

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 423

Final Reading

Introduced by Agriculture Committee: Schilz, 47, Chairperson;
Bloomfield, 17; Hansen, 42; Harr, 8; Johnson, 23;
Wallman, 30; Brasch, 16; Carlson, 38; Davis, 43.

Read first time January 22, 2013

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-3812,
2 38-3330, 54-742, 54-901, 54-902, 54-905, and 54-906,
3 Reissue Revised Statutes of Nebraska, and section 29-818,
4 Revised Statutes Cumulative Supplement, 2012; to provide
5 for use of the Nebraska Agricultural Products Marketing
6 Cash Fund for purposes of bovine trichomoniasis
7 prevention; to provide for waiver of privilege and
8 liability limitations for veterinarians for purposes of
9 bovine trichomoniasis prevention; to prohibit sales of
10 cattle, require notifications, and provide for assessment
11 of costs for purposes of bovine trichomoniasis
12 prevention; to change and eliminate livestock animal
13 seizure provisions; to define and redefine terms; to
14 change provisions of the Livestock Animal Welfare Act; to
15 harmonize provisions; and to repeal the original

1 sections.

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

1 Section 1. Section 2-3812, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-3812 There is hereby created the Nebraska Agricultural
4 Products Marketing Cash Fund. The fund shall consist of
5 administrative costs collected under subsection (4) of section 54-742
6 and money appropriated by the Legislature which is received as gifts
7 or grants or collected as fees or charges from any source, including
8 federal, state, public, and private. The fund shall be utilized for
9 the purpose of carrying out the Nebraska Agricultural Products
10 Marketing Act and for purposes of subsection (4) of section 54-742.
11 Any money in such fund available for investment shall be invested by
12 the state investment officer pursuant to the Nebraska Capital
13 Expansion Act and the Nebraska State Funds Investment Act.

14 Sec. 2. Section 29-818, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 29-818 (1) Except for pet animals ~~or equines~~ as provided
17 in subsection (2) of this section, property seized under a search
18 warrant or validly seized without a warrant shall be safely kept by
19 the officer seizing the same, unless otherwise directed by the judge
20 or magistrate, and shall be so kept so long as necessary for the
21 purpose of being produced as evidence on any trial. Property seized
22 may not be taken from the officer having it in custody by replevin or
23 other writ so long as it is or may be required as evidence in any
24 trial, nor may it be so taken in any event where a complaint has been
25 filed in connection with which the property was or may be used as

1 evidence, and the court in which such complaint was filed shall have
2 exclusive jurisdiction for disposition of the property or funds and
3 to determine rights therein, including questions respecting the
4 title, possession, control, and disposition thereof.

5 (2)(a) Any pet animal ~~or equine~~ seized under a search
6 warrant or validly seized without a warrant may be kept by the
7 officer seizing the same on the property of the person who owns,
8 keeps, harbors, maintains, or controls such pet animal. ~~or equine.~~

9 (b) When any pet animal ~~or equine~~ is seized ~~or held under~~
10 this subsection, the court shall provide the person who owns, keeps,
11 harbors, maintains, or controls such pet animal ~~or equine~~ with notice
12 that a hearing will be had and specify the date, time, and place of
13 such hearing. Such notice shall be served by personal or residential
14 service or by certified mail. If such notice cannot be served by such
15 methods, service may be made by publication in the county where such
16 pet animal ~~or equine~~ was seized. Such publication shall be made after
17 application and order of the court. Unless otherwise determined and
18 ordered by the court, the date of such hearing shall be no later than
19 ten days after the seizure.

20 (c) At the hearing, the court shall determine the
21 disposition of the pet animal, ~~or equine~~, and if the court determines
22 that any pet animal ~~or equine~~ shall not be returned, the court shall
23 order the person from whom the pet animal ~~or equine~~ was seized to pay
24 all expenses for the support and maintenance of the pet animal, ~~or~~
25 ~~equine~~, including expenses for shelter, food, veterinary care, and

1 board, necessitated by the possession of the pet animal, ~~or equine~~.
2 At the hearing, the court shall also consider the person's ability to
3 pay for the expenses of the pet animal ~~or equine~~ and the amount of
4 such payments. Payments shall be for a succeeding thirty-day period
5 with the first payment due on or before the tenth day following the
6 hearing. Payments for each subsequent succeeding thirty-day period,
7 if any, shall be due on or before the tenth day of such period.

