

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 1055

FINAL READING

(SECOND)

Introduced by McDonald, 41.

Read first time January 18, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to animals; to amend sections 54-607, 54-608,
 2 54-610, 54-611, 54-613, 54-614, 54-615, 54-616, 54-617,
 3 54-618, 54-619, 54-620, 54-623, and 54-624, Reissue
 4 Revised Statutes of Nebraska, sections 28-1014, 28-1015,
 5 and 28-1016, Revised Statutes Cumulative Supplement,
 6 2006, and sections 28-101, 28-1008, and 28-1013,
 7 Revised Statutes Supplement, 2007; to prohibit certain
 8 association with animals as prescribed; to change and
 9 eliminate provisions relating to dogs running at large
 10 and dangerous dogs; to define and redefine terms; to
 11 provide and change penalties; to provide powers and

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1 duties for certain political subdivisions; to harmonize
2 provisions; to repeal the original sections; to outright
3 repeal section 54-609, Reissue Revised Statutes of
4 Nebraska; and to declare an emergency.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 2007, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and section 3 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-1008, Revised Statutes Supplement,
6 2007, is amended to read:

7 28-1008 For purposes of sections 28-1008 to 28-1017 and
8 section 3 of this act:

9 (1) Abandon means to leave any animal in one's care,
10 whether as owner or custodian, for any length of time without
11 making effective provision for its food, water, or other care as is
12 reasonably necessary for the animal's health;

13 (2) Animal means any vertebrate member of the animal
14 kingdom. The term does not include an uncaptured wild creature;

15 (3) Cruelly mistreat means to knowingly and intentionally
16 kill, maim, disfigure, torture, beat, mutilate, burn, scald, or
17 otherwise inflict harm upon any animal;

18 (4) Cruelly neglect means to fail to provide any animal
19 in one's care, whether as owner or custodian, with food, water, or
20 other care as is reasonably necessary for the animal's health;

21 (5) Humane killing means the destruction of an animal by
22 a method which causes the animal a minimum of pain and suffering;

23 (6) Law enforcement officer means any member of the
24 Nebraska State Patrol, any county or deputy sheriff, any member
25 of the police force of any city or village, or any other public

1 official authorized by a city or village to enforce state or
2 local animal control laws, rules, regulations, or ordinances.
3 Law enforcement officer also includes any inspector under the
4 Commercial Dog and Cat Operator Inspection Act to the extent that
5 such inspector may exercise the authority of a law enforcement
6 officer under section 28-1012 while in the course of performing
7 inspection activities under the Commercial Dog and Cat Operator
8 Inspection Act;

9 (7) Mutilation means intentionally causing permanent
10 injury, disfigurement, degradation of function, incapacitation, or
11 imperfection to an animal. Mutilation does not include conduct
12 performed by a veterinarian licensed to practice veterinary
13 medicine and surgery in this state or conduct that conforms to
14 accepted veterinary practices;

15 ~~(7)~~ (8) Police animal means a horse or dog owned or
16 controlled by the State of Nebraska for the purpose of assisting a
17 Nebraska state trooper in the performance of his or her official
18 enforcement duties; and

19 (9) Repeated beating means intentional successive strikes
20 to an animal by a person resulting in serious bodily injury or
21 death to the animal;

22 ~~(8)~~ (10) Serious injury or illness includes any injury
23 or illness to any animal which creates a substantial risk of death
24 or which causes broken bones, prolonged impairment of health, or
25 prolonged loss or impairment of the function of any bodily organ;

1 and-

2 (11) Torture means intentionally subjecting an animal
3 to extreme pain, suffering, or agony. Torture does not include
4 conduct performed by a veterinarian licensed to practice veterinary
5 medicine and surgery in this state or conduct that conforms to
6 accepted veterinary practices.

