

House Bill 2328
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 42.09, Penal Code, is amended to read as follows:

Sec. 42.09. CRUELTY TO LIVESTOCK ANIMALS.

(a) A person commits an offense if the person intentionally or knowingly:

- (1) tortures a livestock [~~an~~] animal;
- (2) fails unreasonably to provide necessary food, water, or care[, ~~or shelter~~] for a livestock [~~an~~] animal in the person's custody;
- (3) abandons unreasonably a livestock [~~an~~] animal in the person's custody;
- (4) ~~transports or confines an animal in a cruel manner;~~

~~[(5) kills, seriously injures, or] administers poison to a livestock [~~an~~] animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;~~

~~(5) causes one livestock animal to fight with another livestock animal or with an animal as defined by Section 42.092 [(6) causes one animal to fight with another]; or~~

~~(6) [(7)] uses a live livestock animal as a lure in dog race training or in dog coursing on a racetrack[;~~

~~[(8) trips a horse;~~

~~[(9) injures an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or~~

~~[(10) seriously overworks an animal].~~

(b) In ~~[It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.~~

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SECTION 1. Section 42.09, Penal Code, is amended to read as follows:

Sec. 42.09. CRUELTY TO LIVESTOCK ANIMALS.

(a) A person commits an offense if the person intentionally or knowingly:

- (1) tortures a livestock [~~an~~] animal;
- (2) fails unreasonably to provide necessary food, water, or care[, ~~or shelter~~] for a livestock [~~an~~] animal in the person's custody;
- (3) abandons unreasonably a livestock [~~an~~] animal in the person's custody;
- (4) transports or confines a livestock [~~an~~] animal in a cruel and unusual manner;

(5) ~~[kills, seriously injures, or] administers poison to a livestock [~~an~~] animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;~~

(6) causes one livestock animal to fight with another livestock animal or with an animal as defined by Section 42.092 ~~[causes one animal to fight with another];~~

(7) uses a live livestock animal as a lure in dog race training or in dog coursing on a racetrack;

(8) trips a horse;

~~[(9) injures an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;] or~~

~~[(10)]~~ seriously overworks a livestock [~~an~~] animal.

(b) In ~~[It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.~~

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~~[(e) For purposes of]~~ this section:

(1) "Abandon" includes abandoning a livestock ~~[an]~~ animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

~~(2) ["Animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.]~~

~~[(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.]~~

~~[(4)]~~ "Custody" includes responsibility for the health, safety, and welfare of a livestock ~~[an]~~ animal subject to the person's care and control, regardless of ownership of the livestock animal.

~~(2-a)~~ "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

~~(3)~~ "Livestock animal" means:

~~(A) cattle, sheep, swine, goats, ratites, or poultry commonly raised for human consumption;~~

~~(B) a horse, pony, mule, donkey, or hinny;~~

~~(C) native or nonnative hoofstock raised under agriculture practices; or~~

~~(D) native or nonnative fowl raised under agricultural practices.~~

~~(4) [(5)]~~ "Necessary food, water, or care~~[, or shelter]~~" includes food, water, or care~~[, or shelter]~~ provided to the extent required to maintain the livestock animal in a state of good health.

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~~[(e) For purposes of]~~ this section:

(1) "Abandon" includes abandoning a livestock ~~[an]~~ animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

~~(2) ["Animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.]~~

"Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

~~(3) [(4)]~~ "Custody" includes responsibility for the health, safety, and welfare of a livestock ~~[an]~~ animal subject to the person's care and control, regardless of ownership of the livestock animal.

~~(4)~~ "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

~~(5)~~ "Livestock animal" means:

~~(A) cattle, sheep, swine, goats, ratites, or poultry commonly raised for human consumption;~~

~~(B) a horse, pony, mule, donkey, or hinny;~~

~~(C) native or nonnative hoofstock raised under agriculture practices; or~~

~~(D) native or nonnative fowl~~ commonly raised under agricultural practices.

~~(6) [(5)]~~ "Necessary food, water, or care~~[, or shelter]~~" includes food, water, or care~~[, or shelter]~~ provided to the extent required to maintain the livestock animal in a state of good health.

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~~[(6) "Trip" means to use an object to cause a horse to fall or lose its balance.]~~

~~(c) [(4)] An offense under Subsection (a)(2) or [; (3)[; (4), (9), or (10)] is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092. An offense under Subsection (a)(1), (4), (5), or (6) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.~~

~~(d) [(e) It is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.~~

~~[(f) It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.~~

~~[(g)] It is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research [the person had a reasonable fear of bodily injury to the person or to~~

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(7)"Torture" includes any act that causes unjustifiable pain or suffering.

