

ENGROSSED LEGISLATIVE BILL 133

Introduced by Holdcroft, 36.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-1008, 28-1012, 28-1012.01, and 28-1019, Revised Statutes Cumulative Supplement, 2024; to define a term; to provide powers, duties, and immunity to animal control officers; to change provisions relating to seizure of certain animals; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 28-1008, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

(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. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Animal control officer means a person authorized by a city, village, or county to enforce any state or local animal control law, rule, regulation, resolution, or ordinance concerning animal welfare;

(4) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, kick, hit, strike in any manner, 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) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(7) 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 a special investigator appointed as a deputy state sheriff as authorized pursuant to section 81-201 while acting within the authority of the Director of Agriculture under the Commercial Dog and Cat Operator Inspection Act;

(8) 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;

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

(10) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer 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 injury or illness 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 28-1012, Revised Statutes Cumulative Supplement, 2024, is

amended to read:

28-1012 (1) Any law enforcement officer or animal control officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry by a law enforcement officer or an animal control officer who is accompanied by a law enforcement officer upon private property to inspect, care for, or impound the animal.

(2) It shall be the duty of any law enforcement officer or animal control officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated to make prompt investigation of such violation. Any law enforcement officer or animal control officer may, in lieu of making an arrest, issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.

(3) Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 28-1012.01 as the court may direct.

(4) Any law enforcement officer or animal control officer acting under this section shall not be liable for damage to property if such damage is not the result of the law enforcement officer's or animal control officer's negligence.

Sec. 3. Section 28-1012.01, Revised Statutes Cumulative Supplement, 2024, is amended to read:

28-1012.01 (1) Any animal seized under a search warrant or validly seized without a warrant may be kept on the property of the owner or custodian by the law enforcement officer or animal control officer seizing the animal. When a criminal complaint has been filed in connection with a seized animal, the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the animal and to determine any rights therein, including

questions respecting the title, possession, control, and disposition thereof as provided in this section.

(2) Within ten business days after the date an animal has been seized pursuant to section 28-1006 or 28-1012, the county attorney of the county where the animal was seized shall file an application with the court having appropriate jurisdiction for a hearing to determine the disposition and the cost for the care of the animal. Notice of such hearing shall be given to the owner or custodian from whom such animal was seized and to any holder of a lien or security interest of record in such animal specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(3) If the court finds that probable cause exists that an animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the animal to the agency that took custody of the animal and authorize appropriate disposition of the animal including adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. The court may consider adoption alternatives through humane societies or comparable institutions and 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;

(b) Issue an order to the owner or custodian setting forth the conditions

under which custody of the animal shall be returned to the owner or custodian from whom the animal was seized or to any other person claiming an interest in the animal. Such order may include any management actions deemed necessary and prudent by the court, including reducing the number of animals harbored or owned by the owner or custodian by humane destruction or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining animals; or

(c) Order the owner or custodian from whom the animal was seized to post a bond or other security or to otherwise order payment in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the animal including veterinary care incurred by the agency from the date of seizure and necessitated by the possession of the animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the animal. The agency shall provide an accounting of expenses to the court when the animal is no longer in the custody of the agency or upon request by the court. The county attorney of the county where the animal was seized may apply to the court for a subsequent hearing under this section at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted, or if a person becomes delinquent in his or her payments for the expenses of the animal, the animal shall be forfeited to the agency.

(4) If custody of an animal is returned to the owner or custodian prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the animal during the time the animal was held by the agency shall be returned to the owner or

custodian.

(5) Nothing in this section shall prevent the humane destruction of a seized animal at any time as determined necessary by a licensed veterinarian or as authorized by court order.

(6) An appeal may be filed within ten days after a hearing held under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the animal for thirty days. Such bond or surety shall be required for each succeeding thirty-day period until the appeal is final.

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

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

Sec. 4. Section 28-1019, Revised Statutes Cumulative Supplement, 2024, is amended to read:

28-1019 (1)(a) If a person is convicted of a 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 section 28-1005.01 or 28-1009 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 any law enforcement officer or animal control officer. Distribution or disposition

shall be made under section 28-1012.01.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 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. 5. Original sections 28-1008, 28-1012, 28-1012.01, and 28-1019, Revised Statutes Cumulative Supplement, 2024, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 133 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR