

# Liability for the Mistreatment of Farm Animals in Pennsylvania

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## **Introduction**

Beginning in the 1960's and 1970's, concern about the rights of animals blossomed in this country. In fact, the concern over the plight of abused and mistreated animals struck the hearts of so many Americans that a 1966 Life magazine article describing cruelty to animals garnered more mail and calls for legislative action than feature stories about the then-being-fought Vietnam War.<sup>1</sup> This "animal rights movement" resulted in a great deal of both federal and state legislative response. A series of three federal laws have been enacted<sup>2</sup> and every state now has in place an anti-cruelty statute of some degree.

Pennsylvania too has enacted its own anti-cruelty to animals statute.<sup>3</sup> The statute is titled, "Cruelty to Animals" and is found in the, "Offenses Against Public Order and Decency" article of Title 18. The following is a breakdown of the Pennsylvania law and related cases and a summary of what it all means for Pennsylvania farmers.

## **18 Pa. C.S. § 5511 Cruelty to Animals**

### **Definitions**

1. Domestic Animal — Any dog, cat, equine animal, bovine animal, sheep, goat or porcine animal.
2. Domestic Fowl — Any avian raised for food, hobby or sport.
3. Normal Agricultural Operation — Normal activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products or in the production and harvesting of agricultural, agronomic, horticultural, silvicultural and agricultural crops and commodities.
4. Zoo Animal — Any member of the class of mammalia, aves, amphibia or reptilia which is kept in a confined area by a public body or private individual for purposes of observation

by the general public.

5. Summary Offense — An offense usually for a minor misdemeanor.
6. Fine for Summary Offense — In addition to any other penalty provided by law, a person convicted of a summary offense under this section shall pay a fine of not less than \$50 nor more than \$750 or to imprisonment for not more than 90 days, or both.

### **Section (A) of the Act:**

- (A)(1) — A person commits a misdemeanor of the second degree if he willfully and maliciously kills, maims or disfigures any domestic animal or fowl belonging to another person.
- (A)(2) — A person commits a felony of the third degree if he willfully and maliciously kills, maims, poisons or disfigures any zoo animal in captivity.
- (A)(2)(2.1)(i) — A person commits a misdemeanor of the first degree if he willfully and maliciously kills, maims, mutilates, tortures, poisons or disfigures any dog or cat, whether belonging to himself or otherwise.

### **Exceptions to Section (A):**

- The killing of a dog or cat by the owner of that animal is not malicious if it is accomplished in accordance with the act of December 22, 1983 (P.L. 303, No. 83), referred to as the Animal Destruction Method Authorization Law.
- The subsection does not apply to the killing of any animal taken or found in the act of actually destroying any domestic animal or domestic fowl (i.e. a domestic dog that is attacking and/or harassing livestock can be killed by the farmer).
- The subsection does not apply to the killing of any animal or fowl pursuant to the act of June 3, 1937 known as the Game Law. (In other words, legal hunting and fishing).
- Finally, the subsection does not apply to reasonable vermin or pest control.

### **Section (B) of the Act:**

- Section B concerns regulating the sale of baby birds and rabbits. The section makes it a summary offense if a person sells, offers for sale, barter, or gives away baby chickens, ducklings, or other fowl under one month of age and rabbits under two months of age for use as pets or novelties. The section was probably included to combat the sale of young chicks and rabbits as pets and novelties around Easter and other holidays.

### **Exception to Section (B):**

- The section shall not be construed to prohibit the sale or display of the above named animals in proper facilities by persons engaging in the business of selling them for purposes of commercial breeding and raising.

**\*\*\*The following sections of the Act apply more directly to agriculture and include many exceptions under the definition of "normal agricultural operation."**

### **Section (C) of the Act:<sup>4</sup>**

- A person commits a summary offense if he wantonly or cruelly illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, or abandons any animal, or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal's body heat and keep it dry.

