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**States' Animal Cruelty Statutes**  
**State of Delaware**

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UNIVERSITY of ARKANSAS  
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## States' Animal Cruelty Statutes

### STATE OF DELAWARE

*Current through 77 Laws 2010, chs. 1-286. Revisions by the Delaware Code Revisors were unavailable at the time of publication.*

#### **§ 1325. Cruelty to animals; class A misdemeanor; class F felony**

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

- (1) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.
- (2) "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.
- (3) "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglecter, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.
- (4) "Cruelty to animals" includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; failure to feed properly or give proper shelter or veterinary care to an animal.
- (5) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.
- (6) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.
- (7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not.
- (8) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(9) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(10) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "Animal" shall not include fish, crustacea or molluska.

(12) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment; or

(2) Subjects any animal in the person's custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal whether belonging to the actor or another. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or

(5) Captures, detains, transports, removes or delivers any animal known to be a domestic farm animal, pet or companion animal, or any other animal of scientific, environmental, economic or cultural value, under false pretenses to any public or private animal shelter, veterinary clinic or other facility, or otherwise causes the same through acts of deception or misrepresentation of the circumstances and disposition of any such animal.

Paragraphs (1), (2) and (4) of this subsection are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (4) of this subsection or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (5), in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of 3 Del.C. § 7904.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of 3 Del.C. § 7904.

(e) Any agent of the Delaware Society for the Prevention of Cruelty to Animals, or, in Kent County of this State, of the Kent County Society for the Prevention of Cruelty to Animals, may impound an animal owned or possessed in apparent violation of this section, consistent with 3 Del.C. § 7904.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

### **1326. Animals; fighting and baiting prohibited; class F felony**

(a) A person who owns, possesses, keeps, trains or uses any bull, bear, dog, cock or other animal, or fowl, for the purpose of fighting or baiting; or a person who is party to or who causes any such fighting or baiting of any bear, dog, cock or other animal, or fowl; or a person who shall rent or otherwise obtain the use of a building, shed, room, yard, ground or premises for the purpose of fighting or baiting any animal or fowl, or shall knowingly suffer or permit the use of any building, shed, room, yard, ground or premises belonging to the person or under the person's control, for any of the purposes described in this section, shall be guilty of a class F felony.

(b) A person who is present at a building, shed, room, yard, ground or premises where preparations are being made for any exhibition prohibited by this section, knowing that such exhibition is taking place or about to take place is guilty of a class G felony.

(c) All animals, equipment, devices and money involved in a violation of this section shall be forfeited to the State. Animals so forfeited shall be disposed of in a humane manner.

(d) No prosecution for any offense under this section shall be commenced after 5 years from the commission of such offense.

(e) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction.

(f) A person who gambles on the outcome of an exhibition prohibited by this section is guilty of a class F felony.

(g) No fine issued as a result of violation of this Section shall be suspended.

**§ 704. Prohibited hunting and trapping devices and methods; confiscation of devices; primitive weapon season**

(a) No person shall make use of any pitfall, deadfall, scaffold, cage, snare, trap, net, pen, baited hook, lure, urine or baited field or any other similar device for the purpose of injuring, capturing or killing birds or animals protected by the laws of this State, except muskrats, raccoon, opossum, minks, otters, beavers and rabbits may be trapped and snapping turtles may be trapped or taken with a net in accordance with the regulations of the Department of Natural Resources and Environmental Control, and except as otherwise expressly provided. Landlords and tenants and their respective children may take rabbits in traps and snares during the open season for same on their freeholds and leaseholds respectively. For purposes of this section, the term "lure" means any mixture of ingredients intended to be placed at the trap location for the purpose of masking human odor or attracting wildlife. The term "lure" does not include any tangible objects such as duck or goose decoys or similar tangible devices used while hunting nor does the term include any mixture of ingredients intended for the purpose of masking human odor or attracting deer while deer hunting.

(b) No person shall make use of any drug, poison, chemical or explosive for the purpose of injuring, capturing or killing birds or animals protected by the laws of this State.

(c) The unlawful setting or placing of any of the devices or contrivances named in subsection (a) or (b) of this section is an offense against this section, and such devices and contrivances, when found unlawfully set or placed, shall be confiscated by the Department and disposed of as the Department sees fit.

(d) No person shall shoot at, or kill any bird or animal protected by the laws of this State with any device, swivel or punt gun, or with any gun other than such as is habitually raised at arm's length and fired from the shoulder. Possession of such illegal device or gun while hunting shall be prima facie evidence of an offense under this subsection.

(e) No person shall use for hunting or have in their possession while hunting any shotgun shells loaded with lead or lead alloy missiles larger than No. 2 shot, except ammunition permitted for hunting deer during the lawful open season for deer.