8 (d) If a person becomes delinquent in his or her payments
9 for the expenses of the pet animal, ~~or equine~~, the court shall hold a
10 hearing to determine the disposition of the seized pet animal, ~~or~~
11 ~~equine~~. Notice of such hearing shall be given to the person who owns,
12 keeps, harbors, maintains, or controls such pet animal ~~or equine~~ and
13 to any lienholder or security interest holder of record as provided
14 in subdivision (b) of this subsection.

15 (e) An appeal may be entered within ten days after a
16 hearing under subdivision (c) or (d) of this subsection. Any person
17 filing an appeal shall post a bond sufficient to pay all costs of
18 care of the pet animal ~~or equine~~ for thirty days. Such payment will
19 be required for each succeeding thirty-day period until the appeal is
20 final.

21 (f) Should the person be found not guilty, all funds paid
22 for the expenses of the pet animal ~~or equine~~ shall be returned to the
23 person.

24 (g) For purposes of this subsection, pet ÷ ~~(i) Pet animal~~
25 means any domestic dog, domestic cat, mini pig, domestic rabbit,

1 domestic ferret, domestic rodent, bird except a bird raised as an
2 agricultural animal and specifically excluding any bird possessed
3 under a license issued by the State of Nebraska or the United States
4 Fish and Wildlife Service, nonlethal aquarium fish, nonlethal
5 invertebrate, amphibian, turtle, nonvenomous snake that will not grow
6 to more than eight feet in length at maturity, or such other animal
7 as may be specified and for which a permit shall be issued by an
8 animal control authority after inspection and approval, except that
9 any animal forbidden to be sold, owned, or possessed by federal or
10 state law is not a pet animal. ~~;~~ and

11 ~~(ii) Equine means a horse, pony, donkey, mule, hinny, or~~
12 ~~llama.~~

13 (h) This section shall not preempt, and shall not be
14 construed to preempt, any ordinance of a city of the metropolitan or
15 primary class.

16 Sec. 3. Section 38-3330, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 38-3330 (1) Unless required by any state or local law for
19 contagious or infectious disease reporting or other public health and
20 safety purpose, no veterinarian licensed under the Veterinary
21 Medicine and Surgery Practice Act shall be required to disclose any
22 information concerning the veterinarian's care of an animal except
23 under a written authorization or other waiver by the veterinarian's
24 client or pursuant to a court order or a subpoena. A veterinarian who
25 releases information under a written authorization or other waiver by

1 the client or pursuant to a court order or a subpoena is not liable
2 to the client or any other person.

3 (2) The privilege provided by this section is waived to
4 the extent that the veterinarian's client or the owner of the animal
5 places the veterinarian's care and treatment of the animal or the
6 nature and extent of injuries to the animal at issue in any civil or
7 criminal proceeding.

8 (3) The privilege provided by this section is waived to
9 the extent and for purposes of notifying any owner or manager of
10 cattle that have a significant risk for exposure to bovine
11 trichomoniasis. A veterinarian who releases information about the
12 risk for exposure to bovine trichomoniasis is not liable to the
13 client or any other person.

14 (4) For purposes of this section, veterinarian includes
15 the employees or agents of the licensed veterinarian while acting for
16 or on behalf of such veterinarian.

17 Sec. 4. Section 54-742, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 54-742 (1) It is the duty of any person who discovers,
20 suspects, or has reason to believe that any animal belonging to him
21 or her or which he or she has in his or her possession or custody or
22 which, belonging to another, may come under his or her observation is
23 affected with any dangerous, infectious, contagious, or otherwise
24 transmissible disease which affects livestock to immediately report
25 such fact, belief, or suspicion to the department or to any agent,

1 employee, or appointee thereof.

