

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 865

FINAL READING

Introduced by Fischer, 43; Carlson, 38; Cornett, 45; Dubas, 34; Schilz, 47; Coash, 27; McCoy, 39; Price, 3.

Read first time January 11, 2010

Committee: Agriculture

A BILL

1 FOR AN ACT relating to animals; to amend sections 28-1008
2 and 28-1013, Revised Statutes Supplement, 2009; to
3 adopt the Livestock Animal Welfare Act; to eliminate
4 penalties and provisions relating to bovines and equines;
5 to harmonize provisions; to provide a duty for the
6 Revisor of Statutes; to repeal the original sections;
7 and to outright repeal sections 28-1009.02, 28-1009.03,
8 28-1013.01, and 28-1013.02, Reissue Revised Statutes of
9 Nebraska.

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

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Livestock Animal Welfare Act.

3 Sec. 2. For purposes of the Livestock Animal Welfare Act:

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

9 (2) Animal welfare practice means veterinarian practices
10 and animal husbandry practices common to the livestock animal
11 industry, including transport of livestock animals from one
12 location to another;

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

14 (4) Cruelly mistreat means to knowingly and intentionally
15 kill or cause physical harm to a livestock animal in a manner that
16 is not consistent with animal welfare practices;

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

21 (6) Equine means a horse, pony, donkey, mule, hinny, or
22 llama;

23 (7) Euthanasia means the destruction of a livestock
24 animal by commonly accepted veterinary practices;

25 (8) Law enforcement officer means any member of the

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

10 (9) Livestock animal means any bovine, equine, swine,
11 sheep, goats, domesticated cervine animals, ratite birds, or
12 poultry; and

13 (10) Serious injury or illness includes any injury or
14 illness to any livestock animal which creates a substantial risk of
15 death or which causes broken bones, prolonged impairment of health,
16 or prolonged loss or impairment of the function of any bodily
17 organ.

18 Sec. 3. (1) A person who intentionally, knowingly, or
19 recklessly abandons or cruelly neglects a livestock animal is
20 guilty of a Class I misdemeanor unless the abandonment or cruel
21 neglect results in serious injury or illness or death of the
22 livestock animal, in which case it is a Class IV felony.

23 (2) A person who cruelly mistreats a livestock animal is
24 guilty of a Class I misdemeanor for the first offense and a Class
25 IV felony for any subsequent offense.

1 Sec. 4. A person commits indecency with a livestock
2 animal when such person subjects an animal to sexual penetration as
3 defined in section 28-318. Indecency with a livestock animal is a
4 Class III misdemeanor.

5 Sec. 5. (1) In addition to any other sentence given for
6 a violation of section 3 or 4 of this act, the sentencing court
7 may order the defendant to reimburse a public or private agency
8 for expenses incurred in conjunction with the care, impoundment,
9 or disposal of a livestock animal involved in the violation of
10 such section. Whenever the court believes that such reimbursement
11 is a proper sentence or at the prosecuting attorney's request,
12 the court shall order that the presentence investigation report
13 include documentation regarding the nature and amount of the
14 expenses incurred. The court may order that reimbursement be made
15 immediately, in specified installments, or within a specified
16 period of time, not to exceed five years after the date of
17 judgment.

18 (2) Even if reimbursement for expenses is not ordered
19 under subsection (1) of this section, the defendant shall be
20 liable for all expenses incurred by a public or private agency in
21 conjunction with the care, impoundment, or disposal of a livestock
22 animal. The expenses shall be a lien upon the livestock animal.

23 Sec. 6. (1) Any law enforcement officer who has reason
24 to believe that a livestock animal has been abandoned or is
25 being cruelly neglected or cruelly mistreated may seek a warrant

1 authorizing entry upon private property to inspect, care for, or
2 impound the livestock animal or livestock animals.

3 (2) Any law enforcement officer who has reason to believe
4 that a livestock animal has been abandoned or is being cruelly
5 neglected or cruelly mistreated may issue a citation to the owner
6 as prescribed in sections 29-422 to 29-429.

7 (3) Any livestock animal, equipment, device, or other
8 property or things involved in a violation of section 3 or 4
9 of this act shall be subject to seizure, and distribution or
10 disposition may be made in such manner as the court may direct.

11 (4) Any law enforcement officer acting under this section
12 shall not be liable for damage to property if such damage is not
13 the result of the officer's negligence.