7 Sec. 3. (1)(a) If a person is convicted of a Class IV
8 felony under section 28-1005 or 28-1009, the sentencing court shall
9 order such person not to own, possess, or reside with any animal
10 for at least five years after the date of conviction, but such time
11 restriction shall not exceed fifteen years. Any person violating
12 such court order shall be guilty of a Class I misdemeanor.

13 (b) If a person is convicted of a Class I misdemeanor
14 under subdivision (2)(a) of section 28-1009 or a Class III
15 misdemeanor under section 28-1010, the sentencing court may order
16 such person not to own, possess, or reside with any animal after
17 the date of conviction, but such time restriction, if any, shall
18 not exceed five years. Any person violating such court order shall
19 be guilty of a Class IV misdemeanor.

20 (c) Any animal involved in a violation of a court order
21 under subdivision (a) or (b) of this subsection shall be subject to
22 seizure by law enforcement.

23 (2) This section shall not apply to any person convicted
24 under section 28-1005 or 28-1009 if a licensed physician confirms
25 in writing that ownership or possession of or residence with an

1 animal is essential to the health of such person.

2 Sec. 4. Section 28-1013, Revised Statutes Supplement,
3 2007, is amended to read:

4 28-1013 Sections 28-1008 to 28-1017 and section 3 of this
5 act shall not apply to:

6 (1) Care or treatment of an animal by a veterinarian
7 licensed under the Nebraska Veterinary Practice Act until December
8 1, 2008, and the Veterinary Medicine and Surgery Practice Act on
9 and after December 1, 2008;

10 (2) Commonly accepted care or treatment of a police
11 animal by a law enforcement officer in the normal course of his or
12 her duties;

13 (3) Research activity carried on by any research facility
14 currently meeting the standards of the federal Animal Welfare Act,
15 7 U.S.C. 2131 et seq., as such act existed on January 1, 2003;

16 (4) Commonly accepted practices of hunting, fishing, or
17 trapping;

18 (5) Commonly accepted practices occurring in conjunction
19 with rodeos, animal racing, or pulling contests;

20 (6) Humane killing of an animal by the owner or by his or
21 her agent or a veterinarian upon the owner's request;

22 (7) Commonly accepted practices of animal husbandry with
23 respect to farm animals and commercial livestock operations,
24 including their transport from one location to another and
25 nonnegligent actions taken by personnel or agents of the Nebraska

1 Department of Agriculture or the United States Department of
2 Agriculture in the performance of duties prescribed by law;

3 (8) Use of reasonable force against an animal, other than
4 a police animal, which is working, including killing, capture, or
5 restraint, if the animal is outside the owned or rented property
6 of its owner or custodian and is injuring or posing an immediate
7 threat to any person or other animal;

8 (9) Killing of house or garden pests;

9 (10) Commonly followed practices occurring in conjunction
10 with the slaughter of animals for food or byproducts; and

11 (11) Commonly accepted animal training practices.

12 Sec. 5. Section 28-1014, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 28-1014 Any city, village, or county may adopt and
15 promulgate rules, regulations, and ordinances which are not
16 inconsistent with the provisions of sections 28-1008 to 28-1017
17 and section 3 of this act for the protection of the public, public
18 health, and animals within its jurisdiction.

19 Sec. 6. Section 28-1015, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 28-1015 When an animal is owned by a minor child, the
22 parent of such minor child with whom the child resides or legal
23 guardian with whom the child resides shall be subject to the
24 penalties provided under sections 28-1008 to 28-1017 and section 3
25 of this act if the animal is abandoned or cruelly neglected.

1 Sec. 7. Section 28-1016, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 28-1016 Nothing in sections 28-1008 to 28-1017 and
4 section 3 of this act shall be construed as amending or changing
5 the authority of the Game and Parks Commission as established in
6 the Game Law or to prohibit any conduct authorized or permitted by
7 such law.