### **Exception to Section (C) (AG EXCEPTION):**

- This subsection shall not apply to activity undertaken in **normal agricultural operation** (see definition).

### **Section (D) of the Act:**

- This section of the Act makes it a summary offense to sell or offer for sale any horse which by reason of disability or disease could not be worked without violating portions of this Act. It is also a summary offense to lead, drive, ride or transport any diseased or lame horse except to transport the horse to the nearest facility for its humane keeping, destruction or medical treatment.<sup>5</sup>

### **Section (E) of the Act:**

- A person commits a summary offense if he carries, or causes, or allows to be carried in or upon any cart, or other vehicle whatsoever, any animal in a cruel or inhumane manner.

### **Exception to Section (E) (AG EXCEPTION):**

- For the purposes of this section, it shall not be deemed cruel or inhumane to transport live poultry in crates so long as not more than 15 pounds of live poultry are allocated to each cubic foot of space in the crate.<sup>6</sup>

### **Section (F) of the Act:**

- It is a summary offense to work any animal, whether belonging to yourself or in your possession, for more than 15 hours in any 24 hour period, or more than 90 hours in any one week.

### **Section (G) of the Act:**

- A person commits a summary offense if he kneads or beats or pads the udder of any cow, or willfully allows it to go un milked for a period of 24 hours or more, for the purpose of enhancing the appearance or size of the udder of said cow, or by a muzzle or any other device prevents its calf, if less than six weeks old, from obtaining nourishment, and thereby relieving the udder of said cow, for a period of 24 hours.

### **Section (H) of the Act:**

- This section makes it a summary offense to crop the ears of a dog unless the cropping is done by a licensed veterinarian and the dog is properly anesthetized.

### **Section (H.1) of the Act:<sup>7</sup>**

- This section pertains to animal fighting and makes it a third degree felony if a person:
  1. For amusement or [financial] gain, causes, allows or permits any animal to engage in animal fighting;
  2. Receives compensation for the admission of another person to any place kept or used for animal fighting;
  3. Owns, possesses, keeps, trains, promotes, purchases or knowingly sells any animal for animal fighting;
  4. In any way knowingly encourages, aids or assists therein;
  5. Wagers on the outcome of an animal fight;
  6. Pays for admission to an animal fight or attends an animal fight as a spectator; or
  7. Knowingly permits any place under his control or possession to be kept or used for animal fighting.

### **Exception to Section (H.1) (AG EXCEPTION)**

- This subsection shall not apply to activity undertaken in a **normal agricultural operation**. [At first glance, this may sound like a strange exception. However, it does not mean that farmers are allowed, under the statute, to engage in animal fighting. The exception most likely addresses normal animal fighting that occurs on farms. Bulls fighting in a farm field or poultry squabbling in a poultry coop, et cetera].

#### **Section (I) of the Act:**

- An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of the Commonwealth, shall have the same powers to initiate criminal proceedings provided for police officers by the Pennsylvania Rules of Criminal Procedure. An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have standing to request any court of competent jurisdiction to enjoin any violation of this section.<sup>8</sup>

#### **Section (J) of the Act:**

- This section empowers any police officer or agent of a society or association for the prevention of cruelty to animals to seize any animal kept, used, or intended to be used for animal fighting. The animal can be seized prior to the conviction of the supposed violator. The officer also has the option to destroy the animal if it is in a sick or disabled condition. Otherwise, the officer is charged with maintaining the care of the animal until a conviction is handed down or not. In case of conviction, the owner of the animal is responsible for compensating the Commonwealth for the care and keeping of the animal while the legal process was underway.

#### **Section (K) of the Act:**

- A person commits a summary offense if he shoots, maims, traps, detains or kills any Antwerp or homing pigeon which carries the name of its owner.

#### **Section (L) of the Act:**

- This section authorizes any issuing authority the power to issue any police officer or SPCA officer a search warrant authorizing the search of any building or enclosure in which any violation of the Act is occurring or has occurred.

