

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
FIRST SPECIAL SESSION

**LEGISLATIVE BILL 6**

Introduced by Carlson, 38.

Read first time November 04, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to animals; to amend sections 28-1006, 28-1012,  
2 and 29-820, Reissue Revised Statutes of Nebraska, section  
3 54-630, Revised Statutes Cumulative Supplement, 2008, and  
4 sections 54-627 and 54-628, Revised Statutes Supplement,  
5 2009; to change inspection provisions of the Commercial  
6 Dog and Cat Operator Inspection Act; to harmonize  
7 provisions; and to repeal the original sections.

8 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 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 be made in such manner as the court may direct. The court may  
14 give preference to adoption alternatives through humane societies  
15 or comparable institutions and to the protection of such animal's  
16 welfare. For a humane society or comparable institution to be  
17 considered as an adoption alternative under this subsection, it  
18 must first be licensed as an animal shelter by the Department  
19 of Agriculture ~~as having passed the inspection requirements in~~  
20 under the Commercial Dog and Cat Operator Inspection Act. ~~and paid~~  
21 ~~the fee for inspection under the act.~~ The court may prohibit an  
22 adopting or purchasing party from selling such animal for a period  
23 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 be made

1 in such manner as the court may direct.

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

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

18 Sec. 3. Section 29-820, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 29-820 (1) Unless other disposition is specifically  
21 provided by law, when property seized or held is no longer required  
22 as evidence, it shall be disposed of by the law enforcement agency  
23 on such showing as the law enforcement agency may deem adequate, as  
24 follows:

25 (a) Property stolen, embezzled, obtained by false

1 pretenses, or otherwise obtained unlawfully from the rightful owner  
2 thereof shall be restored to the owner;

3 (b) Money shall be restored to the owner unless it was  
4 used in unlawful gambling or lotteries or it was used or intended  
5 to be used to facilitate a violation of Chapter 28, article 4, in  
6 which case the money shall be forfeited and disposed of as required  
7 by Article VII, section 7, of the Constitution of Nebraska;

8 (c) Property which is unclaimed or the ownership of which  
9 is unknown shall be sold at a public auction held by the officer  
10 having custody thereof and the net proceeds disposed of as provided  
11 in subdivision (b) of this subsection, as shall any money which is  
12 unclaimed or the ownership of which is unknown;

13 (d) Except as provided in subdivision (2)(b) of this  
14 section, articles of contraband shall be destroyed; and

15 (e) Except as provided in subdivision (2)(a) of this  
16 section, firearms, ammunition, explosives, bombs, and like devices  
17 which have been used in the commission of crime shall be destroyed.

18 (2) When the following property is seized or held and is  
19 no longer required as evidence, such property shall be disposed of  
20 on order of the court as the court may deem adequate:

21 (a) Firearms which may have a lawful use; and

22 (b) Goods which are declared to be contraband but may  
23 reasonably be returned to a condition or state in which such goods  
24 may be lawfully used, possessed, or distributed by the public.

25 (3) When any animal as defined by section 28-1008 is

1 seized or held and is no longer required as evidence, such animal  
2 may be disposed of in such manner as the court may direct. The  
3 court may consider adoption alternatives through humane societies  
4 or comparable institutions and the protection of such animal's  
5 welfare. For a humane society or comparable institution to be  
6 considered as an adoption alternative under this subsection, it  
7 must first be licensed as an animal shelter by the Department  
8 of Agriculture ~~as having passed the inspection requirements in~~  
9 under the Commercial Dog and Cat Operator Inspection Act. ~~and paid~~  
10 ~~the fee for inspection under the act.~~ The court may prohibit an  
11 adopting or purchasing party from selling such animal for a period  
12 not to exceed one year.

13 (4) Unless otherwise provided by law, all other property  
14 shall be disposed of in such manner as the court in its sound  
15 discretion shall direct.

16 Sec. 4. Section 54-627, Revised Statutes Supplement,  
17 2009, is amended to read:

18 54-627 (1) A person shall not operate as a commercial  
19 breeder, a dealer, a boarding kennel, an animal control facility,  
20 or an animal shelter unless the person obtains the appropriate  
21 license as a commercial breeder, dealer, boarding kennel, animal  
22 control facility, or animal shelter. A person shall not operate  
23 as a pet shop unless the person obtains a license as a pet  
24 shop. A pet shop shall only be subject to the Commercial Dog and  
25 Cat Operator Inspection Act and the rules and regulations adopted

1 and promulgated pursuant thereto in any area or areas of the  
2 establishment used for the keeping and selling of pet animals. If  
3 a facility listed in this subsection is not located at the owner's  
4 residence, the name and address of the owner shall be posted on the  
5 premises.

6 (2) An applicant for a license shall submit an  
7 application for the appropriate license to the department, on a  
8 form prescribed by the department, together with the annual license  
9 fee. Such fee is nonreturnable. Upon receipt of the application and  
10 annual license fee and upon completion of a qualifying inspection  
11 if ~~required~~ an inspection is done pursuant to section 54-630 for an  
12 initial license applicant or if a qualifying inspection is deemed  
13 appropriate and done by the department before a license is issued  
14 for any other applicant, the appropriate license may be issued by  
15 the department. Such license shall not be transferable to another  
16 person or location.

17 (3)(a) Except as otherwise provided in this subsection,  
18 the annual license fee shall be determined according to the  
19 following fee schedule based upon the daily average number of dogs  
20 or cats housed by the licensee over the previous annual licensure  
21 period:

22 (i) Ten or fewer dogs or cats, one hundred fifty dollars;

23 (ii) Eleven to fifty dogs or cats, two hundred dollars;

24 and

25 (iii) More than fifty dogs or cats, two hundred fifty

1 dollars.

