

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 252

Introduced by Cornett, 45.

Read first time January 14, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-101, 28-1006, 28-1007, and 28-1019, Reissue Revised
3 Statutes of Nebraska; to prohibit the possession of
4 animal fighting paraphernalia; to provide a penalty;
5 to provide for seizure of property; to provide for
6 applicability; to harmonize provisions; and to repeal the
7 original sections.

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

1 Section 1. Section 28-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and sections 2 and 3 of
4 this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. (1) No person shall knowingly or intentionally
7 own or possess animal fighting paraphernalia with the intent to
8 commit a violation of section 28-1005.

9 (2) For purposes of this section, animal fighting
10 paraphernalia means equipment, products, and materials of any
11 kind that are used, intended for use, or designed for use, in
12 the training, preparation, conditioning, or furtherance of the
13 pitting of an animal against another as defined in section 28-1004.
14 Animal fighting paraphernalia includes, but is not limited to, the
15 following:

16 (a) A breaking stick, which means a device designed for
17 insertion behind the molars of a dog for the purpose of breaking
18 the dog's grip on another animal or object;

19 (b) A cat mill, which means a device that rotates around
20 a central support with one arm designed to secure a dog and one arm
21 designed to secure a cat, rabbit, or other small animal beyond the
22 grasp of the dog;

23 (c) A treadmill, jenni, or hot walker, which means an
24 exercise device consisting of an endless belt on which the animal
25 walks or runs without changing place;

1 (d) A fighting pit, which means a walled area designed to
2 contain an animal fight;

3 (e) A springpole, which means a biting surface attached
4 to a stretchable device, suspended at a height sufficient to
5 prevent a dog from reaching the biting surface while touching the
6 ground;

7 (f) Unprescribed veterinary medicine that is a controlled
8 substance as defined in section 28-401;

9 (g) A heel, which means any edged or pointed instrument
10 designed to be attached to the leg of a fowl or other animal;

11 (h) A boxing glove or muff, which means a fitted
12 protective covering for the spurs of a fowl; and

13 (i) Any other instrument commonly used in the furtherance
14 of pitting an animal against another.

15 (3) Any person violating subsection (1) of this section
16 is guilty of a Class IV felony.

17 Sec. 3. In determining whether an object is animal
18 fighting paraphernalia as defined in section 2 of this act, a
19 court shall consider, in addition to all other logically relevant
20 factors, the following:

21 (1) Expert testimony concerning the use of the object;
22 (2) Statements by an owner of the object or by anyone in
23 control of the object concerning its use;
24 (3) Prior convictions, if any, of the owner or of anyone
25 in control of the object under any state or federal law relating to

1 animals;

2 (4) The proximity of the object, in time and space, to a
3 direct violation of section 28-1005;

4 (5) The proximity of the object to any animals;

5 (6) The existence of any animal-related substances on the
6 object;

7 (7) Direct or circumstantial evidence of the intent of an
8 owner or of anyone in control of the object to deliver it to any
9 person whom he or she knows or should reasonably know intends to
10 use the object to facilitate a violation of section 28-1005. The
11 innocence of an owner or of anyone in control of the object as to
12 a direct violation of section 28-1005 shall not prevent a finding
13 that the object is intended for use or designed for use as animal
14 fighting paraphernalia;

15 (8) Instructions, oral or written, provided with the
16 object concerning its use;

17 (9) Descriptive materials accompanying the object which
18 explain or depict its use;

19 (10) National and local advertising concerning the use of
20 the object;

21 (11) The manner in which the object is displayed for
22 sale;

23 (12) Whether the owner or anyone in control of the object
24 is a legitimate supplier of like or related items to the community
25 for legitimate purposes;

1 (13) Direct or circumstantial evidence of the ratio of
2 sales of the object or objects to the total sales of the business
3 enterprise; and

4 (14) The existence and scope of any legitimate purpose
5 for the object in the community.

6 Sec. 4. Section 28-1006, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-1006 (1) It shall be the duty of the sheriff, a police
9 officer, or the Nebraska State Patrol to make prompt investigation
10 of and arrest for any violation of section 28-1005 or section 2 of
11 this act.

12 (2) Any animal, equipment, device, or other property or
13 things involved in any violation of section 28-1005 or section 2
14 of this act shall be subject to seizure, and disposition may be
15 made in accordance with the method of disposition directed for
16 contraband in section 29-820.

17 (3) Any animal involved in any violation of section
18 28-1005 or section 2 of this act shall be subject to seizure.
19 Distribution or disposition may be made in such manner as the court
20 may direct. The court may give preference to adoption alternatives
21 through humane societies or comparable institutions and to the
22 protection of such animal's welfare. For a humane society or
23 comparable institution to be considered as an adoption alternative
24 under this subsection, it must first be licensed by the Department
25 of Agriculture as having passed the inspection requirements in the

1 Commercial Dog and Cat Operator Inspection Act and paid the fee
2 for inspection under the act. The court may prohibit an adopting
3 or purchasing party from selling such animal for a period not to
4 exceed one year.

5 (4) In addition to any other sentence given for a
6 violation of section 28-1005 or section 2 of this act, the
7 sentencing court may order the defendant to reimburse a public
8 or private agency for expenses incurred in conjunction with the
9 care, impoundment, or disposal, including adoption, of an animal
10 involved in the violation of such section 28-1005 or section 2
11 of this act. Whenever the court believes that such reimbursement
12 may be a proper sentence or the prosecuting attorney requests,
13 the court shall order that the presentence investigation report
14 include documentation regarding the nature and amount of the
15 expenses incurred. The court may order that reimbursement be made
16 immediately, in specified installments, or within a specified
17 period of time, not to exceed five years after the date of
18 judgment.

19 Sec. 5. Section 28-1007, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1007 Sections 28-1004 to 28-1006 and sections 2 and 3
22 of this act shall not be construed to amend or in any manner change
23 the authority of the Game and Parks Commission under the Game Law,
24 to prohibit any conduct authorized or permitted in the Game Law,
25 or to prohibit the training of dogs animals for any purpose not

1 prohibited by law.

2 Sec. 6. Section 28-1019, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-1019 (1)(a) If a person is convicted of a Class IV
5 felony under section 28-1005 or 28-1009 or section 2 of this act,
6 the sentencing court shall order such person not to own, possess,
7 or reside with any animal for at least five years after the date
8 of conviction, but such time restriction shall not exceed fifteen
9 years. Any person violating such court order shall be guilty of a
10 Class I misdemeanor.

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

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

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

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1 **Sec. 7. Original sections 28-101, 28-1006, 28-1007, and**
2 **28-1019, Reissue Revised Statutes of Nebraska, are repealed.**