14 Sec. 7. The Livestock Animal Welfare Act shall not apply
15 to:

16 (1) Care or treatment of a livestock animal or other
17 conduct by a veterinarian or veterinary technician licensed under
18 the Veterinary Medicine and Surgery Practice Act that occurs within
19 the scope of his or her employment, that occurs while acting in his
20 or her professional capacity, or that conforms to commonly accepted
21 veterinary practices;

22 (2) Euthanasia of a livestock animal or livestock animals
23 as conducted by the owner or by his or her agent or a veterinarian
24 upon the owner's request;

25 (3) Research activity carried on by any research facility

1 currently meeting the standards of the federal Animal Welfare Act,
2 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;

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

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

11 (6) Commonly accepted animal training practices; and

12 (7) Commonly accepted practices occurring in conjunction
13 with sanctioned rodeos, animal racing, and pulling contests.

14 Sec. 8. (1) For purposes of this section:

15 (a) Employee means any employee of a governmental agency
16 dealing with livestock animal control or animal abuse; and

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

22 (2) Any employee, while acting in his or her professional
23 capacity or within the scope of his or her employment, who
24 observes or is involved in an incident which leads the employee
25 to reasonably suspect that a livestock animal has been abandoned,

1 cruelly neglected, or cruelly mistreated shall report such to
2 the entity or entities that investigate such reports in that
3 jurisdiction.

4 (3) The report of an employee shall be made within two
5 working days of acquiring the information concerning the livestock
6 animal by facsimile transmission of a written report presented
7 in the form described in subsection (5) of this section or by
8 telephone. When an immediate response is necessary to protect the
9 health and safety of the livestock animal or others, the report of
10 an employee shall be made by telephone as soon as possible.

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

16 (5) A report made by an employee pursuant to this section
17 shall include:

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

20 (b) The name, if known, of the livestock animal owner or
21 custodian, whether a business or individual;

22 (c) A description of the livestock animal or livestock
23 animals involved, person or persons involved, and location of the
24 livestock animal or livestock animals and the premises; and

25 (d) The date, the time, and a description of the

1 observation or incident which led the reporter to reasonably
2 suspect livestock animal abandonment, cruel neglect, or cruel
3 mistreatment and any other information the reporter believes may be
4 relevant.

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

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

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

20 Sec. 9. (1) If a person is convicted of a Class IV felony
21 under section 3 of this act, the sentencing court shall order such
22 person not to own or possess a livestock animal for at least five
23 years after the date of conviction, but such time restriction shall
24 not exceed fifteen years. Any person violating such court order
25 shall be guilty of a Class I misdemeanor.

1 (2) If a person is convicted of a Class I misdemeanor
2 under section 3 of this act or a Class III misdemeanor under
3 section 4 of this act, the sentencing court may order such person
4 not to own or possess any livestock animal after the date of
5 conviction, but such time restriction, if any, shall not exceed
6 five years. Any person violating such court order shall be guilty
7 of a Class IV misdemeanor.

8 (3) Any livestock animal involved in a violation of a
9 court order under subsection (1) or (2) of this section shall be
10 subject to seizure by law enforcement.

11 Sec. 10. (1) Any livestock animal health care
12 professional, while acting in his or her professional capacity or
13 within the scope of his or her employment, who observes or is
14 involved in an incident which leads the livestock animal health
15 care professional to reasonably suspect that a livestock animal
16 has been abandoned, cruelly neglected, or cruelly mistreated shall
17 report such treatment to an entity that investigates such reports
18 in the appropriate jurisdiction.

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

24 (3) For purposes of this section, a livestock animal
25 health care professional means a licensed veterinarian as defined

1 in section 38-3310 or a licensed veterinary technician as defined
2 in section 38-3311 whose practice involves care of livestock
3 animals.

4 Sec. 11. (1) No person shall intentionally trip or cause
5 to fall, or lasso or rope the legs of, any equine by any means
6 for the purpose of entertainment, sport, practice, or contest. The
7 intentional tripping or causing to fall, or lassoing or roping the
8 legs of, any equine by any means for the purpose of entertainment,
9 sport, practice, or contest shall not be considered a commonly
10 accepted practice occurring in conjunction with sanctioned rodeos,
11 animal racing, or pulling contests.

12 (2) Violation of this section is a Class I misdemeanor.

