

SENATE BILL NO. 2211

Introduced by

Senators Flakoll, J. Lee, O'Connell

Representatives Anderson, Delmore, D. Johnson

1 A BILL for an Act to create and enact a new section to chapter 36-01 and chapter 36-21.2 of the
2 North Dakota Century Code, relating to the duties of the state board of animal health and the
3 treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
4 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code, relating
5 to the treatment of animals; and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new section to chapter 36-01 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Restriction on importation of certain animals - Exception.**

- 10 1. The state board of animal health may restrict the importation and the sale or other
11 distribution within the state of any domestic animal and any animal that is wild by
12 nature, if the board has reason to believe that the animal may pose a threat to the
13 health and well-being of this state's human or animal population.
14 2. The board may exempt, from any restriction imposed under subsection 1, the
15 importation or sale of animals for bona fide scientific or educational purposes.

16 **SECTION 2.** Chapter 36-21.2 of the North Dakota Century Code is created and enacted as
17 follows:

18 **36-21.2-01. Adequate careNeglect - Definition - Exemptions - Penalty.**

- 19 ~~1. A person having custody or control of an animal shall provide the animal with~~
20 ~~adequate care.~~
21 2.1. Any person that willfully fails to meet the requirements of this sectionengages in
22 animal neglect is guilty of a class A misdemeanor for a first or a second offense and a
23 class C felony for a secondthird or subsequent offense occurring within fiveten years.

1 ~~3. a. For purposes of this chapter, "adequately caring for an animal" means providing it~~
2 ~~with:~~

3 ~~(1) Sufficient food and water;~~

4 ~~(2) Shelter from the elements, as appropriate for the species, the breed, and~~
5 ~~the animal's age and physical condition; and~~

6 ~~(3) Necessary medical attention.~~

7 ~~b. In addition to the requirements of subdivision a, a person having custody or~~
8 ~~control of the animal shall ensure that the animal's environment is appropriately~~
9 ~~ventilated, appropriately cleaned, and free of conditions likely to cause injury or~~
10 ~~death.~~

11 2. For purposes of this chapter, "neglect" means the failure to provide an animal with:

12 a. Food and water, as appropriate for the species, the breed, and the animal's age
13 and physical condition;

14 b. Shelter from the elements, as appropriate for the species, the breed, and the
15 animal's age and physical condition;

16 c. Necessary medical attention; and

17 d. An environment that is:

18 (1) Ventilated in a manner appropriate for the species, the breed, and the
19 animal's age and physical condition;

20 (2) Cleaned in a manner appropriate for the species, the breed, and the
21 animal's age and physical condition; and

22 (3) Free of conditions likely to cause injury or death to an animal of that
23 species, breed, age, and physical condition.

24 4.3. The following do not constitute violations of this section:

25 a. Any usual and customary practice in production agriculture, including all aspects
26 of the livestock industry;

27 b. Any usual and customary practice in the breeding, raising, training, showing, and
28 competition of animals;

29 c. Any usual and customary practice in the sport of rodeo and in animal racing;

30 d. Any usual and customary practice in livestock exhibitions and competitions;

31 e. Lawful fishing, hunting, and trapping;

- 1 f. Lawful wildlife management practices;
- 2 g. Lawful research and educational activities involving the use of animals;
- 3 h. Lawful control of pests, rodents, and predators;
- 4 i. Lawful animal damage control activities;
- 5 j. Services provided by or under the direction of a licensed veterinarian; and
- 6 k. The humane destruction of an animal for cause.

7 **36-21.2-02. Animal abuse - Definition - Exemptions - Penalty.**

- 8 1. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
9 for a first or a second offense and a class C felony for a second~~third~~ or subsequent
10 offense occurring within fiveten years.
- 11 2. For purposes of this chapter, "animal abuse" means the physical abuse of an animal,
12 but does not include any act or omission that falls within the definition of animal
13 cruelty, as set forth in section 36-21.2-03.
- 14 3. The following do not constitute violations of this section:
 - 15 a. Any usual and customary practice in production agriculture, including all aspects
16 of the livestock industry;
 - 17 b. Any usual and customary practice in the breeding, raising, training, showing, and
18 competition of animals;
 - 19 c. Any usual and customary practice in the sport of rodeo and in animal racing;
 - 20 d. Any usual and customary practice in livestock exhibitions and competitions;
 - 21 e. Lawful fishing, hunting, and trapping;
 - 22 f. Lawful wildlife management practices;
 - 23 g. Lawful research and educational activities involving the use of animals;
 - 24 h. Lawful control of pests, rodents, and predators;
 - 25 i. Lawful animal damage control activities;
 - 26 j. Any action taken by an individual against an animal that is attacking or is about to
27 attack a human, a companion animal, or livestock;
 - 28 k. Services provided by or under the direction of a licensed veterinarian; and
 - 29 l. The humane destruction of an animal for cause.

30 **36-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.**

- 31 1. Any person that willfully engages in animal cruelty is guilty of a class C felony.