2 (2) The department shall work together with livestock
3 health committees, livestock groups, diagnostic laboratories,
4 practicing veterinarians, producers, and others who may be affected,
5 to adopt and promulgate rules and regulations to effectuate a
6 workable livestock disease reporting system according to the
7 provisions of this section. The rules and regulations shall establish
8 who shall report diseases, what diseases shall be reported, how such
9 diseases shall be reported, to whom diseases shall be reported, the
10 method by which diseases shall be reported, and the frequency of
11 reports required. For disease reporting purposes, the department
12 shall categorize livestock diseases according to relative economic or
13 health risk factors and may provide different reporting measures for
14 the various categories.

15 (3) Any person who reasonably suspects that any beef or
16 dairy breeding bull belonging to him or her or which he or she has in
17 his or her possession or custody is infected with bovine
18 trichomoniasis shall not sell or transport such animal, except for
19 consignment directly to a federally recognized slaughter
20 establishment, unless such person causes such animal to be tested for
21 bovine trichomoniasis. Any person who owns or has possession or
22 custody of a beef or dairy breeding bull, or who has a beef or dairy
23 breeding bull belonging to another under his or her observation, for
24 which a laboratory confirmed diagnosis of bovine trichomoniasis has
25 been made, shall report such diagnosis to the department within five

1 business days after receipt of the laboratory confirmation. Any such
2 breeding bull for which a laboratory confirmation of bovine
3 trichomoniasis has been made shall not be sold or transported except
4 for consignment directly to a federally recognized slaughter
5 establishment.

6 (4)(a) An owner or manager of any beef or dairy breeding
7 bull for which a laboratory confirmed diagnosis of bovine
8 trichomoniasis has been made shall notify each adjacent landowner or
9 land manager of the diagnosis if such land is capable of maintaining
10 livestock susceptible to bovine trichomoniasis. Such notification
11 shall be made to each landowner or land manager within fourteen days
12 after the diagnosis even if cattle are not currently maintained on
13 the owner's or manager's land.

14 (b) The owner or manager of the cattle shall submit to
15 the department a form or affidavit attesting to the fact that the
16 notification required under this subsection has occurred. The form or
17 affidavit shall be submitted to the department within fourteen days
18 after the diagnosis and shall include the names of adjacent
19 landowners or land managers who were notified and their contact
20 information.

21 (c) If an owner or manager does not, within such
22 fourteen-day period, submit the form or affidavit indicating that
23 adjacent landowners or land managers have been notified as required
24 under this subsection, the department shall notify each adjacent
25 landowner or land manager of the diagnosis. The department shall

1 assess the administrative costs of the department to notify the
2 adjacent landowners or land managers against the owner or manager
3 that failed to comply with this subsection. The department shall
4 determine the definition of adjacent based on the disease
5 characteristics and modes of transmission. The department shall remit
6 any administrative costs collected under this subsection to the State
7 Treasurer for credit to the Nebraska Agricultural Products Marketing
8 Cash Fund.

9 Sec. 5. Section 54-901, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 54-901 Sections 54-901 to 54-912 and section 9 of this
12 act shall be known and may be cited as the Livestock Animal Welfare
13 Act.

14 Sec. 6. Section 54-902, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 54-902 For purposes of the Livestock Animal Welfare Act:

17 (1) Abandon means to leave a livestock animal in one's
18 care, whether as owner or custodian, for any length of time without
19 making effective provision for the livestock animal's ~~food,~~ feed,
20 water, or other care as is reasonably necessary for the livestock
21 animal's health;

22 (2) Animal welfare practice means veterinarian practices
23 and animal husbandry practices common to the livestock animal
24 industry, including transport of livestock animals from one location
25 to another;

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

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

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

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

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

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

23 (9) Livestock animal means any bovine, equine, swine,
24 sheep, goats, domesticated cervine animals, ratite birds, llamas, or
25 poultry; ~~and~~

1 (10) Owner or custodian means any person owning, keeping,
2 possessing, harboring, or knowingly permitting an animal to remain on
3 or about any premises owned or occupied by such person; and

4 ~~(10)~~(11) Serious injury or illness includes any injury
5 or illness to any livestock animal which creates a substantial risk
6 of death or which causes broken bones, prolonged impairment of
7 health, or prolonged loss or impairment of the function of any bodily
8 organ.