8 Sec. 8. Section 54-607, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 54-607 ~~Whoever,~~ being the The owner of any dog, shall
11 ~~permit the same to run~~ running at large for ten days, without such
12 a collar as hereinbefore described being securely placed upon the
13 ~~neck of such dog,~~ required in section 54-605 shall be fined ~~in any~~
14 ~~sum not exceeding~~ an amount not to exceed twenty-five dollars.

15 Sec. 9. Section 54-608, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 54-608 In counties having a population of eighty thousand
18 or more inhabitants and cities of the first class contained in such
19 counties, it shall be unlawful for any person, firm, partnership,
20 limited liability company, or corporation to have any dog which
21 is owned, kept, harbored, or allowed to be habitually in or upon
22 premises occupied by him, ~~or her,~~ or it or under his, ~~or her,~~ or
23 its control to be at large, ~~and go in or upon public property or~~
24 ~~the private premises of others or upon the streets or highways.~~

25 Sec. 10. Section 54-610, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 54-610 In counties having a population of eighty thousand
3 or more inhabitants and cities of the first class contained in such
4 counties, whenever complaints are made to the poundmaster or the
5 person or corporation performing the duties of poundmaster that a
6 dog is at large, ~~or doing damage to public or private property,~~
7 it shall be the duty of such poundmaster, person, or corporation
8 to investigate such complaint. If upon such investigation it
9 appears that the complaint is founded upon facts, it shall be
10 the duty of such poundmaster, person, or corporation to take such
11 dog into custody and he, she, or it may file or cause to be
12 filed a complaint in the county court against such person, firm,
13 partnership, limited liability company, or corporation owning,
14 keeping, or harboring such dog charging a violation of ~~sections~~
15 section 54-601 and or 54-608. ~~to 54-611.~~

16 Sec. 11. Section 54-611, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 54-611 In counties having a population of eighty thousand
19 or more inhabitants and cities of the first class contained in
20 such counties, if upon final hearing the defendant is adjudged
21 guilty of any violation of ~~sections~~ section 54-601 and or 54-608,
22 ~~to 54-610,~~ the court may, in addition to the penalty provided in
23 section 54-613, order such disposition of the offending dog as
24 may seem reasonable and proper. Disposition includes sterilization,
25 seizure, permanent assignment of the dog to a court-approved animal

1 shelter as defined in section 28-1018, or destruction of the dog
 2 in an expeditious and humane manner. Reasonable costs for such
 3 disposition are the responsibility of the defendant.

4 Sec. 12. Section 54-613, Reissue Revised Statutes of
 5 Nebraska, is amended to read:

6 54-613 ~~In counties having a population of eighty thousand~~
 7 ~~or more inhabitants and cities of the first class contained in such~~
 8 ~~counties, any~~ Any person in violation of ~~sections~~ section 54-601
 9 ~~and or~~ 54-608 ~~to 54-611~~ shall be deemed guilty of a Class V IV
 10 misdemeanor.

11 Sec. 13. Section 54-614, Reissue Revised Statutes of
 12 Nebraska, is amended to read:

13 54-614 (1) A ~~Any~~ county having a population in excess of
 14 ~~fifteen thousand inhabitants according to the most recent federal~~
 15 ~~decennial census~~ may collect a license tax in an amount which
 16 shall be determined by the appropriate governing body from the
 17 owners and harborers of dogs, and may enforce the same such tax by
 18 appropriate penalties. A county may impound any dog if, ~~and cause~~
 19 ~~the destruction of any dog for which~~ the owner or harborer shall
 20 refuse or neglect to pay such license tax. Any licensing provision
 21 shall comply with subsection (2) of section 54-603 for dog guides,
 22 hearing aid dogs, and service dogs.

23 (2) A ~~Such~~ county may regulate, ~~license,~~ or prohibit the
 24 running at large of dogs, adopt regulations to ~~and~~ guard against
 25 injuries or annoyances therefrom, and authorize the destruction,

1 adoption, or other disposition of the same such dogs when running
 2 at large contrary to the provisions of this subsection or any
 3 regulations adopted in accordance with this subsection. A county
 4 adopting regulations in accordance with this subsection shall
 5 provide for an appeal process with respect to such regulations.

