

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1084

Introduced by Karpisek, 32.

Read first time January 21, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections
2 28-1006, 28-1012, 28-1019, and 29-818, Reissue Revised
3 Statutes of Nebraska; to provide for seizures of pet
4 animals and equines as prescribed; to provide procedures;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1006, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1006 (1) It shall be the duty of the sheriff, a police
4 officer, or the Nebraska State Patrol to make prompt investigation
5 of and arrest for any violation of section 28-1005.

6 (2) Any animal, equipment, device, or other property
7 or things involved in any violation of section 28-1005 shall be
8 subject to seizure, and disposition may be made in accordance
9 with the method of disposition directed for contraband in ~~section~~
10 sections 29-818 and 29-820.

11 (3) Any animal involved in any violation of section
12 28-1005 shall be subject to seizure. Distribution or disposition
13 ~~may~~ shall be made as provided in section 29-818 and in such manner
14 as the court may direct. The court may give preference to adoption
15 alternatives through humane societies or comparable institutions
16 and to the protection of such animal's welfare. For a humane
17 society or comparable institution to be considered as an adoption
18 alternative under this subsection, it must first be licensed by
19 the Department of Agriculture as having passed the inspection
20 requirements in the Commercial Dog and Cat Operator Inspection
21 Act and paid the fee for inspection under the act. The court may
22 prohibit an adopting or purchasing party from selling such animal
23 for a period not to exceed one year.

24 (4) In addition to any other sentence given for a
25 violation of section 28-1005, the sentencing court may order the

1 defendant to reimburse a public or private agency for expenses
2 incurred in conjunction with the care, impoundment, or disposal,
3 including adoption, of an animal involved in the violation of
4 such section. Whenever the court believes that such reimbursement
5 may be a proper sentence or the prosecuting attorney requests,
6 the court shall order that the presentence investigation report
7 include documentation regarding the nature and amount of the
8 expenses incurred. The court may order that reimbursement be made
9 immediately, in specified installments, or within a specified
10 period of time, not to exceed five years after the date of
11 judgment.

12 Sec. 2. Section 28-1012, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-1012 (1) Any law enforcement officer who has reason
15 to believe that an animal has been abandoned or is being cruelly
16 neglected or cruelly mistreated may seek a warrant authorizing
17 entry upon private property to inspect, care for, or impound the
18 animal.

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

23 (3) Any animal, equipment, device, or other property or
24 things involved in a violation of section 28-1009 or 28-1010 shall
25 be subject to seizure and distribution or disposition ~~may~~ shall

1 be made under section 29-818 and in such manner as the court may
2 direct.

3 (4) Any animal involved in a violation of section
4 28-1009 or 28-1010 shall be subject to seizure. Distribution
5 or disposition ~~may~~ shall be made under section 29-818 and in such
6 manner as the court may direct. The court may consider adoption
7 alternatives through humane societies or comparable institutions
8 and the protection of such animal's welfare. For a humane
9 society or comparable institution to be considered as an adoption
10 alternative under this subsection, it must first be licensed by
11 the Department of Agriculture as having passed the inspection
12 requirements in the Commercial Dog and Cat Operator Inspection
13 Act and paid the fee for inspection under the act. The court may
14 prohibit an adopting or purchasing party from selling such animal
15 for a period not to exceed one year.

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

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

21 28-1019 (1) (a) If a person is convicted of a Class IV
22 felony under section 28-1005 or 28-1009, the sentencing court shall
23 order such person not to own, possess, or reside with any animal
24 for at least five years after the date of conviction, but such time
25 restriction shall not exceed fifteen years. Any person violating

1 such court order shall be guilty of a Class I misdemeanor.

2 (b) If a person is convicted of a Class I misdemeanor
3 under subdivision (2)(a) of section 28-1009 or a Class III
4 misdemeanor under section 28-1010, the sentencing court may order
5 such person not to own, possess, or reside with any animal after
6 the date of conviction, but such time restriction, if any, shall
7 not exceed five years. Any person violating such court order shall
8 be guilty of a Class IV misdemeanor.

9 (c) Any animal involved in a violation of a court order
10 under subdivision (a) or (b) of this subsection shall be subject
11 to seizure by law enforcement. Distribution or disposition shall be
12 made under section 29-818.

13 (2) This section shall not apply to any person convicted
14 under section 28-1005 or 28-1009 if a licensed physician confirms
15 in writing that ownership or possession of or residence with an
16 animal is essential to the health of such person.

17 Sec. 4. Section 29-818, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 29-818 ~~Property~~ (1) Except for pet animals or equines
20 as provided in subsection (2) of this section, property seized
21 under a search warrant or validly seized without a warrant shall
22 be safely kept by the officer seizing the same unless otherwise
23 directed by the judge or magistrate, and shall be so kept so long
24 as necessary for the purpose of being produced as evidence on any
25 trial. Property seized may not be taken from the officer having it

1 in custody by replevin or other writ so long as it is or may be
2 required as evidence in any trial, nor may it be so taken in any
3 event where a complaint has been filed in connection with which
4 the property was or may be used as evidence, and the court in
5 which such complaint was filed shall have exclusive jurisdiction
6 for disposition of the property or funds and to determine rights
7 therein, including questions respecting the title, possession,
8 control, and disposition thereof.

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

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

24 (c) At the hearing the court shall determine the
25 disposition of the pet animal or equine and if the court determines

1 that any pet animal or equine shall not be returned, the court
2 shall order the person from whom the pet animal or equine was
3 seized to pay all expenses for the support and maintenance of
4 the pet animal or equine, including expenses for shelter, food,
5 veterinary care, and board, necessitated by the possession of the
6 pet animal or equine. At the hearing, the court shall also consider
7 the person's ability to pay for the expenses of the pet animal
8 or equine and the amount of such payments. Payments shall be for
9 a succeeding thirty-day period with the first payment due on or
10 before the tenth day following the hearing. Payments for each
11 subsequent succeeding thirty-day period, if any, shall be due on or
12 before the tenth day of such period.

13 (d) If a person becomes delinquent in his or her payments
14 for the expenses of the pet animal or equine, the court shall hold
15 a hearing to determine the disposition of the seized pet animal
16 or equine. Notice of such hearing shall be given as provided in
17 subdivision (b) of this subsection.

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

24 (f) Should the person be found not guilty, all funds paid
25 for the expenses of the pet animal or equine shall be returned to

1 the person.

2 (g) For purposes of this subsection:

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

14 (ii) Equine means a horse, pony, donkey, mule, hinny, or
15 llama.

16 (h) This section shall not preempt, and shall not be
17 construed to preempt, any ordinance of a city of the metropolitan
18 class.

19 Sec. 5. Original sections 28-1006, 28-1012, 28-1019, and
20 29-818, Reissue Revised Statutes of Nebraska, are repealed.