#### **Exception to Section (L):**

- No search warrant shall be issued based upon an alleged violation of this section which involves a place where scientific research work is being conducted by, or under the supervision of, graduates of duly accredited scientific schools or where biological products are being produced for the care or prevention of disease.

With some exceptions, Pennsylvania's Cruelty to Animals statute is quite typical of the animal cruelty statutes found in most states. These statutes have generally been met with heavy criticism for not going far enough to protect the interests of animals. The main points of contention with the laws are that they do not penalize strictly enough and that the various exceptions, especially the agricultural exceptions, go too far in insulating farmers from any legal liability for mistreating farm animals.<sup>9</sup>

Certain sections of the Pennsylvania statute do contain stiffer penalties for particular violations than many similar state laws, however. For example, violations of section (A) can carry a felony charge, a fine of up to \$1,000 and potential jail time of up to two years. These penalties are more stringent than other states' penalties for the same or similar violations; however, the careful wording of the statute severely limits the effectiveness of these greater punishments with regard to agriculture because section (A) only concerns cats, dogs, zoo animals and animals not belonging to the violator. This leaves the agricultural industry unaffected by the more stringent penalties found in the Act. Cruelty to farm animals will, at most, be considered a summary offense which is a low-level misdemeanor punishable by a maximum penalty of a \$750 fine and/or not more than three months imprisonment. While these penalties are not completely insignificant, violators are not ordinarily sentenced to the maximum. Further, the numerous exceptions for "normal agricultural operations" significantly limit any potential liability that farmers may face. "Normal agricultural activity," as it is defined in the Act, essentially means custom, and the vagueness of the definition of normal agricultural activity as found in the Act leaves a lot of room for discretion. If certain cruel or abusive activities toward farm animals were the "norm" in Pennsylvania, these activities would not be against the law according to a liberal reading of the agricultural operations exception. Farm animals would only fall within the Act's protection if the farmer failed to conduct a "normal agricultural operation." Furthermore, the burden of proof that the State must prove is that the farmer acted wantonly or cruelly toward the animal. This is admittedly a lower standard of proof than section (A)'s requirement of willful or malicious behavior, but it is still open to judicial interpretation and requires an actively guilty mens rea, which means a guilty mind or criminal intent.

Clearly, livestock-rearing agricultural operations are of great importance to the agricultural industry and the food supplies of our nation and the world. Millions

of farm animals are raised and bred for the purpose of deriving agricultural commodities to sell on the open market. Even though Pennsylvania's Cruelty to Animals statute limits much of the animal abuse liability that farmers might otherwise face, farm animals provide income and livelihood for farmers and the farmers owe it to the animals to treat them with care and respect.

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<sup>1</sup> Dr. Stephen F. Matthews, *Liability for Mistreating Animals Under Missouri Law*, October 13, 1986. Revised 1996 by Deanne Hackman.

<sup>2</sup> The three federal statutes relating to animal cruelty include: 1) Stopping dog thefts for resale to research institutions, 2) Licensing pet shops, 3) Providing for safe and sanitary transportation of animals. (Dr. Stephen F. Matthews, *Liability for Mistreating Animals Under Missouri Law*, October 13, 1986. Revised 1996 by Deanne Hackman.)

<sup>3</sup> Pennsylvania had two animal abuse statutes prior to the enactment of the current Cruelty to Animals statute. The first was the Cruelty to Animals Act of March 29, 1869 which provided that, "any person who shall, within this Commonwealth, wantonly or cruelly illtreat, overload, beat or otherwise abuse any animal shall be deemed guilty of a misdemeanor." This language has been incorporated into the current Act with changes. The penalty is now a summary offense. The second law, which is also incorporated into the current cruelty to animals statute, was the Act of 1909 which provided that, "it shall be unlawful to sell any horse which by reason of lameness could not be worked without violating the laws against cruelty to animals."

