

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 865**

Introduced by Fischer, 43; Carlson, 38; Cornett, 45; Dubas, 34;  
Schilz, 47.

Read first time January 11, 2010

Committee: Agriculture

A BILL

1 FOR AN ACT relating to animals; to amend sections 28-1008 and  
2 28-1013, Revised Statutes Supplement, 2009; to adopt the  
3 Livestock Animal Welfare Act; to harmonize provisions; to  
4 provide a duty for the Revisor of Statutes; to repeal  
5 the original sections; and to outright repeal sections  
6 28-1009.02, 28-1009.03, 28-1013.01, and 28-1013.02,  
7 Reissue Revised Statutes of Nebraska.  
8 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 industry,  
11 including transport of livestock from one location to another;

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

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

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

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

22           (7) Euthanasia means the destruction of a livestock  
23 animal by commonly accepted veterinary practices conducted by the  
24 owner or by his or her agent or a veterinarian upon the owner's  
25 request;

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

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

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

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

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

1 IV felony for any subsequent offense.

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

6           Sec. 5. (1) In addition to any other sentence given for  
7 a violation of section 3 or 4 of this act, the sentencing court  
8 may order the defendant to reimburse a public or private agency  
9 for expenses incurred in conjunction with the care, impoundment,  
10 or disposal of a livestock animal involved in the violation of  
11 such section. Whenever the court believes that such reimbursement  
12 is a proper sentence or at the prosecuting attorney's request,  
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           (2) Even if reimbursement for expenses is not ordered  
20 under subsection (1) of this section, the defendant shall be  
21 liable for all expenses incurred by a public or private agency in  
22 conjunction with the care, impoundment, or disposal of a livestock  
23 animal. The expenses shall be a lien upon the animal.

24           Sec. 6. (1) Any law enforcement officer who has reason  
25 to believe that a livestock animal has been abandoned or is

1 being cruelly neglected or cruelly mistreated may seek a warrant  
2 authorizing entry upon private property to inspect, care for, or  
3 impound the livestock animal or livestock animals.

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

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

12 (4) Any livestock animal involved in a violation of  
13 section 3 or 4 of this act shall be subject to seizure.  
14 Distribution or disposition may be made in such manner as the  
15 court may direct.

16 (5) Any law enforcement officer acting under this section  
17 shall not be liable for damage to property if such damage is not  
18 the result of the officer's negligence.

19 Sec. 7. The Livestock Animal Welfare Act shall not apply  
20 to:

21 (1) Care or treatment of a livestock animal or other  
22 conduct by a veterinarian or veterinary technician licensed under  
23 the Veterinary Medicine and Surgery Practice Act that occurs within  
24 the scope of his or her employment, that occurs while acting in his  
25 or her professional capacity, or that conforms to commonly accepted

1 veterinary practices;

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

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

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

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

16 (6) Commonly accepted animal training practices.

17 Sec. 8. For purposes of this section:

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

23 (2) Employee means any employee of a governmental agency  
24 dealing with livestock animal control or animal abuse.

25 (3) Any employee, while acting in his or her professional

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

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

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

19 (6) A report made by an employee pursuant to this section  
20 shall include:

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

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

25 (c) A description of the livestock animal or livestock

1 animals involved, person or persons involved, and location of the  
2 livestock animal or livestock animals and the premises; and

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

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

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

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

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

1 restriction shall not exceed fifteen years. Any person violating  
2 such court order shall be guilty of a Class I misdemeanor.

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

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

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

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

1           (3) For purposes of this section, a livestock animal  
2 health care professional means a licensed veterinarian as defined  
3 in section 38-3310 or a licensed veterinary technician as defined  
4 in section 38-3311 whose practice involves care of livestock  
5 animals.

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

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

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

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

24           Sec. 13. Section 28-1008, Revised Statutes Supplement,  
25 2009, is amended to read:

1                   28-1008 For purposes of sections 28-1008 to 28-1017,  
2 28-1019, and 28-1020:

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

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

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

12                   ~~(4)~~ (3) Cruelly mistreat means to knowingly and  
13 intentionally kill, maim, disfigure, torture, beat, mutilate, burn,  
14 scald, or otherwise inflict harm upon any animal;

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

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

21                   ~~(7)~~ (5) Humane killing means the destruction of an  
22 animal by a method which causes the animal a minimum of pain and  
23 suffering;

24                   ~~(8)~~ (6) Law enforcement officer means any member of  
25 the Nebraska State Patrol, any county or deputy sheriff, any

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

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

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

20           ~~(11)~~ (9) Repeated beating means intentional successive  
21 strikes to an animal by a person resulting in serious bodily injury  
22 or death to the animal;

23           ~~(12)~~ (10) Serious injury or illness includes any injury  
24 or illness to any animal which creates a substantial risk of death  
25 or which causes broken bones, prolonged impairment of health, or

1 prolonged loss or impairment of the function of any bodily organ;  
2 and

3 ~~(13)~~ (11) Torture means intentionally subjecting an  
4 animal to extreme pain, suffering, or agony. Torture does not  
5 include conduct performed by a veterinarian licensed to practice  
6 veterinary medicine and surgery in this state or conduct that  
7 conforms to accepted veterinary practices.

8 Sec. 14. Section 28-1013, Revised Statutes Supplement,  
9 2009, is amended to read:

10 28-1013 Sections 28-1008 to 28-1017 and 28-1019 shall not  
11 apply to:

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

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

21 (3) Research activity carried on by any research facility  
22 currently meeting the standards of the federal Animal Welfare Act,  
23 7 U.S.C. 2131 et seq., as such act existed on January 1, 2003;

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

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

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

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

11           ~~(8) (7) Use of reasonable force against an animal, other  
12 than a police animal, which is working, including killing, capture,  
13 or restraint, if the animal is outside the owned or rented property  
14 of its owner or custodian and is injuring or posing an immediate  
15 threat to any person or other animal;~~

16           ~~(9) (8) Killing of house or garden pests; and~~

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

19           ~~(11) (9) Commonly accepted animal training practices.~~

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

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

24           Sec. 17. The following sections are outright repealed:  
25 Sections 28-1009.02, 28-1009.03, 28-1013.01, and 28-1013.02,

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1 Reissue Revised Statutes of Nebraska.