- 1 2. For purposes of this chapter, "animal cruelty" means:
- 2 a. Any ~~willful~~ act or omission that causes an animal unjustifiable pain, suffering, or
- 3 death, including the infliction of any injury that results in a substantial risk of
- 4 death, leaves an animal significantly disfigured, results in broken bones, or
- 5 causes prolonged impairment of an animal's health; and
- 6 b. Any ~~willful~~ act or omission that results in a serious illness and leaves an animal
- 7 significantly disfigured or causes prolonged impairment of the animal's health.
- 8 3. The following do not constitute violations of this section:
- 9 a. Any usual and customary practice in production agriculture, including all aspects
- 10 of the livestock industry;
- 11 b. Any usual and customary practice in the breeding, raising, ~~training~~, showing, and
- 12 competition of animals;
- 13 c. Any usual and customary practice in the sport of rodeo and in animal racing;
- 14 d. Any usual and customary practice in livestock exhibitions and competitions;
- 15 e. Lawful fishing, hunting, and trapping;
- 16 f. Lawful wildlife management practices;
- 17 g. Lawful research and educational activities involving the use of animals;
- 18 h. Lawful control of pests, rodents, and predators;
- 19 i. Lawful animal damage control activities;
- 20 j. Any action taken by an individual against an animal that is attacking or is about to
- 21 attack a human, a companion animal, or livestock;
- 22 k. Services provided by or under the direction of a licensed veterinarian; and
- 23 l. The humane destruction of an animal for cause.

24 **36-21.2-04. Animal abandonment - Definition - Exemptions - Penalty.**

25 ~~1. A person having custody or control of an animal may not willfully abandon the animal.~~

26 2.1. Any person that willfully ~~abandons~~ engages in the abandonment of an animal is guilty

27 of a class A misdemeanor for a first or a second offense and a class C felony for a

28 ~~second~~ ~~third~~ or subsequent offense occurring within ~~five~~ ~~ten~~ years.

29 3.2. For purposes of this chapter, "abandonment" means the relinquishment of a person's

30 custody or control, with no intention of reclaiming that custody or control, and without

31 placing the animal into the custody or control of another person that is able to

1 adequately provide care for the animal and who knowingly and willingly accepts that
2 responsibility. The term includes:

- 3 a. The desertion of an animal; and
4 b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
5 conclusion of a boarding contract or other service contract, other than that
6 specified in section 43-29-16.1.

7 4.3. The following do not constitute violations of this section:

- 8 a. Any usual and customary practice in production agriculture, including all aspects
9 of the livestock industry;
10 b. Any usual and customary practice in the breeding, raising, training, showing, and
11 competition of animals;
12 c. Any usual and customary practice in the sport of rodeo and in animal racing;
13 d. Any usual and customary practice in livestock exhibitions and competitions;
14 e. Lawful fishing, hunting, and trapping;
15 f. Lawful wildlife management practices;
16 g. Lawful research and educational activities involving the use of animals;
17 h. Lawful control of pests, rodents, and predators;
18 i. Lawful animal damage control activities;
19 j. Services provided by or under the direction of a licensed veterinarian; and
20 k. The humane destruction of an animal for cause.

21 4. For purposes of this section, "care" means food, water, and shelter from the elements,
22 as appropriate for the species, the breed, and the animal's age and physical condition,
23 and necessary medical attention.

24 **36-21.2-05. Seizure of animal - Court order.**

- 25 1. A law enforcement officer may petition the court for an order directing the seizure of
26 any animal believed to have been denied adequate care neglected, abused, treated
27 cruelly, or subjected to any act or omission in violation of this chapter.
28 2. The court may act without notice to the animal's owner or to the person having
29 custody or control of the animal and may rely solely on testimony or an affidavit in
30 considering the petition.

1 3. In the order for seizure, the court may direct that a veterinarian humanely destroy an
2 animal if the veterinarian, upon examining the animal, determines that the animal is
3 experiencing excruciating pain or suffering and that the animal's pain or suffering is not
4 likely to be alleviated using reasonable medical interventions.

5 **36-21.2-06. Law enforcement - Duty upon seizure - Notification.**

6 1. Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement
7 officer shall provide care for the animal ~~with adequate care~~, either directly or through a
8 contractual arrangement with another person. For purposes of this subsection, "care"
9 means food, water, and shelter from the elements, as appropriate for the species, the
10 breed, and the animal's age and physical condition, and necessary medical attention.

11 a. If the owner and the person having custody or control at the time of the seizure
12 are known to the officer, the officer shall:

13 (1) Provide notice of the seizure to the owner and the person having custody or
14 control of the animal; and

15 (2) Petition the court for an order directing the animal's disposition.

16 b. If the animal's owner is not known to the law enforcement officer, the officer shall
17 publish notice of the animal's seizure in the official newspaper of the county and
18 indicate that if the owner does not claim the animal within five days, the animal
19 will be sold, placed for adoption, or humanely destroyed, at the direction of the
20 law enforcement officer.

21 (1) If the owner does not claim the animal within five days, as required by this
22 subdivision, the law enforcement officer shall sell the animal, place the
23 animal for adoption, or provide for its humane destruction.

