

AMENDMENTS TO LB360

(Amendments to Standing Committee amendments, AM1151)

Introduced by Johnson, 23.

1 1. Strike original section 1 and insert the following new sections:

2 Section 1. Section 28-1006, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 28-1006 (1) It shall be the duty of the sheriff, a police officer,
5 or the Nebraska State Patrol to make prompt investigation of and arrest
6 for any violation of section 28-1005 or 28-1005.01.

7 (2) Any ~~animal~~, equipment, device, or other property or things
8 involved in any violation of section 28-1005 or 28-1005.01 shall be
9 subject to seizure, and disposition may be made in accordance with the
10 method of disposition directed for contraband in sections 29-818 and
11 29-820.

12 (3) Any animal involved in any violation of section 28-1005 or
13 28-1005.01 shall be subject to seizure. Distribution or disposition shall
14 be made as provided in section 5 of this act ~~29-818~~ and in such manner as
15 the court may direct. The court may give preference to adoption
16 alternatives through humane societies or comparable institutions and to
17 the protection of such animal's welfare. For a humane society or
18 comparable institution to be considered as an adoption alternative under
19 this subsection, it must first be licensed by the Department of
20 Agriculture as having passed the inspection requirements in the
21 Commercial Dog and Cat Operator Inspection Act and paid the fee for
22 inspection under the act. The court may prohibit an adopting or
23 purchasing party from selling such animal for a period not to exceed one
24 year.

25 (4) In addition to any other sentence given for a violation of
26 section 28-1005 or 28-1005.01, the sentencing court may order the

1 defendant to reimburse a public or private agency for expenses incurred
2 in conjunction with the care, impoundment, or disposal, including
3 adoption, of an animal involved in the violation of section 28-1005 or
4 28-1005.01. Whenever the court believes that such reimbursement may be a
5 proper sentence or the prosecuting attorney requests, the court shall
6 order that the presentence investigation report include documentation
7 regarding the nature and amount of the expenses incurred. The court may
8 order that reimbursement be made immediately, in specified installments,
9 or within a specified period of time, not to exceed five years after the
10 date of judgment.

11 Sec. 2. Section 28-1008, Revised Statutes Cumulative Supplement,
12 2014, is amended to read:

13 28-1008 For purposes of sections 28-1008 to 28-1017, 28-1019, and
14 28-1020 and section 5 of this act:

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

19 (2) Animal means any vertebrate member of the animal kingdom. Animal
20 does not include an uncaptured wild creature or a livestock animal as
21 defined in section 54-902;

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

25 (4) Cruelly neglect means to fail to provide any animal in one's
26 care, whether as owner or custodian, with food, water, or other care as
27 is reasonably necessary for the animal's health;

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

30 (6) Law enforcement officer means any member of the Nebraska State
31 Patrol, any county or deputy sheriff, any member of the police force of

1 any city or village, or any other public official authorized by a city or
2 village to enforce state or local animal control laws, rules,
3 regulations, or ordinances. Law enforcement officer also includes a
4 special investigator appointed as a deputy state sheriff as authorized
5 pursuant to section 81-201 while acting within the authority of the
6 Director of Agriculture ~~any inspector under the Commercial Dog and Cat~~
7 ~~Operator Inspection Act to the extent that such inspector may exercise~~
8 ~~the authority of a law enforcement officer under section 28-1012 while in~~
9 ~~the course of performing inspection activities~~ under the Commercial Dog
10 and Cat Operator Inspection Act;

11 (7) Mutilation means intentionally causing permanent injury,
12 disfigurement, degradation of function, incapacitation, or imperfection
13 to an animal. Mutilation does not include conduct performed by a
14 veterinarian licensed to practice veterinary medicine and surgery in this
15 state or conduct that conforms to accepted veterinary practices;

16 (8) Owner or custodian means any person owning, keeping, possessing,
17 harboring, or knowingly permitting an animal to remain on or about any
18 premises owned or occupied by such person;

19 (9 8) Police animal means a horse or dog owned or controlled by the
20 State of Nebraska or any county, city, or village for the purpose of
21 assisting a law enforcement officer in the performance of his or her
22 official enforcement duties;