(f) A muzzle-loading rifle, meaning a single-barrel gun which is loaded with black powder and projectile through the muzzle, having distinct rifling the full length of the bore, shooting a

spherical or conical projectile, ignited by a flint striking a frizzen or by a percussion cap, having a minimum bore of 0.42 inches (10.67 mm), minimum powder charge of 62 grains (4 grams), may be used in the pursuit, taking or attempted taking ("hunting") of protected wildlife, provided (1) such hunting takes place during the primitive weapon season established by the Department of Natural Resources and Environmental Control and is done pursuant to the requirements of law applicable to other means of hunting protected wildlife, (2) no person engaged in such hunting shall possess or use any multi-projected loads (buck and ball), explosive bullets or any balls smaller than .42 caliber. No weapon may be used for hunting deer during the primitive weapon season other than a muzzle-loading rifle or bow. The Department may permit the use of a single shot muzzle-loading pistol being a minimum .42 caliber with a minimum powder charge of 40 grains during the primitive weapons season for deer, when using a muzzle-loading rifle to provide the coup-de-grace, if required.

(g) Except as set forth herein, no person may use a handgun in the pursuit, taking or attempted taking (hunting) of protected wildlife. A handgun as described herein may be used for the pursuit, taking and attempted taking (hunting) of deer on privately owned lands situated south of the Chesapeake and Delaware Canal and those lands within the State owned by the State of Delaware so designated for this purpose by the Department of Natural Resources and Environmental Control, at its discretion, under the following conditions:

- (1) The handgun shall be limited to revolvers and single shot pistols with a minimum barrel length of 5.75 inches and not exceeding 12.5 inches and chambered for and using straight-wall handgun ammunition in .357 magnum, .41 caliber, .41 magnum, .44 caliber, 44 magnum, .45 caliber, .454 caliber, .480 caliber or .50 caliber and using open sights, metallic/mechanical, optical or telescopic sights;
- (2) The handgun must be carried openly on a sling or in a holster and not concealed;
- (3) To be used:

- a. During a separate 7 day season to begin on the 1st Saturday in January through the 2nd Saturday in January; and
- b. In place of a shotgun during the shotgun deer season.

(h) No person shall operate, provide, sell, use, or offer to operate, provide, sell, or use any computer software or service that allows a person not physically present at a hunt site to remotely control a weapon that could be used to take a live animal or bird by remote operation, including, but not limited to, weapons or devices set up to fire through the use of the Internet or through a remote control device.

## **§ 7901. Delaware Society for the Prevention of Cruelty to Animals**

(a) Incorporation. --The Delaware Society for the Prevention of Cruelty to Animals is incorporated and made a body politic and corporate in law.

(b) Objects. The objects of the Society are to provide effective means for the prevention of cruelty to animals throughout the State and to conduct educational or other programs as specified in its bylaws.

(c) Powers. --The Society shall have the power to enforce all laws enacted for the protection of animals; to purchase, print and circulate books and publications designed to promote the objects of the Society; to appoint or employ such agents or employees as the Board of Directors may from time to time deem necessary; to sue and be sued, in its corporate name, in any court in this State or elsewhere; to exercise all of the legal incidents common to a body corporate, including the right to use a seal, to receive legacies and donations, to acquire by purchase and transfer by sale, lease or mortgage real estate or any interest therein; to make and perform contracts of every kind with any person, corporation, government, state, county or municipality which are designed to promote the objects of the Society.

(d) Offices. --The principal office of the Society shall be located in the County of New Castle, but the Society is authorized and empowered to establish branch offices at any place or places within the State.

(e) Existence. --The Society shall have perpetual existence.

(f) Management. The affairs of the Society shall be conducted by a Board of Directors, the size, selection, and tenure of which shall be prescribed in the Society's bylaws, and whose powers and duties are as described in the bylaws and as otherwise given by the laws of this State to corporate directors.

(g) Membership. --Membership in the Society shall be open to all persons interested in the objects of the Society; provided, however, that the bylaws may prescribe conditions of membership, including an annual dues or assessment. The private property of the members of the Society shall not be subject to the payment of Society debts to any extent whatsoever.

(h) Officers. --The officers of the Society shall be selected by the Board of Directors and shall be those officers provided for in the bylaws.

(i) Bylaws. The Society shall have the power to adopt a code of bylaws and said bylaws shall be binding upon the Society and its members until modified or rescinded as provided for in its bylaws.

## **§ 7902. Enforcement of laws for protection of animals**

The sheriffs and constables of the several counties of this State, and the police force of the City of Wilmington, as well as all other places in the State where police organizations exist, shall, as occasion requires, assist the Kent County Society for the Prevention of Cruelty to Animals or The Delaware Society for the Prevention of Cruelty to Animals, their members or agents, in the enforcement of all laws which are enacted for the protection of dumb animals.

