

E AND R AMENDMENTS TO LB 423

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 29-818, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 29-818 (1) Except for pet animals ~~or equines~~ as provided
6 in subsection (2) of this section, property seized under a search
7 warrant or validly seized without a warrant shall be safely kept
8 by the officer seizing the same, unless otherwise directed by the
9 judge or magistrate, and shall be so kept so long as necessary
10 for the purpose of being produced as evidence on any trial.
11 Property seized may not be taken from the officer having it in
12 custody by replevin or other writ so long as it is or may be
13 required as evidence in any trial, nor may it be so taken in any
14 event where a complaint has been filed in connection with which
15 the property was or may be used as evidence, and the court in
16 which such complaint was filed shall have exclusive jurisdiction
17 for disposition of the property or funds and to determine rights
18 therein, including questions respecting the title, possession,
19 control, and disposition thereof.

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

1 (b) When any pet animal ~~or equine~~ is seized ~~or held~~
2 under this subsection, the court shall provide the person who owns,
3 keeps, harbors, maintains, or controls such pet animal ~~or equine~~
4 with notice that a hearing will be had and specify the date, time,
5 and place of such hearing. Such notice shall be served by personal
6 or residential service or by certified mail. If such notice cannot
7 be served by such methods, service may be made by publication
8 in the county where such pet animal ~~or equine~~ was seized. Such
9 publication shall be made after application and order of the court.
10 Unless otherwise determined and ordered by the court, the date of
11 such hearing shall be no later than ten days after the seizure.

12 (c) At the hearing, the court shall determine the
13 disposition of the pet animal, ~~or equine~~, and if the court
14 determines that any pet animal ~~or equine~~ shall not be returned, the
15 court shall order the person from whom the pet animal ~~or equine~~
16 was seized to pay all expenses for the support and maintenance
17 of the pet animal, ~~or equine~~, including expenses for shelter,
18 food, veterinary care, and board, necessitated by the possession of
19 the pet animal, ~~or equine~~. At the hearing, the court shall also
20 consider the person's ability to pay for the expenses of the pet
21 animal ~~or equine~~ and the amount of such payments. Payments shall be
22 for a succeeding thirty-day period with the first payment due on
23 or before the tenth day following the hearing. Payments for each
24 subsequent succeeding thirty-day period, if any, shall be due on or
25 before the tenth day of such period.

26 (d) If a person becomes delinquent in his or her payments
27 for the expenses of the pet animal, ~~or equine~~, the court shall hold

1 a hearing to determine the disposition of the seized pet animal.
2 ~~or equine.~~ Notice of such hearing shall be given to the person who
3 owns, keeps, harbors, maintains, or controls such pet animal ~~or~~
4 ~~equine~~ and to any lienholder or security interest holder of record
5 as provided in subdivision (b) of this subsection.

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

12 (f) Should the person be found not guilty, all funds paid
13 for the expenses of the pet animal ~~or equine~~ shall be returned to
14 the person.

15 (g) For purposes of this subsection, pet ~~+(i)~~ Pet animal
16 means any domestic dog, domestic cat, mini pig, domestic rabbit,
17 domestic ferret, domestic rodent, bird except a bird raised
18 as an agricultural animal and specifically excluding any bird
19 possessed under a license issued by the State of Nebraska or the
20 United States Fish and Wildlife Service, nonlethal aquarium fish,
21 nonlethal invertebrate, amphibian, turtle, nonvenomous snake that
22 will not grow to more than eight feet in length at maturity,
23 or such other animal as may be specified and for which a permit
24 shall be issued by an animal control authority after inspection and
25 approval, except that any animal forbidden to be sold, owned, or
26 possessed by federal or state law is not a pet animal. ~~and~~

27 ~~(ii) Equine means a horse, pony, donkey, mule, hinny, or~~

1 ~~llama.~~

2 (h) This section shall not preempt, and shall not be
3 construed to preempt, any ordinance of a city of the metropolitan
4 class.

