

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 494

FINAL READING

Introduced by McCoy, 39; Mello, 5; Nordquist, 7.

Read first time January 20, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to animals; to amend sections 28-1008, 28-1013,
2 28-1014, 28-1015, 28-1016, 28-1017, and 54-622, Reissue
3 Revised Statutes of Nebraska, and sections 54-617,
4 54-620, 54-623, 54-623.01, and 54-624, Revised Statutes
5 Cumulative Supplement, 2008; to define and redefine
6 terms; to require animal health care professionals to
7 report animal abandonment, cruel neglect, and cruel
8 mistreatment; to change provisions relating to dangerous
9 dogs; to provide and change penalties; to harmonize
10 provisions; and to repeal the original sections.

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

1 Section 1. Section 28-1008, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1008 For purposes of sections 28-1008 to 28-1017 and
4 28-1019 and section 7 of this act:

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

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

11 (3) Bovine means a cow, an ox, or a bison;

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

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

18 (6) Equine means a horse, pony, donkey, mule, hinny, or
19 llama;

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

22 (8) Law enforcement officer means any member of the
23 Nebraska State Patrol, any county or deputy sheriff, any member
24 of the police force of any city or village, or any other public
25 official authorized by a city or village to enforce state or

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

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

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

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

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

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

6 Sec. 2. Section 28-1013, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-1013 Sections 28-1008 to 28-1017 and 28-1019 shall not
9 apply to:

10 (1) Care or treatment of an animal or other conduct by a
11 veterinarian or veterinary technician licensed under the Nebraska
12 Veterinary Practice Act until December 1, 2008, and the Veterinary
13 Medicine and Surgery Practice Act on and after December 1, 2008,
14 that occurs within the scope of his or her employment, that occurs
15 while acting in his or her professional capacity, or that conforms
16 to commonly accepted veterinary practices;

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

20 (3) Research activity carried on by any research facility
21 currently meeting the standards of the federal Animal Welfare Act,
22 7 U.S.C. 2131 et seq., as such act existed on January 1, 2003;

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

25 (5) Commonly accepted practices occurring in conjunction

1 with sanctioned rodeos, animal racing, or pulling contests;

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

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

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

15 (9) Killing of house or garden pests;

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

18 (11) Commonly accepted animal training practices.

19 Sec. 3. Section 28-1014, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1014 Any city, village, or county may adopt and
22 promulgate rules, regulations, and ordinances which are not
23 inconsistent with the provisions of sections 28-1008 to 28-1017 and
24 28-1019 and section 7 of this act for the protection of the public,
25 public health, and animals within its jurisdiction.

1 Sec. 4. Section 28-1015, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1015 When an animal is owned by a minor child, the
4 parent of such minor child with whom the child resides or legal
5 guardian with whom the child resides shall be subject to the
6 penalties provided under sections 28-1008 to 28-1017 and 28-1019
7 and section 7 of this act if the animal is abandoned or cruelly
8 neglected.

9 Sec. 5. Section 28-1016, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1016 Nothing in sections 28-1008 to 28-1017 and
12 28-1019 and section 7 of this act shall be construed as amending
13 or changing the authority of the Game and Parks Commission as
14 established in the Game Law or to prohibit any conduct authorized
15 or permitted by such law.

16 Sec. 6. Section 28-1017, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-1017 (1) For purposes of this section:

19 (a) Reasonably suspects means a basis for reporting
20 knowledge or a set of facts that would lead a person of ordinary
21 care and prudence to believe and conscientiously entertain a strong
22 suspicion that criminal activity is at hand or that a crime has
23 been committed; and

24 (b) Employee means any employee of ~~an agency relating~~
25 ~~to~~ a governmental agency dealing with child or adult protective

1 services, animal control, or animal abuse.

2 (2) Any employee, while acting in his or her professional
3 capacity or within the scope of his or her employment, who
4 observes or is involved in an incident which leads the employee
5 to reasonably suspect that an animal has been abandoned, cruelly
6 neglected, or cruelly mistreated shall report such to the entity or
7 entities that investigate such reports in that jurisdiction.

8 (3) The report of an employee shall be made within two
9 working days of acquiring the information concerning the animal by
10 facsimile transmission of a written report presented in the form
11 described in subsection (6) of this section or by telephone. When
12 an immediate response is necessary to protect the health and safety
13 of the animal or others, the report of an employee shall be made by
14 telephone as soon as possible.