6 Sec. 14. Section 54-615, Reissue Revised Statutes of
 7 Nebraska, is amended to read:

8 54-615 Such A county shall have power to regulate the
 9 running at large of dogs, and to cause such as may be running at
 10 large to be impounded and sold to discharge the may impound any dog
 11 deemed to be running at large. The owner of such dog shall pay the
 12 reasonable cost and penalties provided for the violation of such
 13 prohibitions, prohibition, including the expense of impounding and
 14 keeping the same, and the expense of such sale. dog.

15 Sec. 15. Section 54-616, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 54-616 Such A county may shall have power to provide for
 18 the erection of all needful pounds any pounds needed within the
 19 county, to appoint and compensate keepers thereof, and to establish
 20 and enforce rules governing the same. such pounds.

21 Sec. 16. Section 54-617, Reissue Revised Statutes of
 22 Nebraska, is amended to read:

23 54-617 For purposes of sections 54-617 to 54-624 and
 24 section 22 of this act:

25 (1) Animal control authority shall mean means an entity

1 authorized to enforce the animal control laws of a county, city, or
2 village or this state and includes any local law enforcement agency
3 or other agency designated by a county, city, or village to enforce
4 the animal control laws of such county, city, or village;

5 (2) Animal control officer ~~shall mean~~ means any
6 individual employed, appointed, or authorized by an animal control
7 authority for the purpose of aiding in the enforcement of sections
8 54-617 to 54-624 and section 22 of this act or any other law or
9 ordinance relating to the licensure of animals, control of animals,
10 or seizure and impoundment of animals and ~~shall include~~ includes
11 any state or local law enforcement officer or other employee whose
12 duties in whole or in part include assignments that involve the
13 seizure and impoundment of any animal;

14 ~~(3) Dangerous dog shall mean any dog that, according to~~
15 ~~the records of an animal control authority: (a) Has killed or~~
16 ~~inflicted severe injury on a human being on public or private~~
17 ~~property; (b) has killed a domestic animal without provocation~~
18 ~~while the dog was off the owner's property; or (c) has been~~
19 ~~previously determined to be a potentially dangerous dog by an~~
20 ~~animal control authority and the owner has received notice of such~~
21 ~~determination and such dog again aggressively bites, attacks, or~~
22 ~~endangers the safety of humans or domestic animals. A dog shall not~~
23 ~~be defined as a dangerous dog if the threat, any injury that is not~~
24 ~~a severe injury, or the damage was sustained by a person who, at~~
25 ~~the time, was committing a willful trespass as defined in section~~

1 20-203, 28-520, or 28-521 or any other tort upon the property of
2 the owner of the dog, who was tormenting, abusing, or assaulting
3 the dog, who has, in the past, been observed or reported to have
4 tormented, abused, or assaulted the dog, or who was committing or
5 attempting to commit a crime;

6 (3)(a) Dangerous dog means a dog that, according to
7 the records of an animal control authority: (i) Has killed a
8 human being; (ii) has inflicted injury on a human being that
9 requires medical treatment; (iii) has killed a domestic animal
10 without provocation; or (iv) has been previously determined to be a
11 potentially dangerous dog by an animal control authority, the owner
12 has received notice of such determination, and the dog inflicts an
13 injury on a human being that does not require medical treatment,
14 injures a domestic animal, or threatens the safety of humans or
15 domestic animals.

16 (b)(i) A dog shall not be defined as a dangerous dog
17 under subdivision (3)(a)(ii) of this section if the individual was
18 tormenting, abusing, or assaulting the dog at the time of the
19 injury or has, in the past, been observed or reported to have
20 tormented, abused, or assaulted the dog.