## **§ 7903. Fines and penalties in certain cases; disposition**

All fines, penalties and forfeitures, imposed and collected in any county of the State under every act relating to or affecting cruelty to animals, in every case where the prosecution shall be instituted and conducted by the Kent County Society for the Prevention of Cruelty to Animals and The Delaware Society for the Prevention of Cruelty to Animals, shall enure to such Society in aid of the purposes for which they were incorporated.

#### **§ 7904. Service of process**

Any warrant of arrest, or other process, issued under or by virtue of the several laws in relation to cruelty to animals, may be directed to and executed by any agent in Sussex and New Castle Counties of this State, so appointed by The Delaware Society for the Prevention of Cruelty to Animals or in Kent County of this State so appointed by the Kent County Society for the Prevention of Cruelty to Animals. No compensation shall be paid to the agent except by the Society.

#### **§ 7905. Impoundment**

(a) Any agent in Sussex and New Castle Counties of this State, so appointed by the Delaware Society for the Prevention of Cruelty to Animals, or in Kent County of this State, so appointed by the Kent County Society for the Prevention of Cruelty to Animals, or any law enforcement officer as defined in § 222 of Title 11, may, in instances of alleged acts of animal cruelty and as provided for by the laws of Delaware relating to seizure of property, impound in the appropriate S.P.C.A. shelter or, if required, in an appropriate veterinarian facility, any animal subjected to cruel mistreatment or cruel neglect. Should the owner or custodian of an animal not be available at or near the premises where the animal is located, upon taking an animal under this section the agent shall leave in an appropriate place written notice to the animal's owner or custodian of such action. Societies for the prevention of cruelty to animals shall take all reasonable action to insure that owners or custodians of an animal, impounded under this section, shall have received notice of such action as soon as possible and no later than 24 hours after the impoundment.

(b) An animal impounded under this section shall not remain in the custody of the appropriate Society for the Prevention of Cruelty to Animals longer than 48 hours and shall be returned to its owner or custodian unless a complaint is filed within the 48-hour period in the appropriate court under the animal cruelty laws against the owner or custodian, except that upon good cause shown a court may permit a reasonable extension of the 48-hour period not to exceed 30 days. When a complaint is filed in the appropriate court, the impounded animal shall remain in the custody of the appropriate Society for the Prevention of Cruelty to Animals pending the outcome of the action. If the owner or custodian is found to be in violation of the animal cruelty laws the court shall make a final determination as to the disposition of the animal. Should the complaint be withdrawn, prior to a court hearing, the animal shall be immediately made available to its owner or custodian.

(c) Upon a determination that probable cause exists to believe that the animal cruelty or animal fighting laws have been violated by the owner or custodian of any impounded animal, the State

and/or the appropriate Society for the Prevention of Cruelty to Animals shall have the right to recover the costs of holding and caring for any animal impounded under this section from the owner or custodian of the animal. Each month, the State or appropriate Society for the Prevention of Cruelty to Animals shall submit a detailed billing to the owner or custodian of the animal, listing the accrued monthly costs of boarding, veterinary and other costs incurred. Notwithstanding any provision of this section or any other law to the contrary, failure of the animal's owner or custodian to pay these costs within 30 days of the receipt of a detailed monthly billing will result in ownership of the animal reverting to the State or to the appropriate Society for the Prevention of Cruelty to Animals. The provisions of this paragraph shall be applicable notwithstanding the final disposition of the criminal charges.

(d) An owner or custodian of an animal impounded under this section who is found guilty of cruelty to the animal, and the court orders the animal returned to such owner or custodian, shall, prior to taking the animal, reimburse the appropriate Society for the Prevention of Cruelty to Animals its regular standard fees charged for the care of animals while in the Society's custody plus any veterinary fees incurred for the animal during the period of impoundment. Failure of the animal's owner or custodian to pay such fees within 5 days after a finding of guilty will result in ownership of the animal reverting to the appropriate S.P.C.A.. The S.P.C.A. may then dispose of the animal in accord with its procedures for such disposition.

(e) Should an animal which has been impounded under this section expire while in the custody of the Society for the Prevention of Cruelty to Animals, the animal shall, as soon as possible, be turned over to the State Veterinarian at the Department of Agriculture. The State Veterinarian shall take whatever action necessary, including autopsy if required, to determine cause of the animal's death and shall record such cause. The cause of death shall, if requested, be furnished to the animal's owner and to the court handling the complaint relative to the animal. Disposition of the animal's remains shall be coordinated with the animal's owner and, provided a complaint has been filed, with the court handling the complaint.