9 Sec. 7. Section 54-905, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 54-905 (1) In addition to any other sentence given for a
12 violation of section 54-903 or 54-904, the sentencing court may order
13 the defendant to reimburse a public or private agency for any
14 unreimbursed expenses incurred in conjunction with the care,
15 ~~impoundment, seizure,~~ or disposal of a livestock animal involved in
16 the violation of such section. Whenever the court believes that such
17 reimbursement is a proper sentence or at the prosecuting attorney's
18 request, the court shall order that the presentence investigation
19 report include documentation regarding the nature and amount of the
20 expenses incurred. The court may order that reimbursement be made
21 immediately, in specified installments, or within a specified period
22 of time, not to exceed five years after the date of judgment.

23 (2) Even if reimbursement for expenses is not ordered
24 under subsection (1) of this section, the defendant shall be liable
25 for all expenses incurred by a public or private agency in

1 conjunction with the care, ~~impoundment, seizure,~~ or disposal of a
2 livestock animal. The expenses shall be a lien upon the livestock
3 animal.

4 Sec. 8. Section 54-906, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 54-906 (1) ~~Any~~ A law enforcement officer who has reason
7 to believe that a livestock animal has been abandoned or is being
8 cruelly neglected or cruelly mistreated may seek a warrant
9 authorizing entry upon private property to inspect, care for, or
10 impound the livestock animal. ~~or livestock animals.~~

11 (2) ~~Any~~ A law enforcement officer who has reason to
12 believe that a livestock animal has been abandoned or is being
13 cruelly neglected or cruelly mistreated may issue a citation to the
14 owner or custodian as prescribed in sections 29-422 to 29-429.

15 (3) A law enforcement officer may specify in a custody
16 agreement the terms and conditions by which the owner or custodian
17 may maintain custody of the livestock animal to provide care for such
18 animal at the expense of the owner or custodian. The custody
19 agreement shall be signed by the owner or custodian of the livestock
20 animal. A copy of the signed agreement shall be provided to the owner
21 or custodian of the livestock animal. A violation of the custody
22 agreement may result in the seizure of the livestock animal.

23 ~~(3)-(4)~~ Any livestock animal, equipment, device, or other
24 property or things involved in a violation of section 54-903 or
25 54-904 shall be subject to seizure, and distribution or disposition

1 may be made in such manner as the court may direct. Any livestock
2 animal involved in a violation of section 54-903 or 54-904 shall be
3 subject to seizure. Distribution or disposition shall be made under
4 section 9 of this act as the court may direct. Any livestock animal
5 seized under this subsection may be kept by the law enforcement
6 officer on the property of the owner or custodian of such livestock
7 animal.

8 (5) A law enforcement officer may euthanize or cause a
9 livestock animal seized or kept pursuant to this section to be
10 euthanized if the animal is severely emaciated, injured, disabled, or
11 diseased past recovery for any useful purpose. The law enforcement
12 officer shall notify the owner or custodian prior to the euthanasia
13 if practicable under the circumstances. An owner or custodian may
14 request that a veterinarian of the owner's or custodian's choosing
15 view the livestock animal and be present upon examination of the
16 livestock animal, and no livestock animal shall be euthanized without
17 reasonable accommodation to provide for the presence of the owner's
18 or custodian's veterinarian when requested. However, attempted
19 notification of the owner or custodian or the presence of the owner's
20 or custodian's veterinarian shall not unduly delay euthanasia when
21 necessary. The law enforcement officer may forgo euthanasia if the
22 care of the livestock animal is placed with the owner's or
23 custodian's veterinarian.

24 ~~(4) Any~~ (6) A law enforcement officer acting under this
25 section shall not be liable for damage to property if such damage is

1 not the result of the officer's negligence.

2 Sec. 9. (1) After a livestock animal has been seized, the
3 agency that took custody of the livestock animal shall, within seven
4 days after the date of seizure, file a complaint with the district
5 court in the county in which the animal was seized for a hearing to
6 determine the disposition and the cost for the care of the livestock
7 animal. Notice of such hearing shall be given to the owner or
8 custodian from whom such livestock animal was seized and to any
9 holder of a lien or security interest of record in such livestock
10 animal, specifying the date, time, and place of such hearing. Such
11 notice shall be served by personal or residential service or by
12 certified mail. If such notice cannot be served by such methods,
13 service may be made by publication in the county where such livestock
14 animal was seized. Such publication shall be made after application
15 and order of the court. The hearing shall be held as soon as
16 practicable and not more than ten business days after the date of
17 application for the hearing unless otherwise determined and ordered
18 by the court.

