

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 585

Introduced by Linehan, 39.

Read first time January 18, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to animals; to amend sections 28-1009,
2 28-1012.01, 28-1019, 54-617, 54-618, 54-620, 54-622, 54-622.01,
3 54-623, 54-623.01, and 54-624, Reissue Revised Statutes of Nebraska;
4 to change a deadline for filing a hearing application regarding
5 seized animals; to define and redefine terms; to change provisions
6 relating to determination of a dangerous dog; to provide a
7 requirement as prescribed; to harmonize provisions; and to repeal
8 the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1009, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1009 (1) A person who intentionally, knowingly, or recklessly
4 abandons or cruelly neglects an animal is guilty of a Class I misdemeanor
5 unless the abandonment or cruel neglect results in serious injury or
6 illness or death of the animal, in which case it is a Class IV felony.

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

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

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

20 (4) A person convicted of a Class I misdemeanor under this section
21 may also be subject to section 28-1019. A person convicted of a Class
22 IIIA felony or a Class IV felony under this section shall also be subject
23 to section 28-1019.

24 Sec. 2. Section 28-1012.01, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 28-1012.01 (1) Any animal seized under a search warrant or validly
27 seized without a warrant may be kept on the property of the owner or
28 custodian by the law enforcement officer seizing the animal. When a
29 criminal complaint has been filed in connection with a seized animal, the
30 court in which such complaint was filed shall have exclusive jurisdiction
31 for disposition of the animal and to determine any rights therein,

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

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

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

20 (a) Order immediate forfeiture of the animal to the agency that took
21 custody of the animal and authorize appropriate disposition of the animal
22 including adoption, donation to a suitable shelter, humane destruction,
23 or any other manner of disposition approved by the court. The court may
24 consider adoption alternatives through humane societies or comparable
25 institutions and the protection of such animal's welfare. For a humane
26 society or comparable institution to be considered as an adoption
27 alternative under this subsection, it must first be licensed by the
28 Department of Agriculture as having passed the inspection requirements in
29 the Commercial Dog and Cat Operator Inspection Act and paid the fee for
30 inspection under the act. The court may prohibit an adopting or
31 purchasing party from selling such animal for a period not to exceed one

1 year;

2 (b) Issue an order to the owner or custodian setting forth the
3 conditions under which custody of the animal shall be returned to the
4 owner or custodian from whom the animal was seized or to any other person
5 claiming an interest in the animal. Such order may include any management
6 actions deemed necessary and prudent by the court, including reducing the
7 number of animals harbored or owned by the owner or custodian by humane
8 destruction or forfeiture and securing necessary care, including
9 veterinary care, sufficient for the maintenance of any remaining animals;
10 or

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

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

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

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

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

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

20 Sec. 3. Section 28-1019, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-1019 (1)(a) If a person is convicted of a Class ~~IIIA~~ IV felony
23 under section 28-1005 or a Class IIIA felony or a Class IV felony under
24 section 28-1009, the sentencing court shall order such person not to own,
25 possess, or reside with any animal for at least five years after the date
26 of conviction, but such time restriction shall not exceed fifteen years.
27 Any person violating such court order shall be guilty of a Class I
28 misdemeanor.

29 (b) If a person is convicted of a Class I misdemeanor under section
30 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010,
31 the sentencing court may order such person not to own, possess, or reside

1 with any animal after the date of conviction, but such time restriction,
2 if any, shall not exceed five years. Any person violating such court
3 order shall be guilty of a Class IV misdemeanor.

4 (c) Any animal involved in a violation of a court order under
5 subdivision (a) or (b) of this subsection shall be subject to seizure by
6 law enforcement. Distribution or disposition shall be made under section
7 28-1012.01.

8 (2) This section shall not apply to any person convicted under
9 section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms
10 in writing that ownership or possession of or residence with an animal is
11 essential to the health of such person.

12 Sec. 4. Section 54-617, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 54-617 For purposes of sections 54-617 to 54-624 and section 6 of
15 this act:

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

21 (2) Animal control officer means any individual employed, appointed,
22 or authorized by an animal control authority for the purpose of aiding in
23 the enforcement of sections 54-617 to 54-624 and section 6 of this act or
24 any other law or ordinance relating to the licensure of animals, control
25 of animals, or seizure and impoundment of animals and includes any state
26 or local law enforcement officer or other employee whose duties in whole
27 or in part include assignments that involve the seizure and impoundment
28 of any animal;

29 (3)(a) Dangerous dog means a dog that, ~~according to the records of~~
30 ~~an animal control authority~~: (i) Has killed a human being; (ii) has
31 inflicted serious bodily injury on a human being that requires medical

1 treatment; (iii) has killed a domestic animal without provocation; (iv)
2 has inflicted serious bodily injury on a domestic animal without
3 provocation that requires medical treatment; or (v) ~~(iv)~~ has been
4 previously determined to be a potentially dangerous dog by an animal
5 control authority, the owner has received notice from an animal control
6 authority or an animal control officer of such determination, and the dog
7 inflicts an injury on a human being that does not require medical
8 treatment, injures a domestic animal, or threatens the safety of humans
9 or domestic animals.

10 (b)(i) A dog shall not be defined as a dangerous dog under
11 subdivision (3)(a)(ii) of this section, and the owner shall not be guilty
12 under section 54-622.01, if the individual was tormenting, abusing, or
13 assaulting the dog at the time of the injury or has, in the past, been
14 observed or reported to have tormented, abused, or assaulted the dog.

