

LEGISLATIVE BILL 273

Approved by the Governor March 20, 2003

Introduced by Chambers, 11; Price, 26; Byars, 30; Hartnett, 45

AN ACT relating to animals; to amend sections 28-1005, 28-1008, and 28-1013 to 28-1016, Reissue Revised Statutes of Nebraska, and sections 28-101 and 28-1009, Revised Statutes Supplement, 2002; to define terms; to require reporting of animal abandonment, neglect, or mistreatment as prescribed; to provide a penalty; to change penalties relating to pitting an animal against another and abandoning, neglecting, or mistreating an animal as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. (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 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 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 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 made 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 made 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 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. 2. Section 28-101, Revised Statutes Supplement, 2002, is amended to read:

28-101. Sections 28-101 to 28-1348 and section 1 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 3. Section 28-1005, Reissue Revised Statutes of Nebraska, is amended to read:

28-1005. (1) No person shall knowingly:

(a) Promote, engage in, or be employed at dogfighting, cockfighting,

bearbaiting, or pitting an animal against another;

(b) Receive money for the admission of another person to a place kept for such purpose;

(c) Own, use, train, sell, or possess an animal for such purpose; or

(d) Permit any act as described in this subsection to occur on any premises owned or controlled by him or her.

(2) Any person violating subsection (1) of this section shall be guilty of a ~~Class I misdemeanor for the first conviction. A person convicted of violating any provision of subsection (1) of this section for a second or subsequent time shall be guilty of a Class IV felony.~~

(3) No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in subsection (1) of this section. Any person who violates any provision of this subsection shall be guilty of a ~~Class I misdemeanor~~ Class IV felony.

Sec. 4. Section 28-1008, Reissue Revised Statutes of Nebraska, is amended to read:

28-1008. For purposes of sections 28-1008 to 28-1016 and section 1 of this act:

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

(4) 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;

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

(6) 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; and

(7) 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.

Sec. 5. Section 28-1009, Revised Statutes Supplement, 2002, is amended to read:

28-1009. (1) A person who abandons or cruelly neglects an animal is guilty of a ~~Class II misdemeanor for the first offense and a Class I misdemeanor for any subsequent offense.~~

~~(2) A~~ (2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IV felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IV felony.

Sec. 6. Section 28-1013, Reissue Revised Statutes of Nebraska, is amended to read:

28-1013. Sections 28-1008 to 28-1016 and section 1 of this act shall not apply to:

(1) Care or treatment of an animal by a veterinarian licensed under the Nebraska Veterinary Practice Act;

(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

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, 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. 7. 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 28-1016 and section 1 of this act for the protection of the public, public health, and animals within its jurisdiction.

Sec. 8. 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 28-1016 and section 1 of this act if the animal is abandoned or cruelly neglected.

Sec. 9. Section 28-1016, Reissue Revised Statutes of Nebraska, is amended to read:

28-1016. Nothing in sections 28-1008 to 28-1016 and section 1 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. 10. Original sections 28-1005, 28-1008, and 28-1013 to 28-1016, Reissue Revised Statutes of Nebraska, and sections 28-101 and 28-1009, Revised Statutes Supplement, 2002, are repealed.