19 (2) If the court finds that probable cause exists that
20 the livestock animal has been abandoned or cruelly neglected or
21 mistreated, the court may:

22 (a) Order immediate forfeiture of the livestock animal to
23 the agency that took custody of the livestock animal and authorize
24 appropriate disposition of the livestock animal, including sale at
25 public auction, adoption, donation to a suitable shelter, humane

1 destruction, or any other manner of disposition approved by the
2 court. With respect to sale of a livestock animal, the proceeds shall
3 first be applied to the cost of sale and then to the expenses for the
4 care of the livestock animal and the remaining proceeds, if any,
5 shall be paid to the holder of a lien or security interest of record
6 in such livestock animal and then to the owner of the livestock
7 animal;

8 (b) Issue an order to the owner or custodian setting
9 forth the conditions under which custody of the livestock animal
10 shall be returned to the owner or custodian from whom the livestock
11 animal was seized or to any other person claiming an interest in the
12 livestock animal. Such order may include any management actions
13 deemed necessary and prudent by the court, including culling by sale,
14 humane disposal, or forfeiture and securing necessary care, including
15 veterinary care, sufficient for the maintenance of any remaining
16 livestock animal; or

17 (c) Order the owner or custodian from whom the livestock
18 animal was seized to post a bond or other security, or to otherwise
19 order payment, in an amount that is sufficient to reimburse all
20 reasonable expenses, as determined by the court, for the care of the
21 livestock animal, including veterinary care, incurred by the agency
22 from the date of seizure and necessitated by the possession of the
23 livestock animal. Payments shall be for a succeeding thirty-day
24 period with the first payment due on or before the tenth day
25 following the hearing. Payments for each subsequent succeeding

1 thirty-day period, if any, shall be due on or before the tenth day of
2 such period. The bond or security shall be placed with, or payments
3 ordered under this subdivision shall be paid to, the agency that took
4 custody of the livestock animal. The agency shall provide an
5 accounting of expenses to the court when the livestock animal is no
6 longer in the custody of the agency or upon request by the court. The
7 agency may petition the court for a subsequent hearing under this
8 subsection at any time. The hearing shall be held as soon as
9 practicable and not more than ten business days after the date of
10 application for the hearing unless otherwise determined and ordered
11 by the court. When all expenses covered by the bond or security are
12 exhausted and subsequent bond or security has not been posted or if a
13 person becomes delinquent in his or her payments for the expenses of
14 the livestock animal, the livestock animal shall be forfeited to the
15 agency.

16 (3) If custody of a livestock animal is returned to the
17 owner or custodian of the livestock animal prior to seizure, any
18 proceeds of a bond or security or any payment or portion of payment
19 ordered under this section not used for the care of the livestock
20 animal during the time the animal was held by the agency shall be
21 returned to the owner or custodian.

22 (4) Nothing in this section shall prevent the euthanasia
23 of a seized livestock animal at any time as determined necessary by a
24 law enforcement officer or as authorized by court order.

25 (5) An appeal may be entered within ten days after a

1 hearing under this section. Any person filing an appeal shall post a
2 bond or security sufficient to pay reasonable costs of care of the
3 livestock animal for thirty days. Such payment will be required for
4 each succeeding thirty-day period until the appeal is final.

5 (6) If the owner or custodian from whom the livestock
6 animal was seized is found not guilty in an associated criminal
7 proceeding, all funds paid for the expenses of the livestock animal
8 remaining after the actual expenses incurred by the agency have been
9 paid shall be returned to such person.

10 (7) This section shall not preempt any ordinance of a
11 city of the metropolitan or primary class.

12 Sec. 10. Original sections 2-3812, 38-3330, 54-742,
13 54-901, 54-902, 54-905, and 54-906, Reissue Revised Statutes of
14 Nebraska, and section 29-818, Revised Statutes Cumulative Supplement,
15 2012, are repealed.