21 (ii) A dog shall not be defined as a dangerous dog
22 under subdivision (3)(a)(iv) of this section if the injury, damage,
23 or threat was sustained by an individual who, at the time, was
24 committing a willful trespass as defined in section 20-203, 28-520,
25 or 28-521, was committing any other tort upon the property of the

1 owner of the dog, was tormenting, abusing, or assaulting the dog,
 2 or has, in the past, been observed or reported to have tormented,
 3 abused, or assaulted the dog, or was committing or attempting to
 4 commit a crime;

5 (4) Domestic animal ~~shall mean~~ means a cat, a dog, or
 6 livestock. Livestock includes buffalo, deer, antelope, fowl, and
 7 any other animal in any zoo, wildlife park, refuge, wildlife area,
 8 or nature center intended to be on exhibit;

9 (5) Medical treatment means treatment administered by a
 10 physician or other licensed health care professional;

11 ~~(5)~~ (6) Owner shall mean means any person, firm,
 12 corporation, organization, political subdivision, or department
 13 possessing, harboring, keeping, or having control or custody of a
 14 dog; and

15 ~~(6)~~ (7) Potentially dangerous dog shall mean means (a)
 16 any dog that when unprovoked (i) ~~inflicts a nonsevere injury on~~
 17 ~~a human or~~ inflicts an injury on a human being that does not
 18 require medical treatment, (ii) injures a domestic animal, or (iii)
 19 ~~either on public or private property or~~ (ii) chases or approaches a
 20 person upon streets, sidewalks, or any public grounds in a menacing
 21 fashion or apparent attitude of attack or (b) any specific dog
 22 with a known propensity, tendency, or disposition to attack when
 23 unprovoked, to cause injury, or to threaten the safety of humans or
 24 domestic animals. and

25 ~~(7)~~ Severe injury shall mean any physical injury that

1 ~~results in disfiguring lacerations requiring multiple sutures or~~
2 ~~cosmetic surgery or one or more broken bones or that creates a~~
3 ~~potential danger to the life or health of the victim.~~

4 Sec. 17. Section 54-618, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 54-618 (1) A dangerous dog that has been declared as
7 such shall be spayed or neutered and implanted with a microchip
8 identification number by a licensed veterinarian within thirty
9 days after such declaration. The cost of both procedures is the
10 responsibility of the owner of the dangerous dog. Written proof of
11 both procedures and the microchip identification number shall be
12 provided to the animal control authority after the procedures are
13 completed.

14 (2) No owner of a dangerous dog shall permit the dog to
15 go beyond the property of the owner unless the dog is restrained
16 securely by a chain or leash.

17 (3) Except as provided in subsection (4) of this section
18 or for a reasonable veterinary purpose, no owner of a dangerous dog
19 shall transport such dog or permit such dog to be transported to
20 another county, city, or village in this state.

21 (4) An owner of a dangerous dog may transport such dog
22 or permit such dog to be transported to another county, city, or
23 village in this state for the purpose of permanent relocation of
24 the owner if the owner has obtained written permission prior to
25 such relocation from the animal control authority of the county,

1 city, or village in which the owner resides and from the county,
2 city, or village in which the owner will reside. Each animal
3 control authority may grant such permission based upon a reasonable
4 evaluation of both the owner and the dog, including if the owner
5 has complied with the laws of this state and of the county, city,
6 or village in which he or she resides with regard to dangerous dogs
7 after the dog was declared dangerous. An animal control authority
8 shall not grant permission under this subsection if the county,
9 city, or village has an ordinance or resolution prohibiting the
10 relocation of dangerous dogs. After the permanent relocation, the
11 animal control authority of the county, city, or village in which
12 the owner resides shall monitor the owner and such dog for a period
13 of at least thirty days but not to exceed ninety days to ensure
14 the owner's compliance with the laws of this state and of such
15 county, city, or village with regard to dangerous dogs. Nothing in
16 this subsection shall permit the rescindment of the declaration of
17 dangerous dog.