2 (b) The initial license fee for any person required to  
3 be licensed pursuant to the act shall be one hundred twenty-five  
4 dollars.

5 (c) The annual license fee for a licensee that does not  
6 house dogs or cats shall be one hundred fifty dollars.

7 (d) The fees charged under this subsection may be  
8 increased or decreased by the director after a public hearing  
9 is held outlining the reason for any proposed change in the fee.  
10 The maximum fee shall not exceed three hundred fifty dollars.

11 (4) A license to operate as a commercial breeder, a  
12 license to operate as a dealer, a license to operate as a boarding  
13 kennel, or a license to operate as a pet shop shall be renewed by  
14 filing with the department at least thirty days prior to April 1  
15 of each year a renewal application and the annual license fee. A  
16 license to operate as an animal control facility or animal shelter  
17 shall be renewed by filing with the department at least thirty  
18 days prior to October 1 of each year a renewal application and  
19 the annual license fee. Failure to renew a license prior to the  
20 expiration of the license shall result in an additional fee of  
21 twenty dollars required upon application to renew such license.

22 (5) A licensee under this section shall make its premises  
23 available for inspection pursuant to section 54-628 during normal  
24 business hours.

25 (6) The state or any political subdivision of the state



1 which contracts out its animal control duties to a facility not  
2 operated by the state or any political subdivision of the state  
3 may be exempted from the licensing requirements of this section if  
4 such facility is licensed as an animal control facility or animal  
5 shelter for the full term of the contract with the state or its  
6 political subdivision.

7           Sec. 5. Section 54-628, Revised Statutes Supplement,  
8 2009, is amended to read:

9           54-628 (1) ~~The department shall inspect all licensees at~~  
10 ~~least once in a twenty-four-month period to determine whether~~  
11 ~~the licensee is in compliance with the Commercial Dog and~~  
12 ~~Cat Operator Inspection Act. The department shall establish an~~  
13 ~~inspection program for applicants and licensees to determine~~  
14 ~~whether the standards of care of the Commercial Dog and Cat~~  
15 ~~Operator Inspection Act are being met. Any additional inspector~~  
16 or other field personnel employed by the department to carry out  
17 inspections pursuant to the act that are funded through General  
18 Fund appropriations to the Bureau of Animal Industry shall be  
19 assigned to the Bureau of Animal Industry and shall be available  
20 for temporary reassignment as needed to other activities and  
21 functions of the Bureau of Animal Industry in the event of a  
22 livestock disease emergency or any other threat to livestock or  
23 public health. When an inspection produces evidence of a violation  
24 of the act or the rules and regulations of the department, a copy  
25 of a written report of the inspection and violations shown thereon,

1 prepared by the inspector, shall be given to the applicant or  
2 licensee, together with written notice to comply within the time  
3 limit established by the department and set out in such notice.

4 (2) If deemed necessary under the act or any rule  
5 or regulation adopted and promulgated pursuant to the act, the  
6 department may, for purposes of inspection, enter the premises of  
7 any applicant or licensee during normal business hours and in a  
8 reasonable manner, including all premises in or upon which dogs  
9 or cats are housed, sold, exchanged, or leased or are suspected  
10 of being housed, sold, exchanged, or leased. For purposes of this  
11 subsection, premises includes all buildings, vehicles, equipment,  
12 cages, kennels, containers, and pens and all records on such  
13 premises. The department shall not be subject to any action for  
14 trespass or damages resulting from compliance with this subsection.  
15 Pursuant to an inspection under this subsection, the department  
16 may:

17 (a) Enter the premises of any applicant for a license  
18 under the act to determine if the applicant meets the requirements  
19 for licensure under the act;

20 (b) Access all premises and examine and copy all records  
21 pertaining to compliance with the act and the rules or regulations  
22 adopted and promulgated under the act. The department shall have  
23 authority to gather evidence, including, but not limited to,  
24 photographs;

25 (c) Inspect or reinspect any vehicle or carrier

1 transporting or holding dogs or cats that is in the state to  
2 determine compliance with the act or any rules or regulations  
3 adopted and promulgated under the act;

4 (d) Obtain an inspection warrant in the manner prescribed  
5 in sections 29-830 to 29-835 if any person refuses to allow the  
6 department to conduct an inspection pursuant to this section; or

7 (e) Issue and enforce a written stop-movement order  
8 pursuant to section 54-628.01.

9 (3) For purposes of this section, the private residence  
10 of any applicant or licensee shall be available for purposes of  
11 inspection only if dogs or cats are housed in a primary enclosure  
12 as defined in 9 C.F.R. 1.1 within the residence, including a room  
13 in such residence, and only such portion of the residence that is  
14 used as a primary enclosure shall be open to an inspection pursuant  
15 to this section.

16 Sec. 6. Section 54-630, Revised Statutes Cumulative  
17 Supplement, 2008, is amended to read:

18 54-630 Before the department approves an application for  
19 an initial license, an inspector of the department ~~shall~~ may  
20 inspect the operation of the applicant to determine whether the  
21 applicant qualifies to hold a license pursuant to the Commercial  
22 Dog and Cat Operator Inspection Act. An applicant who qualifies  
23 shall be issued a license. An applicant who does not receive a  
24 license shall be afforded the opportunity for a hearing before  
25 the director or the director's designee to present evidence that

1 the applicant is qualified to hold a license should a license  
2 be issued. All such hearings shall be in accordance with the  
3 Administrative Procedure Act.

4           Sec. 7. Original sections 28-1006, 28-1012, and 29-820,  
5 Reissue Revised Statutes of Nebraska, section 54-630, Revised  
6 Statutes Cumulative Supplement, 2008, and sections 54-627 and  
7 54-628, Revised Statutes Supplement, 2009, are repealed.