23 (10 9) Repeated beating means intentional successive strikes to an
24 animal by a person resulting in serious bodily injury or death to the
25 animal;

26 (11 ~~10~~) Serious injury or illness includes any injury or illness to
27 any animal which creates a substantial risk of death or which causes
28 broken bones, prolonged impairment of health, or prolonged loss or
29 impairment of the function of any bodily organ; and

30 (12 ~~11~~) Torture means intentionally subjecting an animal to extreme
31 pain, suffering, or agony. Torture does not include conduct performed by

1 a veterinarian licensed to practice veterinary medicine and surgery in
2 this state or conduct that conforms to accepted veterinary practices.

3 Sec. 3. Section 28-1011, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 28-1011 (1) In addition to any other sentence given for a violation
6 of section 28-1009 or 28-1010, the sentencing court may order the
7 defendant to reimburse a public or private agency for any unreimbursed
8 expenses incurred in conjunction with the care, impoundment, seizure, or
9 disposal of an animal involved in the violation of such section. Whenever
10 the court believes that such reimbursement may be a proper sentence or
11 the prosecuting attorney requests, the court shall order that the
12 presentence investigation report include documentation regarding the
13 nature and amount of the expenses incurred. The court may order that
14 reimbursement be made immediately, in specified installments, or within a
15 specified period of time, not to exceed five years after the date of
16 judgment.

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

22 Sec. 4. Section 28-1012, Revised Statutes Cumulative Supplement,
23 2014, is amended to read:

24 28-1012 (1) A Any law enforcement officer who has reason to believe
25 that an animal has been abandoned or is being cruelly neglected or
26 cruelly mistreated may seek a warrant authorizing entry upon private
27 property to inspect, care for, or impound the animal.

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

1 (3) Any ~~animal~~, equipment, device, or other property or things
2 involved in a violation of section 28-1009 or 28-1010 shall be subject to
3 seizure and distribution or disposition may be made ~~shall be made~~ under
4 ~~section 29-818~~ and in such manner as the court may direct. Any animal
5 involved in a violation of section 28-1009 or 28-1010 shall be subject to
6 seizure. Distribution or disposition shall be made under section 5 of
7 this act as the court may direct.

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

20 (4 5) Any law enforcement officer acting under this section shall
21 not be liable for damage to property if such damage is not the result of
22 the officer's negligence.

23 Sec. 5. (1) Any animal seized under a search warrant or validly
24 seized without a warrant may be kept on the property of the owner or
25 custodian by the law enforcement officer seizing the animal. When a
26 criminal complaint has been filed in connection with a seized animal, the
27 court in which such complaint was filed shall have exclusive jurisdiction
28 for disposition of the animal and to determine any rights therein,
29 including questions respecting the title, possession, control, and
30 disposition thereof as provided in this section.

31 (2) Within seven days after the date an animal has been seized, the

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

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

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

29 (b) Issue an order to the owner or custodian setting forth the
30 conditions under which custody of the animal shall be returned to the
31 owner or custodian from whom the animal was seized or to any other person

1 claiming an interest in the animal. Such order may include any management
2 actions deemed necessary and prudent by the court, including reducing the
3 number of animals harbored or owned by the owner or custodian by humane
4 destruction or forfeiture and securing necessary care, including
5 veterinary care, sufficient for the maintenance of any remaining animals;
6 or

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

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

1 returned to the owner or custodian.

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

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

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

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

16 Sec. 6. Section 28-1013, Revised Statutes Cumulative Supplement,
17 2014, is amended to read:

18 28-1013 Sections 28-1008 to 28-1017 and 28-1019 and section 5 of
19 this act shall not apply to:

20 (1) Care or treatment of an animal or other conduct by a
21 veterinarian or veterinary technician licensed under the Veterinary
22 Medicine and Surgery Practice Act that occurs within the scope of his or
23 her employment, that occurs while acting in his or her professional
24 capacity, or that conforms to commonly accepted veterinary practices;