5 Sec. 2. Section 54-901, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 54-901 Sections 54-901 to 54-912 and section 6 of this
8 act shall be known and may be cited as the Livestock Animal Welfare
9 Act.

10 Sec. 3. Section 54-902, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 54-902 For purposes of the Livestock Animal Welfare Act:

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

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

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

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

26 (5) Cruelly neglect means to fail to provide a livestock
27 animal in one's care, whether as owner or custodian, with ~~feed,~~

1 feed, water, or other care as is reasonably necessary for the
2 livestock animal's health;

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

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

7 (8) Law enforcement officer means any member of the
8 Nebraska State Patrol, any county or deputy sheriff, any member
9 of the police force of any city or village, or any other public
10 official authorized by a city or village to enforce state or
11 local laws, rules, regulations, or ordinances; ~~Law enforcement~~
12 ~~officer also includes any inspector under the Commercial Dog and~~
13 ~~Cat Operator Inspection Act to the extent that such inspector may~~
14 ~~exercise the authority of a law enforcement officer under section~~
15 ~~28-1012 while in the course of performing inspection activities~~
16 ~~under the Commercial Dog and Cat Operator Inspection Act;~~

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

20 (10) Owner or custodian means any person owning, keeping,
21 possessing, harboring, or knowingly permitting an animal to remain
22 on or about any premises owned or occupied by such person; and

23 ~~(10)~~ (11) Serious injury or illness includes any injury
24 or illness to any livestock animal which creates a substantial
25 risk of death or which causes broken bones, prolonged impairment
26 of health, or prolonged loss or impairment of the function of any
27 bodily organ.

1 Sec. 4. Section 54-905, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 54-905 (1) In addition to any other sentence given for
4 a violation of section 54-903 or 54-904, the sentencing court may
5 order the defendant to reimburse a public or private agency for
6 any unreimbursed expenses incurred in conjunction with the care,
7 ~~impoundment,~~ seizure, or disposal of a livestock animal involved
8 in the violation of such section. Whenever the court believes
9 that such reimbursement is a proper sentence or at the prosecuting
10 attorney's request, the court shall order that the presentence
11 investigation report include documentation regarding the nature
12 and amount of the expenses incurred. The court may order that
13 reimbursement be made immediately, in specified installments, or
14 within a specified period of time, not to exceed five years after
15 the date of judgment.

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

22 Sec. 5. Section 54-906, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 54-906 (1) ~~Any~~ A law enforcement officer who has reason
25 to believe that a livestock animal has been abandoned or is
26 being cruelly neglected or cruelly mistreated may seek a warrant
27 authorizing entry upon private property to inspect, care for, or

1 impound the livestock animal, ~~or livestock animals.~~

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

6 (3) A law enforcement officer may specify in a custody
7 agreement the terms and conditions by which the owner or custodian
8 may maintain custody of the livestock animal to provide care for
9 such animal at the expense of the owner. The custody agreement
10 shall be signed by the owner or custodian of the livestock animal.
11 A copy of the signed agreement shall be provided to the owner
12 or custodian of the livestock animal. A violation of the custody
13 agreement may result in the seizure of the livestock animal.

14 ~~(3)~~ (4) Any livestock animal, equipment, device, or other
15 property or things involved in a violation of section 54-903 or
16 54-904 shall be subject to seizure, and distribution or disposition
17 may be made in such manner as the court may direct. Any livestock
18 animal involved in a violation of section 54-903 or 54-904 shall be
19 subject to seizure. Distribution or disposition shall be made under
20 section 6 of this act as the court may direct. Any livestock animal
21 seized under this subsection may be kept by the law enforcement
22 officer on the property of the owner or custodian of such livestock
23 animal.

