

LEGISLATIVE BILL 252

Approved by the Governor April 12, 2010

Introduced by Cornett, 45; Cook, 13; Lautenbaugh, 18.

FOR AN ACT relating to crimes and offenses; to amend sections 28-1006, 28-1007, and 28-1019, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Supplement, 2009; to prohibit the possession of animal fighting paraphernalia; to provide a penalty; to provide for seizure of property; to provide for applicability; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-101, Revised Statutes Supplement, 2009, is amended to read:

28-101 Sections 28-101 to 28-1356 and section 2 of this act shall be known and may be cited as the Nebraska Criminal Code.

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

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

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

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

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;

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

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

(vi) A heel, which means any edged or pointed instrument designed to be attached to the leg of a fowl;

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

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

(b) Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in this state.

(3) Any person violating subsection (1) of this section is guilty of a Class I misdemeanor.

Sec. 3. Section 28-1006, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) Any animal involved in any violation of section 28-1005 or section 2 of this act shall be subject to seizure. Distribution or disposition may be made in such manner as the court may direct. The court may give preference to adoption alternatives through humane societies or comparable institutions and to the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

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

Sec. 4. Section 28-1007, Reissue Revised Statutes of Nebraska, is amended to read:

28-1007 Sections 28-1004 to 28-1006 and section 2 of this act shall not be construed to amend or in any manner change the authority of the Game and Parks Commission under the Game Law, to prohibit any conduct authorized or permitted in the Game Law, or to prohibit the training of ~~dogs~~ animals for any purpose not prohibited by law.

Sec. 5. Section 28-1019, Reissue Revised Statutes of Nebraska, is amended to read:

28-1019 (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 section 2 of this act 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 or section 2 of this act 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. 6. Original sections 28-1006, 28-1007, and 28-1019, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Supplement, 2009, are repealed.