25 (2) Commonly accepted care or treatment of a police animal by a law
26 enforcement officer in the normal course of his or her duties;

27 (3) Research activity carried on by any research facility currently
28 meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et
29 seq., as such act existed on January 1, 2010;

30 (4) Commonly accepted practices of hunting, fishing, or trapping;

31 (5) Humane killing of an animal by the owner or by his or her agent

1 or a veterinarian upon the owner's request;

2 (6) Use of reasonable force against an animal, other than a police
3 animal, which is working, including killing, capture, or restraint, if
4 the animal is outside the owned or rented property of its owner or
5 custodian and is injuring or posing an immediate threat to any person or
6 other animal;

7 (7) Killing of house or garden pests; and

8 (8) Commonly accepted animal training practices.

9 Sec. 7. Section 28-1014, Revised Statutes Cumulative Supplement,
10 2014, is amended to read:

11 28-1014 Any city, village, or county may adopt and promulgate rules,
12 regulations, and ordinances which are not inconsistent with the
13 provisions of sections 28-1008 to 28-1017, 28-1019, and 28-1020 and
14 section 5 of this act for the protection of the public, public health,
15 and animals within its jurisdiction.

16 Sec. 8. Section 28-1015, Revised Statutes Cumulative Supplement,
17 2014, is amended to read:

18 28-1015 When an animal is owned by a minor child, the parent of such
19 minor child with whom the child resides or legal guardian with whom the
20 child resides shall be subject to the penalties provided under sections
21 28-1008 to 28-1017, 28-1019, and 28-1020 and section 5 of this act if the
22 animal is abandoned or cruelly neglected.

23 Sec. 9. Section 28-1016, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 28-1016 Nothing in sections 28-1008 to 28-1017, 28-1019, and 28-1020
26 and section 5 of this act shall be construed as amending or changing the
27 authority of the Game and Parks Commission as established in the Game Law
28 or to prohibit any conduct authorized or permitted by such law.

29 Sec. 10. Section 28-1019, Revised Statutes Cumulative Supplement,
30 2014, is amended to read:

31 28-1019 (1)(a) If a person is convicted of a Class IV felony under

1 section 28-1005 or 28-1009, the sentencing court shall order such person
2 not to own, possess, or reside with any animal for at least five years
3 after the date of conviction, but such time restriction shall not exceed
4 fifteen years. Any person violating such court order shall be guilty of a
5 Class I misdemeanor.

6 (b) If a person is convicted of a Class I misdemeanor under section
7 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010,
8 the sentencing court may order such person not to own, possess, or reside
9 with any animal after the date of conviction, but such time restriction,
10 if any, shall not exceed five years. Any person violating such court
11 order shall be guilty of a Class IV misdemeanor.

12 (c) Any animal involved in a violation of a court order under
13 subdivision (a) or (b) of this subsection shall be subject to seizure by
14 law enforcement. Distribution or disposition shall be made under section
15 5 of this act 29-818.

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

20 Sec. 11. Section 29-818, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 29-818 ~~(1)~~ Except for ~~pet~~ animals as provided in section 5 of this
23 act subsection (2) of this section, property seized under a search
24 warrant or validly seized without a warrant shall be safely kept by the
25 officer seizing the same, unless otherwise directed by the judge or
26 magistrate, and shall be so kept so long as necessary for the purpose of
27 being produced as evidence on any trial. Property seized may not be taken
28 from the officer having it in custody by replevin or other writ so long
29 as it is or may be required as evidence in any trial, nor may it be so
30 taken in any event where a complaint has been filed in connection with
31 which the property was or may be used as evidence, and the court in which

1 such complaint was filed shall have exclusive jurisdiction for
2 disposition of the property or funds and to determine rights therein,
3 including questions respecting the title, possession, control, and
4 disposition thereof.

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

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

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

31 ~~(d) If a person becomes delinquent in his or her payments for the~~

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

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

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

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

24 ~~(h) This section shall not preempt, and shall not be construed to~~
25 ~~preempt, any ordinance of a city of the metropolitan or primary class.~~

26 2. Renumber the remaining sections and correct the internal
27 references and the repealer accordingly.