<sup>4</sup> See *Commonwealth v. Ulrich*, 1999 Pa. Super. 50, (1999). In this case, appellant was charged with cruelty to animals under 18 Pa. Cons. Stat. Ann. § 5511(c), after shooting and killing a dog owned by another person when appellant discovered the dog attacking his own dog and threatening to attack calves belonging to the appellant. On review, the court found that the statute under which appellant was charged pertained to the ill-treatment, overloading, beating, or other abuse of an animal including deprivation of sustenance, drink, shelter, or veterinary care. The more appropriate charge would have been under 19 Pa. Cons. Stat. Ann. § 5511(a), pertaining to the killing, maiming, or poisoning of a domestic animal. The court declined to stretch the semantics of the language of the statute to uphold appellant's conviction where appellant was regrettably charged under the wrong section of the statute. The court held that the evidence did not support the cruelty conviction. (LEXIS-NEXIS Overview).

<sup>5</sup> See *Commonwealth v. Harris*, 36 Pa. D. & C. 122 (1939). In this case, the court discusses the language found in section (D) of the Act, which is unchanged from the language of the Act of 1909, which made it unlawful to sell a horse in the above-described condition. The court analyzes the state of mind pertaining to wanton cruelty and the general burden of proof that needs to be met by a plaintiff (the state) bringing a cruelty to animals action.

<sup>6</sup> See *Commonwealth v. Boltz*, 41 Pa. D. and C. 2d 201, (1966). In this case, the state prosecuted a transporter of live chickens under Section 831 of the Vehicle Code. The prosecution alleged that the trucks were creating a hazard on the roadways due to the fact that chicken feathers and feces were flying out of the cages and into the view of motorists traveling behind the trucks. The court held that there is no more humane or effective way of transporting live poultry than methods currently used. The court describes the typical cage size, wire mesh size and number of birds per cage (note that the court said 14 birds per cage was the norm while the Cruelty to Animals statute stipulates no more than 15 pounds per cage).

<sup>7</sup> See *Commonwealth v. Balog*, 448 Pa. Super 480, (1996). Appealing his conviction for cruelty to animals (gamecocks), defendant argued that 18 Pa. Cons. Stat. Ann. § 5511(h.1)(3), which prohibited owning animals for animal fighting, was vague and overbroad in violation of U.S. Const. amend. I and XIV. He also argued that his conduct fell within a statutory exception to the crime of cruelty to animals and that a humane society officer that testified at trial was not qualified as an expert. On appeal, the court affirmed the sentence. The court held that defendant failed to carry his burden of showing that the statute was unconstitutional. The court held that defendant's conduct fell within the scope of the statute. The court found that a trooper with a search warrant discovered individually caged roosters altered for fighting on defendant's property and that he seized 36 magazines on fighting birds and two sets of spurs. The agent that testified as an expert participated in about 100 investigations involving cockfighting and qualified as an expert on the subject in 20 court cases, and therefore, the trial court did not abuse its discretion in admitting his testimony. (LEXIS-NEXIS Overview).

<sup>8</sup> See *Hulsizer v. Labor Day Comm., Inc.*, 557 Pa. 467, (1999). This is the famous Hegin, PA Labor Day pigeon shoot case. See this case for an example of the authority of a humane officer pursuant to Section (I) of this Act. The court reversed a decision made by the lower court that affirmed dismissal of the Humane Society officer's action to prevent the Labor Day committee from conducting pigeon shoots because the Humane Society officer had standing to initiate the lawsuit based on the fact that the officer had authority to act in the county as a humane society police officer. See also *In re Application for the Fayette Society for the Prevention of Cruelty to Animals, Inc.*, 28 Pa. D & C 4th 187, (1993). This case describes the qualifications necessary and the abuse of (appointment) power under 22 Pa.C.S. § 501 relative to officers/agents representing the SPCA.

<sup>9</sup> Dr. Stephen F. Matthews, *Liability for Mistreating Animals Under Missouri Law*, October 13, 1986. Revised 1996 by Deanne Hackman.

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