15 (4) Nothing in this section shall be construed to impose
16 a duty to investigate observed or reasonably suspected animal
17 abandonment, cruel neglect, or cruel mistreatment. Any person
18 making a report under this section is immune from liability except
19 for false statements of fact made with malicious intent.

20 (5) ~~Reports~~ A report made by an employee pursuant to this
21 section shall include:

22 (a) The reporter's name and title, business address, and
23 telephone number;

24 (b) The name, if known, of the animal owner or custodian,
25 whether a business or individual;

1 (c) A description of the animal or animals involved,
2 person or persons involved, and location of the animal or animals
3 and the premises; and

4 (d) The date, time, and a description of the observation
5 or incident which led the reporter to reasonably suspect animal
6 abandonment, cruel neglect, or cruel mistreatment and any other
7 information the reporter believes may be relevant.

8 (6) ~~Reports~~ A report made by an employee pursuant to this
9 section may be made on preprinted forms prepared by the entity
10 or entities that investigate reports of animal abandonment, cruel
11 neglect, or cruel mistreatment in that jurisdiction. The form shall
12 include space for the information required under subsection (5) of
13 this section.

14 (7) When two or more employees jointly have observed or
15 reasonably suspected animal abandonment, cruel neglect, or cruel
16 mistreatment and there is agreement between or among them, a report
17 may be made by one person by mutual agreement. Any such reporter
18 who has knowledge that the person designated to report has failed
19 to do so shall thereafter make the report.

20 (8) Any employee failing to report under this section
21 shall be guilty of an infraction.

22 Sec. 7. (1) Any animal health care professional, while
23 acting in his or her professional capacity or within the scope of
24 his or her employment, who observes or is involved in an incident
25 which leads the animal health care professional to reasonably

1 suspect that an animal has been abandoned, cruelly neglected, or
2 cruelly mistreated, shall report such treatment to an entity that
3 investigates such reports in the appropriate jurisdiction.

4 (2) Nothing in this section shall be construed to impose
5 a duty to investigate observed or reasonably suspected abandonment,
6 cruel neglect, or cruel mistreatment of an animal. Any person
7 making a report under this section is immune from liability except
8 for false statements of fact made with malicious intent.

9 (3) For purposes of this section, an animal health care
10 professional means a licensed veterinarian as defined in section
11 38-3310 or a licensed veterinary technician as defined in section
12 38-3311.

13 Sec. 8. Section 54-617, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 54-617 For purposes of sections 54-617 to 54-624 and
16 section 13 of this act:

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

22 (2) Animal control officer means any individual employed,
23 appointed, or authorized by an animal control authority for the
24 purpose of aiding in the enforcement of sections 54-617 to 54-624
25 and section 13 of this act or any other law or ordinance relating

1 to the licensure of animals, control of animals, or seizure
2 and impoundment of animals and includes any state or local law
3 enforcement officer or other employee whose duties in whole or in
4 part include assignments that involve the seizure and impoundment
5 of any animal;

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
11 a potentially dangerous dog by an animal control authority, the
12 owner has received notice from an animal control authority or an
13 animal control officer of such determination, and the dog inflicts
14 an injury on a human being that does not require medical treatment,
15 injures a domestic animal, or threatens the safety of humans or
16 domestic animals.

17 (b)(i) A dog shall not be defined as a dangerous dog
18 under subdivision (3)(a)(ii) of this section, and the owner shall
19 not be guilty under section 13 of this act, if the individual
20 was tormenting, abusing, or assaulting the dog at the time of the
21 injury or has, in the past, been observed or reported to have
22 tormented, abused, or assaulted the dog.

23 (ii) A dog shall not be defined as a dangerous dog under
24 subdivision (3)(a)(iv) of this section, and the owner shall not
25 be guilty under section 13 of this act, if the injury, damage,

1 or threat was sustained by an individual who, at the time, was
2 committing a willful trespass as defined in section 20-203, 28-520,
3 or 28-521, was committing any other tort upon the property of the
4 owner of the dog, was tormenting, abusing, or assaulting the dog,
5 or has, in the past, been observed or reported to have tormented,
6 abused, or assaulted the dog, or was committing or attempting to
7 commit a crime.

