

LEGISLATIVE BILL 865

Approved by the Governor March 17, 2010

Introduced by Fischer, 43; Carlson, 38; Cornett, 45; Dubas, 34; Schilz, 47; Coash, 27; McCoy, 39; Price, 3.

FOR AN ACT relating to animals; to amend sections 28-1008 and 28-1013, Revised Statutes Supplement, 2009; to adopt the Livestock Animal Welfare Act; to eliminate penalties and provisions relating to bovines and equines; to harmonize provisions; to provide a duty for the Revisor of Statutes; to repeal the original sections; and to outright repeal sections 28-1009.02, 28-1009.03, 28-1013.01, and 28-1013.02, Reissue Revised Statutes of Nebraska.

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

Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Livestock Animal Welfare Act.

Sec. 2. For purposes of the Livestock Animal Welfare Act:

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

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

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

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

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

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

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

(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 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) Livestock animal means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry; and

(10) Serious injury or illness includes any injury or illness to any livestock 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.

Sec. 3. (1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects a livestock animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal, in which case it is a Class IV felony.

(2) A person who cruelly mistreats a livestock animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

Sec. 4. A person commits indecency with a livestock animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with a livestock animal is a Class III misdemeanor.

Sec. 5. (1) In addition to any other sentence given for a violation of section 3 or 4 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 of a livestock animal involved in the violation of such section. Whenever the court believes that such reimbursement is a proper sentence or at the prosecuting attorney's request, 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.

(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all expenses incurred by a public or private agency in conjunction with the care, impoundment, or disposal of a livestock animal. The expenses shall be a lien upon the livestock animal.

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

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

(3) Any livestock animal, equipment, device, or other property or things involved in a violation of section 3 or 4 of this act shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct.

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

Sec. 7. The Livestock Animal Welfare Act shall not apply to:

(1) Care or treatment of a livestock animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act 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) Euthanasia of a livestock animal or livestock animals as conducted by the owner or by his or her agent or a veterinarian upon the owner's request;

(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, 2010;

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

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

(6) Commonly accepted animal training practices; and

(7) Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, and pulling contests.

Sec. 8. (1) For purposes of this section:

(a) Employee means any employee of a governmental agency dealing with livestock animal control or animal abuse; and

(b) 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.

(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 a livestock 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 livestock animal by facsimile transmission of a written report presented in the form described in subsection (5) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the livestock 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 livestock 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) 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 livestock animal owner or custodian, whether a business or individual;

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

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

(6) 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 livestock animal abandonment, livestock animal cruel neglect, or livestock animal 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 livestock animal abandonment, livestock animal cruel neglect, or livestock animal 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. 9. (1) If a person is convicted of a Class IV felony under section 3 of this act, the sentencing court shall order such person not to own or possess a livestock 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.

(2) If a person is convicted of a Class I misdemeanor under section 3 of this act or a Class III misdemeanor under section 4 of this act, the sentencing court may order such person not to own or possess any livestock 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.

(3) Any livestock animal involved in a violation of a court order under subsection (1) or (2) of this section shall be subject to seizure by law enforcement.

Sec. 10. (1) Any livestock 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 livestock animal health care professional to reasonably suspect that a livestock 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 a livestock 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, a livestock 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 whose practice involves care of livestock animals.

Sec. 11. (1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

Sec. 12. (1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

Sec. 13. Section 28-1008, Revised Statutes Supplement, 2009, 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. ~~The term Animal does not include an uncaptured wild creature or a livestock animal as defined in section 2 of this act;~~

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

~~(4) (3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;~~

~~(5) (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;~~

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

~~(7) (5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;~~

~~(8) (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. 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) (7) 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) (8) 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) (9) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;~~

~~(12) (10) 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) (11) 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. 14. Section 28-1013, Revised Statutes Supplement, 2009, 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 Veterinary Medicine and Surgery Practice Act 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,~~ 2010;

(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) (5) 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) (6) 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) (7) Killing of house or garden pests; and~~

~~(10) Commonly followed practices occurring in conjunction with the~~

~~slaughter of animals for feed or byproducts; and~~

~~(11)~~ (8) Commonly accepted animal training practices.

Sec. 15. The Revisor of Statutes shall codify the Livestock Animal Welfare Act in Chapter 54.

Sec. 16. Original sections 28-1008 and 28-1013, Revised Statutes Supplement, 2009, are repealed.

Sec. 17. The following sections are outright repealed: Sections 28-1009.02, 28-1009.03, 28-1013.01, and 28-1013.02, Reissue Revised Statutes of Nebraska.