat mental
32 health problems contributing to the violation's commission. The
33 defendant shall bear the costs of the program or treatment.

34 **Sec. 5.** RCW 16.52.207 and 2007 c 376 s 1 are each amended to read
35 as follows:

36 (1) A person is guilty of animal cruelty in the second degree if,

1 under circumstances not amounting to first degree animal cruelty, the
2 person knowingly, recklessly, or with criminal negligence inflicts
3 unnecessary suffering or pain upon an animal.

4 (2) An owner of an animal is guilty of animal cruelty in the second
5 degree if, under circumstances not amounting to first degree animal
6 cruelty, the owner knowingly, recklessly, or with criminal negligence:

7 (a) Fails to provide the animal with necessary shelter, rest,
8 sanitation, space, or medical attention and the animal suffers
9 unnecessary or unjustifiable physical pain as a result of the failure;

10 (b) Under circumstances not amounting to animal cruelty in the
11 second degree under (c) of this subsection, abandons the animal; or

12 (c) Abandons the animal and (i) as a result of being abandoned, the
13 animal suffers bodily harm; or (ii) abandoning the animal creates an
14 imminent and substantial risk that the animal will suffer substantial
15 bodily harm.

16 (3)((~~a~~)) Animal cruelty in the second degree (~~under subsection~~
17 ~~(1), (2)(a), or (2)(b) of this section~~) is a gross misdemeanor.

18 (~~(b) Animal cruelty in the second degree under subsection (2)(c)~~
19 ~~of this section is a gross misdemeanor.~~)

20 (4) In any prosecution of animal cruelty in the second degree under
21 subsection (1) or (2)(a) of this section, it shall be an affirmative
22 defense, if established by the defendant by a preponderance of the
23 evidence, that the defendant's failure was due to economic distress
24 beyond the defendant's control.

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