8 (iii) A dog shall not be defined as a dangerous dog under
9 subdivision (3)(a) of this section if the dog is a police animal as
10 defined in section 28-1008;

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

15 (5) Medical treatment means treatment administered by a
16 physician or other licensed health care professional that results
17 in sutures or surgery or treatment for one or more broken bones;

18 (6) Owner means any person, firm, corporation,
19 organization, political subdivision, or department possessing,
20 harboring, keeping, or having control or custody of a dog; and

21 (7) Potentially dangerous dog means (a) any dog that
22 when unprovoked (i) inflicts an injury on a human being that does
23 not require medical treatment, (ii) injures a domestic animal, or
24 (iii) chases or approaches a person upon streets, sidewalks, or
25 any public grounds in a menacing fashion or apparent attitude of

1 attack or (b) any specific dog with a known propensity, tendency,
2 or disposition to attack when unprovoked, to cause injury, or to
3 threaten the safety of humans or domestic animals.

4 Sec. 9. Section 54-620, Revised Statutes Cumulative
5 Supplement, 2008, is amended to read:

6 54-620 Any dangerous dog may be immediately confiscated
7 by an animal control officer if the owner is in violation of
8 sections 54-617 to 54-624 and section 13 of this act. The
9 owner shall be responsible for the reasonable costs incurred
10 by the animal control authority for the care of a dangerous dog
11 confiscated by an animal control officer or for the destruction of
12 any dangerous dog if the action by the animal control authority is
13 pursuant to law and if the owner violated sections 54-617 to 54-624
14 and section 13 of this act.

15 Sec. 10. Section 54-622, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 54-622 ~~Any person~~ Except as provided in section 13 of
18 this act, any owner who violates sections 54-617 to 54-621 shall be
19 guilty of a Class IV misdemeanor.

20 Sec. 11. Section 54-623, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 54-623 (1) Any ~~person~~ owner convicted of a violation of
23 sections 54-617 to 54-624 and section 13 of this act shall not own
24 a dangerous dog within ten years after such conviction. Any ~~person~~
25 owner violating this subsection shall be guilty of a Class IIIA

1 misdemeanor, and the dog shall be treated as provided in subsection
2 (2) of this section.

3 (2) ~~If~~ Except as provided in section 13 of this act, if
4 a dangerous dog of an owner with a prior conviction under sections
5 54-617 to 54-624 and section 13 of this act attacks or bites a
6 human being or domestic animal, the owner shall be guilty of a
7 Class IIIA misdemeanor. In addition, the dangerous dog shall be
8 immediately confiscated by an animal control authority, placed in
9 quarantine for the proper length of time, and thereafter destroyed
10 in an expeditious and humane manner.

11 Sec. 12. Section 54-623.01, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 54-623.01 Each county shall designate an animal control
14 authority that shall be responsible for enforcing sections 54-617
15 to 54-624 and section 13 of this act and the laws of such county
16 regarding dangerous dogs.

17 Sec. 13. (1) Any owner whose dangerous dog inflicts on a
18 human being a serious bodily injury as defined in section 28-109 is
19 guilty of a Class I misdemeanor for the first offense and a Class
20 IV felony for a second or subsequent offense, whether or not the
21 same dangerous dog is involved.

22 (2) It is a defense to a violation of subsection (1)
23 of this section that the dangerous dog was, at the time of the
24 infliction of the serious bodily injury, in the custody of or under
25 the direct control of a person other than the owner or the owner's

1 immediate family.

2 Sec. 14. Section 54-624, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 54-624 Nothing in sections 54-617 to 54-623.01 and
5 section 13 of this act shall be construed to restrict or
6 prohibit any governing board of any county, city, or village
7 from establishing and enforcing laws or ordinances at least as
8 stringent as the provisions of sections 54-617 to 54-623.01 and
9 section 13 of this act.

10 Sec. 15. Original sections 28-1008, 28-1013, 28-1014,
11 28-1015, 28-1016, 28-1017, and 54-622, Reissue Revised Statutes
12 of Nebraska, and sections 54-617, 54-620, 54-623, 54-623.01, and
13 54-624, Revised Statutes Cumulative Supplement, 2008, are repealed.