18 Sec. 18. Section 54-619, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 54-619 (1) No person, firm, partnership, limited
21 liability company, or corporation shall own, keep, or harbor or
22 allow to be in or on any premises occupied by him, her, or it or
23 under his, her, or its charge or control any dangerous dog without
24 such dog being confined so as to protect the public from injury.

25 (2) While unattended on the owner's property, a dangerous

1 dog shall be securely confined, in a humane manner, indoors or in
2 a securely enclosed and locked pen or structure suitably designed
3 to prevent the entry of young children and to prevent the dog
4 from escaping. The pen or structure shall have secure sides and a
5 secure top. If the pen or structure has no bottom secured to the
6 sides, the sides shall be embedded into the ground at a depth of
7 at least one foot. The pen or structure shall also protect the dog
8 from the elements. The pen or structure shall be at least ten feet
9 from any property line of the owner. The owner of a dangerous dog
10 shall post a warning ~~sign~~ signs on the property where the dog is
11 kept that ~~is~~ are clearly visible from all areas of public access
12 and that ~~informs~~ inform persons that a dangerous dog is on the
13 property. Each warning sign shall be no less than ten inches by
14 twelve inches and shall contain the words warning and dangerous
15 animal in high-contrast lettering at least three inches high on a
16 black background.

17 Sec. 19. Section 54-620, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 54-620 Any dangerous dog may be immediately confiscated
20 by an animal control officer if the owner is in violation of
21 sections 54-617 to 54-624 and section 22 of this act. The
22 owner shall be responsible for the reasonable costs incurred
23 by the animal control authority for the care of a dangerous dog
24 confiscated by an animal control officer or for the destruction of
25 any dangerous dog if the action by the animal control authority is

1 pursuant to law and if the owner violated sections 54-617 to 54-624
2 and section 22 of this act.

3 Sec. 20. Section 54-623, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 54-623 (1) Any person convicted of a violation of
6 sections 54-617 to 54-624 and section 22 of this act shall
7 not own a dangerous dog within ten years after such conviction. Any
8 person violating this subsection shall be guilty of a Class IIIA
9 misdemeanor, and the dog shall be treated as provided in subsection
10 (2) of this section.

11 (2) If a dangerous dog of an owner with a prior
12 conviction under sections 54-617 to 54-624 and section 22 of
13 this act attacks or bites a ~~person~~ human being or ~~another~~ domestic
14 animal, the owner shall be guilty of a Class ~~IV~~ IIIA misdemeanor.
15 In addition, the dangerous dog shall be immediately confiscated by
16 an animal control authority, placed in quarantine for the proper
17 length of time, and thereafter destroyed in an expeditious and
18 humane manner.

19 Sec. 21. Section 54-624, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 54-624 Nothing in sections 54-617 to 54-623 and section
22 22 of this act shall be construed to restrict or prohibit any
23 governing board of any county, city, or village from establishing
24 and enforcing laws or ordinances at least as stringent as the
25 provisions of sections 54-617 to 54-623 and section 22 of this act.

1 Sec. 22. Each county shall designate an animal control
2 authority that shall be responsible for enforcing sections 54-617
3 to 54-624 and the laws of such county regarding dangerous dogs.

4 Sec. 23. Original sections 54-607, 54-608, 54-610,
5 54-611, 54-613, 54-614, 54-615, 54-616, 54-617, 54-618, 54-619,
6 54-620, 54-623, and 54-624, Reissue Revised Statutes of Nebraska,
7 sections 28-1014, 28-1015, and 28-1016, Revised Statutes Cumulative
8 Supplement, 2006, and sections 28-101, 28-1008, and 28-1013,
9 Revised Statutes Supplement, 2007, are repealed.

10 Sec. 24. The following section is outright repealed:
11 Section 54-609, Reissue Revised Statutes of Nebraska.

12 Sec. 25. Since an emergency exists, this act takes effect
13 when passed and approved according to law.