13 Sec. 12. (1) No person shall intentionally trip, cause to
14 fall, or drag any bovine by its tail by any means for the purpose
15 of entertainment, sport, practice, or contest. The intentional
16 tripping, causing to fall, or dragging of any bovine by its tail
17 by any means for the purpose of entertainment, sport, practice,
18 or contest shall not be considered a commonly accepted practice
19 occurring in conjunction with sanctioned rodeos, animal racing, or
20 pulling contests.

21 (2) Violation of this section is a Class I misdemeanor.

22 Sec. 13. Section 28-1008, Revised Statutes Supplement,
23 2009, is amended to read:

24 28-1008 For purposes of sections 28-1008 to 28-1017,
25 28-1019, and 28-1020:

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

5 (2) Animal means any vertebrate member of the animal
6 kingdom. ~~The term~~ Animal does not include an uncaptured wild
7 creature or a livestock animal as defined in section 2 of this act;

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

9 ~~(4)~~ (3) Cruelly mistreat means to knowingly and
10 intentionally kill, maim, disfigure, torture, beat, mutilate, burn,
11 scald, or otherwise inflict harm upon any animal;

12 ~~(5)~~ (4) Cruelly neglect means to fail to provide any
13 animal in one's care, whether as owner or custodian, with food,
14 water, or other care as is reasonably necessary for the animal's
15 health;

16 ~~(6) Equine means a horse, pony, donkey, mule, hinny, or~~
17 ~~llama;~~

18 ~~(7)~~ (5) Humane killing means the destruction of an
19 animal by a method which causes the animal a minimum of pain and
20 suffering;

21 ~~(8)~~ (6) Law enforcement officer means any member of
22 the Nebraska State Patrol, any county or deputy sheriff, any
23 member of the police force of any city or village, or any other
24 public official authorized by a city or village to enforce state
25 or local animal control laws, rules, regulations, or ordinances.

1 Law enforcement officer also includes any inspector under the
2 Commercial Dog and Cat Operator Inspection Act to the extent that
3 such inspector may exercise the authority of a law enforcement
4 officer under section 28-1012 while in the course of performing
5 inspection activities under the Commercial Dog and Cat Operator
6 Inspection Act;

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

13 ~~(10)~~ (8) Police animal means a horse or dog owned or
14 controlled by the State of Nebraska for the purpose of assisting a
15 Nebraska state trooper in the performance of his or her official
16 enforcement duties;

17 ~~(11)~~ (9) Repeated beating means intentional successive
18 strikes to an animal by a person resulting in serious bodily injury
19 or death to the animal;

20 ~~(12)~~ (10) Serious injury or illness includes any injury
21 or illness to any animal which creates a substantial risk of death
22 or which causes broken bones, prolonged impairment of health, or
23 prolonged loss or impairment of the function of any bodily organ;
24 and

25 ~~(13)~~ (11) Torture means intentionally subjecting an

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

5 Sec. 14. Section 28-1013, Revised Statutes Supplement,
6 2009, is amended to read:

7 28-1013 Sections 28-1008 to 28-1017 and 28-1019 shall not
8 apply to:

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

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

18 (3) Research activity carried on by any research facility
19 currently meeting the standards of the federal Animal Welfare Act,
20 7 U.S.C. 2131 et seq., as such act existed on January 1, ~~2003,~~
21 2010;

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

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

1 ~~(6)~~ (5) Humane killing of an animal by the owner or by
2 his or her agent or a veterinarian upon the owner's request;

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

9 ~~(8)~~ (6) Use of reasonable force against an animal, other
10 than a police animal, which is working, including killing, capture,
11 or restraint, if the animal is outside the owned or rented property
12 of its owner or custodian and is injuring or posing an immediate
13 threat to any person or other animal;

14 ~~(9)~~ (7) Killing of house or garden pests; and

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

17 ~~(11)~~ (8) Commonly accepted animal training practices.

18 Sec. 15. The Revisor of Statutes shall codify the
19 Livestock Animal Welfare Act in Chapter 54.

20 Sec. 16. Original sections 28-1008 and 28-1013, Revised
21 Statutes Supplement, 2009, are repealed.

22 Sec. 17. The following sections are outright repealed:
23 Sections 28-1009.02, 28-1009.03, 28-1013.01, and 28-1013.02,
24 Reissue Revised Statutes of Nebraska.