24 (5) A law enforcement officer may euthanize or cause
25 a livestock animal seized or kept pursuant to this section to
26 be euthanized if the animal is experiencing extreme pain or
27 suffering or is severely injured, disabled, or diseased past

1 recovery for any useful purpose. The law enforcement officer
2 shall notify the owner or custodian prior to the euthanasia if
3 practicable under the circumstances. An owner or custodian may
4 request that a veterinarian of the owner's or custodian's choosing
5 view the livestock animal and be present upon examination of the
6 livestock animal, and no livestock animal shall be euthanized
7 without reasonable accommodation to provide for the presence of
8 the owner's or custodian's veterinarian when requested. However,
9 attempted notification of the owner or custodian or the presence
10 of the owner's or custodian's veterinarian shall not unduly delay
11 euthanasia when necessary. The law enforcement officer may forgo
12 euthanasia if the care of the livestock animal is placed with the
13 owner's or custodian's veterinarian.

14 ~~(4) Any~~ (6) A law enforcement officer acting under this
15 section shall not be liable for damage to property if such damage
16 is not the result of the officer's negligence.

17 Sec. 6. (1) After a livestock animal has been seized,
18 the agency that took custody of the livestock animal shall, within
19 seven days after the date of seizure, file a complaint with the
20 district court in the county in which the animal was seized for
21 a hearing to determine the disposition and the cost for the care
22 of the livestock animal. Notice of such hearing shall be given to
23 the owner or custodian from whom such livestock animal was seized
24 and to any holder of a lien or security interest of record in
25 such livestock animal, specifying the date, time, and place of such
26 hearing. Such notice shall be served by personal or residential
27 service or by certified mail. If such notice cannot be served by

1 such methods, service may be made by publication in the county
2 where such livestock animal was seized. Such publication shall be
3 made after application and order of the court. The hearing shall
4 be held as soon as practicable and not more than ten business
5 days after the date of application for the hearing unless otherwise
6 determined and ordered by the court.

7 (2) If the court finds that probable cause exists that
8 the livestock animal has been abandoned or cruelly neglected or
9 mistreated, the court may:

10 (a) Order immediate forfeiture of the livestock animal to
11 the agency that took custody of the livestock animal and authorize
12 appropriate disposition of the livestock animal, including sale at
13 public auction, adoption, donation to a suitable shelter, humane
14 destruction, or any other manner of disposition approved by the
15 court. With respect to sale of a livestock animal, the proceeds
16 shall first be applied to the cost of sale and then to the expenses
17 for the care of the livestock animal and the remaining proceeds,
18 if any, shall be paid to the holder of a lien or security interest
19 of record in such livestock animal and then to the owner of the
20 livestock animal;

21 (b) Issue an order to the owner or custodian setting
22 forth the conditions under which custody of the livestock animal
23 shall be returned to the owner or custodian from whom the livestock
24 animal was seized or to any other person claiming an interest in
25 the livestock animal. Such order may include any management actions
26 deemed necessary and prudent by the court, including culling by
27 sale, humane disposal, or forfeiture and securing necessary care,

1 including veterinary care, sufficient for the maintenance of any
2 remaining livestock animal; or

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

27 (3) If custody of a livestock animal is returned to the

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

6 (4) Nothing in this section shall prevent the euthanasia
7 of a seized livestock animal at any time as determined necessary by
8 a law enforcement officer or as authorized by court order.

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

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

19 (7) This section shall not preempt any ordinance of a
20 city of the metropolitan class.

21 Sec. 7. Original sections 54-901, 54-902, 54-905, and
22 54-906, Reissue Revised Statutes of Nebraska, and section 29-818,
23 Revised Statutes Cumulative Supplement, 2012, are repealed.

24 2. On page 1, strike beginning with "agriculture" in line
25 1 through line 6 and insert "animals; to amend sections 54-901,
26 54-902, 54-905, and 54-906, Reissue Revised Statutes of Nebraska,
27 and section 29-818, Revised Statutes Cumulative Supplement, 2012;

1 to change and eliminate livestock animal seizure provisions; to
2 define and redefine terms; to change provisions of the Livestock
3 Animal Welfare Act; to harmonize provisions; and to repeal the
4 original sections."