

## LEGISLATIVE BILL 494

Approved by the Governor May 22, 2009

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Nebraska Veterinary Practice Act until December 1, 2008, and the Veterinary Medicine and Surgery Practice Act on and after December 1, 2008, that occurs within the scope of his or her employment, that occurs while acting in his or her professional

capacity, or that conforms to commonly accepted veterinary practices;

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

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

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

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

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

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

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

(9) Killing of house or garden pests;

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

(11) Commonly accepted animal training practices.

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

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

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

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

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

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

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

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

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

(b) Employee means any employee of an agency ~~relating to~~ a governmental agency dealing with child or adult protective services, animal control, or animal abuse.

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

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

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

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

(a) The reporter's name and title, business address, and telephone

number;

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

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

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

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

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

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

Sec. 7. (1) Any animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the animal health care professional to reasonably suspect that an animal has been abandoned, cruelly neglected, or cruelly mistreated, shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

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

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

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

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

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

(2) Animal control officer means any individual employed, appointed, or authorized by an animal control authority for the purpose of aiding in the enforcement of sections 54-617 to 54-624 and section 13 of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

(3)(a) Dangerous dog means a dog that, according to the records of an animal control authority: (i) Has killed a human being; (ii) has inflicted injury on a human being that requires medical treatment; (iii) has killed a domestic animal without provocation; or (iv) has been previously determined to be a potentially dangerous dog by an animal control authority, the owner has received notice from an animal control authority or an animal control officer of such determination, and the dog inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

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

(ii) A dog shall not be defined as a dangerous dog under subdivision (3)(a)(iv) of this section, and the owner shall not be guilty under section 13 of this act, if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined in section 20-203, 28-520, or 28-521, was committing any other tort upon the property of the owner of the dog, was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused, or assaulted

the dog, or was committing or attempting to commit a crime.

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

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

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

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

(7) Potentially dangerous dog means (a) any dog that when unprovoked (i) inflicts an injury on a human being that does not require medical treatment, (ii) injures a domestic animal, or (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or (b) any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

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

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

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

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

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

54-623 (1) Any person owner convicted of a violation of sections 54-617 to 54-624 and section 13 of this act shall not own a dangerous dog within ten years after such conviction. Any person owner violating this subsection shall be guilty of a Class IIIA misdemeanor, and the dog shall be treated as provided in subsection (2) of this section.

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

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

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

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

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

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

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

Sec. 15. Original sections 28-1008, 28-1013, 28-1014, 28-1015, 28-1016, 28-1017, and 54-622, Reissue Revised Statutes of Nebraska, and

sections 54-617, 54-620, 54-623, 54-623.01, and 54-624, Revised Statutes Cumulative Supplement, 2008, are repealed.