

LEGISLATIVE BILL 1055

Approved by the Governor April 21, 2008

Introduced by McDonald, 41.

FOR AN ACT relating to animals; to amend sections 54-607, 54-608, 54-610, 54-611, 54-613, 54-614, 54-615, 54-616, 54-617, 54-618, 54-619, 54-620, 54-623, and 54-624, Reissue Revised Statutes of Nebraska, sections 28-1014, 28-1015, and 28-1016, Revised Statutes Cumulative Supplement, 2006, and sections 28-101, 28-1008, and 28-1013, Revised Statutes Supplement, 2007; to prohibit certain association with animals as prescribed; to change and eliminate provisions relating to dogs running at large and dangerous dogs; to define and redefine terms; to provide and change penalties; to provide powers and duties for certain political subdivisions; to harmonize provisions; to repeal the original sections; to outright repeal section 54-609, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

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

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

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

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

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

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

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

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

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

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

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

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

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

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

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

Sec. 3. (1)(a) If a person is convicted of a Class IV felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after

the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

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

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

(2) This section shall not apply to any person convicted under section 28-1005 or 28-1009 if a licensed physician confirms in writing that ownership or possession of or residence with an animal is essential to the health of such person.

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

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

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

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

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

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

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

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

(7) Commonly accepted practices of animal husbandry with respect to farm animals and commercial livestock operations, including their transport from one location to another and nonnegligent actions taken by personnel or agents of the Nebraska Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;

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

(9) Killing of house or garden pests;

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

(11) Commonly accepted animal training practices.

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

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

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

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

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

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

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

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

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

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

Sec. 10. Section 54-610, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

54-611 In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, if upon final hearing the defendant is adjudged guilty of any violation of ~~sections section 54-601 and or 54-608, to 54-610,~~ the court may, in addition to the penalty provided in section 54-613, order such disposition of the offending dog as may seem reasonable and proper. Disposition includes sterilization, seizure, permanent assignment of the dog to a court-approved animal shelter as defined in section 28-1018, or destruction of the dog in an expeditious and humane manner. Reasonable costs for such disposition are the responsibility of the defendant.

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

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

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

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

(2) A Such county may regulate, ~~license,~~ or prohibit the running at large of dogs, adopt regulations to and guard against injuries or annoyances therefrom, and authorize the destruction, adoption, or other disposition of the same such dogs when running at large contrary to the provisions of this subsection or any regulations adopted in accordance with this subsection. A county adopting regulations in accordance with this subsection shall provide for an appeal process with respect to such regulations.

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

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

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

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

~~the same.~~ such pounds.

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

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

(1) Animal control authority ~~shall mean~~ means an entity authorized to enforce the animal control laws of a county, city, or village or this state and includes any local law enforcement agency or other agency designated by a county, city, or village to enforce the animal control laws of such county, city, or village;

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

~~(3) Dangerous dog shall mean any dog that, according to the records of an animal control authority: (a) Has killed or inflicted severe injury on a human being on public or private property; (b) has killed a domestic animal without provocation while the dog was off the owner's property; or (c) has been previously determined to be a potentially dangerous dog by an animal control authority and the owner has received notice of such determination and such dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals. A dog shall not be defined as a dangerous dog if the threat, any injury that is not a severe injury, or the damage was sustained by a person who, at the time, was committing a willful trespass as defined in section 20-203, 28-520, or 28-521 or any other tort upon the property of the owner of the dog, who was tormenting, abusing, or assaulting the dog, who has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or who was committing or attempting to commit a crime;~~

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

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

(ii) A dog shall not be defined as a dangerous dog under subdivision (3) (a) (iv) of this section if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in section 20-203, 28-520, or 28-521, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime;

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

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

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

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

~~(7) Severe injury shall mean any physical injury that results in disfiguring lacerations requiring multiple sutures or cosmetic surgery or one or more broken bones or that creates a potential danger to the life or health of the victim.~~

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

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

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

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

(4) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of the county, city, or village in which the owner resides and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the county, city, or village in which he or she resides with regard to dangerous dogs after the dog was declared dangerous. An animal control authority shall not grant permission under this subsection if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least thirty days but not to exceed ninety days to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this subsection shall permit the rescindment of the declaration of dangerous dog.

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

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

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

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

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

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

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

in subsection (2) of this section.

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

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

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

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

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

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

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