15 (ii) A dog shall not be defined as a dangerous dog under subdivision
16 (3)(a)(v) ~~(3)(a)(iv)~~ of this section, and the owner shall not be guilty
17 under section 54-622.01, if the injury, damage, or threat was sustained
18 by an individual who, at the time, was committing a willful trespass as
19 defined in section 20-203, 28-520, or 28-521, was committing any other
20 tort upon the property of the owner of the dog, was tormenting, abusing,
21 or assaulting the dog, or has, in the past, been observed or reported to
22 have tormented, abused, or assaulted the dog, or was committing or
23 attempting to commit a crime.

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

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

31 (5) Medical treatment means treatment administered by a physician or

1 other licensed health care professional that results in sutures or
2 surgery or treatment for one or more broken bones;

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

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

14 (8) Serious bodily injury has the same meaning as in section 28-109.

15 Sec. 5. Section 54-618, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 54-618 (1) A dangerous dog that has been judicially determined
18 ~~declared~~ as such shall be spayed or neutered and implanted with a
19 microchip identification number by a licensed veterinarian within thirty
20 days after such judicial determination ~~declaration~~. The cost of both
21 procedures is the responsibility of the owner of the dangerous dog.
22 Written proof of both procedures and the microchip identification number
23 shall be provided to the animal control authority after the procedures
24 are completed.

25 (2) No owner of a dangerous dog shall permit the dog to go beyond
26 the property of the owner unless the dog is restrained securely by a
27 chain or leash.

28 (3) Except as provided in subsection (4) of this section or for a
29 reasonable veterinary purpose, no owner of a dangerous dog shall
30 transport such dog or permit such dog to be transported to another
31 county, city, or village in this state.

1 (4) An owner of a dangerous dog may transport such dog or permit
2 such dog to be transported to another county, city, or village in this
3 state for the purpose of permanent relocation of the owner if the owner
4 has obtained written permission prior to such relocation from the animal
5 control authority of the county, city, or village in which the owner
6 resides and from the county, city, or village in which the owner will
7 reside. Each animal control authority may grant such permission based
8 upon a reasonable evaluation of both the owner and the dog, including if
9 the owner has complied with the laws of this state and of the county,
10 city, or village in which he or she resides with regard to dangerous dogs
11 after the dog was judicially determined to be ~~declared~~ dangerous. An
12 animal control authority shall not grant permission under this subsection
13 if the county, city, or village has an ordinance or resolution
14 prohibiting the relocation of dangerous dogs. After the permanent
15 relocation, the animal control authority of the county, city, or village
16 in which the owner resides shall monitor the owner and such dog for a
17 period of at least thirty days but not to exceed ninety days to ensure
18 the owner's compliance with the laws of this state and of such county,
19 city, or village with regard to dangerous dogs. Nothing in this
20 subsection shall permit the rescindment of the judicial determination
21 ~~declaration~~ of dangerous dog.

22 Sec. 6. No person shall knowingly, recklessly, or negligently own,
23 keep, or harbor a dangerous dog without complying with sections 54-618
24 and 54-619.

25 Sec. 7. Section 54-620, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 54-620 Any dangerous dog may be immediately confiscated by an animal
28 control officer if the owner is in violation of section 6 of this act
29 ~~sections 54-617 to 54-624~~. The owner shall be responsible for the
30 reasonable costs incurred by the animal control authority for the care of
31 a dangerous dog confiscated by an animal control officer or for the

1 destruction of any dangerous dog if the action by the animal control
2 authority is pursuant to law and if the owner violated section 6 of this
3 act sections 54-617 to 54-624.

4 Sec. 8. Section 54-622, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 54-622 Except as provided in section 54-622.01, any owner who
7 violates sections 54-617 to 54-621 and section 6 of this act shall be
8 guilty of a Class IV misdemeanor.

9 Sec. 9. Section 54-622.01, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 54-622.01 (1) Any owner whose dangerous dog inflicts on a human
12 being a serious bodily injury ~~as defined in section 28-109~~ is guilty of a
13 Class I misdemeanor for the first offense and a Class IV felony for a
14 second or subsequent offense, whether or not the same dangerous dog is
15 involved.

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

20 Sec. 10. Section 54-623, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 54-623 (1) Any owner convicted of a violation of sections 54-617 to
23 54-624 and section 6 of this act shall not own a dangerous dog within ten
24 years after such conviction. Any owner violating this subsection shall be
25 guilty of a Class IIIA misdemeanor, and the dog shall be treated as
26 provided in subsection (2) of this section.

27 (2) Except as provided in section 54-622.01, if a dangerous dog of
28 an owner with a prior conviction under sections 54-617 to 54-624 and
29 section 6 of this act attacks or bites a human being or domestic animal,
30 the owner shall be guilty of a Class IIIA misdemeanor. In addition, the
31 dangerous dog shall be immediately confiscated by an animal control

1 authority, placed in quarantine for the proper length of time, and
2 thereafter destroyed in an expeditious and humane manner.

3 Sec. 11. Section 54-623.01, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 54-623.01 Each county shall designate an animal control authority
6 that shall be responsible for enforcing sections 54-617 to 54-624 and
7 section 6 of this act and the laws of such county regarding dangerous
8 dogs.

9 Sec. 12. Section 54-624, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 54-624 Nothing in sections 54-617 to 54-623.01 and section 6 of this
12 act shall be construed to restrict or prohibit any governing board of any
13 county, city, or village from establishing and enforcing laws or
14 ordinances at least as stringent as the provisions of sections 54-617 to
15 54-623.01 and section 6 of this act.

16 Sec. 13. Original sections 28-1009, 28-1012.01, 28-1019, 54-617,
17 54-618, 54-620, 54-622, 54-622.01, 54-623, 54-623.01, and 54-624, Reissue
18 Revised Statutes of Nebraska, are repealed.