(8) [(6)] "Trip" means to use an object to cause a horse to fall or lose its balance.

(c) [(4)] An offense under Subsection (a)(2), (3), (4), or (9)[, or (10)] is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092. An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.

(d) [(e) It is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.

[(f)] It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.

(e) [(g)] It is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research [the person had a reasonable fear of bodily injury to the person or to

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~~another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code].~~

~~(e) [(h)]~~ It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring ~~[use of an animal if that use occurs]~~ solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture ~~[farming]~~ practice involving livestock animals.

~~[(i) An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.]~~

SECTION 2. Chapter 42, Penal Code, is amended by adding Section 42.092 to read as follows:

Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (a) In this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature and a

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~~another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code].~~

~~(f) [(h)]~~ It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring ~~[use of an animal if that use occurs]~~ solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture ~~[farming]~~ practice involving livestock animals.

~~[(i) An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.]~~

(g) This section does not create a civil cause of action for damages or enforcement of this section.

SECTION 2. Chapter 42, Penal Code, is amended by adding Section 42.092 to read as follows:

Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (a) In this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature,

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wild living creature previously captured. The term does not include an uncaptured wild creature or a livestock animal.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(4-a) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

(5) "Livestock animal" has the meaning assigned by Section 42.09.

(6) "Necessary food, water, care, or shelter" includes food, water, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;

(2) without legal authority or the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal;

(3) fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;

(4) abandons unreasonably an animal in the person's custody;

(5) transports or confines an animal in a cruel manner;

(6) without legal authority or the owner's effective

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including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

(6) "Livestock animal" has the meaning assigned by Section 42.09.

(7) "Necessary food, water, care, or shelter" includes food, water, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(8) "Torture" includes any act that causes unjustifiable pain or suffering.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;

(2) without the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal;

(3) fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;

(4) abandons unreasonably an animal in the person's custody;

(5) transports or confines an animal in a cruel manner;

(6) without the owner's effective consent, causes bodily

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consent, causes bodily injury to an animal;
(7) causes one animal to fight with another animal, if either animal is not a dog;
(8) uses a live animal as a lure in dog race training or in dog coursing on a racetrack; or
(9) seriously overworks an animal.
(c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. An offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.
(d) It is a defense to prosecution under this section that:
(1) the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101, Health and Safety Code; or
(2) the actor was engaged in bona fide experimentation for scientific research.
(e) It is a defense to prosecution under Subsection (b)(2) or (6) that the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery.

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injury to an animal;
(7) causes one animal to fight with another animal, if either animal is not a dog;
(8) uses a live animal as a lure in dog race training or in dog coursing on a racetrack; or
(9) seriously overworks an animal.
(c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. An offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.
(d) It is a defense to prosecution under this section that:
(1) the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101, Health and Safety Code; or
(2) the actor was engaged in bona fide experimentation for scientific research.
(e) It is a defense to prosecution under Subsection (b)(2) or (6) that:
(1) the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery; or

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(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving livestock animals.

SECTION 3. Section 54.0407, Family Code, is amended to read as follows:

Sec. 54.0407. CRUELTY TO ANIMALS: COUNSELING REQUIRED. If a child is found to have engaged in delinquent conduct constituting an offense under Section 42.09 or 42.092, Penal Code, the juvenile court shall order the child to participate in psychological counseling for a period to be determined by the court.

(2) the person killed or injured the animal within the scope of the person's employment as a public servant or in furtherance of activities or operations associated with electricity transmission or distribution, electricity generation or operations associated with the generation of electricity, or natural gas delivery.

(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving livestock animals.

(g) This section does not create a civil cause of action for damages or enforcement of the section.

Same as House version.

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SECTION 4. Sections 821.023(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 or 42.092, Penal Code.

Same as House version.

SECTION 5. Section 801.3585, Occupations Code, is amended to read as follows:

Sec. 801.3585. LIABILITY FOR REPORTING ANIMAL CRUELTY; IMMUNITY. A veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09 or 42.092, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

Same as House version.

SECTION 6. Section 1702.283, Occupations Code, is amended to read as follows:

Sec. 1702.283. CRUELTY TO ANIMALS. A person who has been convicted of cruelty to animals under Section 42.09 or 42.092, Penal Code:

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(1) is ineligible for a license as a guard dog company or for registration as a dog trainer; and
(2) may not be employed to work with dogs as a security officer by a security services contractor or security department of a private business that uses dogs to protect individuals or property or to conduct investigations.

SECTION 7. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 8. This Act takes effect September 1, 2007.

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Same as House version.

SECTION 9. Same as House version.

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