24 (2) If the owner is identified within the five-day period, the law enforcement
25 officer shall petition the court for an order directing the animal's disposition.

26 2. In ruling on a petition for an animal's disposition under this section, a court may direct
27 that the animal be sold, placed for adoption, humanely destroyed, or returned to its
28 owner, with or without conditions.

29 **36-21.2-07. Costs of seizure and care - Responsibility of owner - Lien.**

30 1. The owner of an animal seized under section 36-21.2-05 is responsible for all costs
31 related to the animal's seizure, including required notifications, attorney's fees, court

1 | costs, and any costs incurred in providing the animal with ~~adequate~~ care or in
2 | providing for its destruction in accordance with section 36-21.2-06.

3 | 2. a. The law enforcement agency that seized the animal has a lien upon the animal
4 | for all costs incurred as a result of the seizure. The lien is superior to any other
5 | claim or lien.

6 | b. If the lien is not satisfied by the animal's owner, the law enforcement agency may
7 | apply to the court for an order enforcing the lien.

8 | 3. If a seized animal is sold, the proceeds must be used first to satisfy the lienholder to
9 | the extent of the lien and second to satisfy any other claims involving the animal. Any
10 | remaining proceeds must be returned to the owner, as directed by the court. If the
11 | owner is unknown, any proceeds otherwise payable to the owner must be deposited in
12 | the general fund of the county.

13 | **36-21.2-08. Abandoned animal - Law enforcement officer - Duties.**

14 | 1. A law enforcement officer may take custody of an animal if the officer has reasonable
15 | cause to believe that the animal has been abandoned in violation of this chapter.

16 | 2. a. Upon taking custody of an animal in accordance with this section, the law
17 | enforcement officer shall:

18 | (1) Provide ~~care for~~ the animal ~~with adequate care~~, either directly or through a
19 | contractual arrangement with another person; and

20 | (2) (a) Notify the owner, if known to the officer; or

21 | (b) If the owner is not known to the officer, provide notice of the animal's
22 | custody, indicate that if the owner does not lay claim to the animal
23 | within five days, the animal will be sold, placed for adoption, or
24 | humanely destroyed, at the direction of the law enforcement officer,
25 | and include the officer's contact information.

26 | b. For purposes of this subdivision, notice may be provided by:

27 | (1) Publication in the official newspaper of the county if the newspaper is
28 | published daily or in a daily newspaper serving the county;

29 | (2) Any electronic means; or

30 | (3) Posting a description and a photograph at the local law enforcement center.

- 1 3. If the owner is identified within the five-day period, the law enforcement officer shall
2 return the animal to the owner only if:
3 a. The owner demonstrates that the animal was not abandoned in violation of this
4 chapter; and
5 b. The owner pays for all costs associated with the animal's care while in custody,
6 including any costs of notifications under this section.
7 4. If the law enforcement officer refuses to return the animal to its owner, the owner may
8 petition the court for an order directing its return. In ruling on a petition under this
9 subsection, a court may direct that the animal be sold, placed for adoption, humanely
10 destroyed, or returned to its owner with or without conditions.
11 5. If the owner does not lay claim to the animal within five days, the law enforcement
12 officer shall sell the animal, place it for adoption, or humanely destroy it.
13 6. Any proceeds from the sale or adoption of an animal under this section must be
14 deposited in the county general fund.
15 7. Notwithstanding the requirements of this section, if upon examining an animal taken
16 into custody by a law enforcement officer in accordance with this section a licensed
17 veterinarian determines that the animal's condition justifies its destruction, the
18 veterinarian shall humanely destroy the animal. The law enforcement agency shall
19 reimburse the veterinarian for the cost of the animal's destruction.
20 8. For purposes of this section, "care" means food, water, and shelter from the elements,
21 as appropriate for the species, the breed, and the animal's age and physical condition,
22 and necessary medical attention.

23 **36-21.2-09. Title of animal - Sale or adoption.**

24 The title to any animal sold or adopted in accordance with this chapter passes to the
25 individual taking custody or control of the animal.

26 **36-21.2-10. Veterinarian.**

27 If upon examining an animal a licensed veterinarian determines that there is reasonable
28 cause to believe an animal has been ~~denied adequate care~~ neglected, abused, treated cruelly,
29 or subjected to any act or omission in violation of this chapter, the veterinarian may retain
30 custody of the animal and shall immediately notify law enforcement officials regarding the
31 determination.

1 **36-21.2-11. Caged animals - Public display - Exemptions - Penalty.**

2 1. In addition to any other requirements set forth in this chapter, a person placing a
3 caged animal on public display shall ensure that:

4 a. The size of the cage allows the animal to stand up, lie down, and turn or move
5 about; and

6 b. The cage provides the animal with protection from the elements, as appropriate
7 for the species, the breed, and the animal's age and physical condition.

8 2. Any person that willfully fails to meet the requirements of this section is guilty of a
9 class A misdemeanor.

10 3. This section does not apply to:

11 a. The North Dakota state fair association;

12 b. Agricultural fair associations;

13 c. Livestock exhibitions and competitions;

14 d. Political subdivisions;

15 e. Educational exhibitions; or

16 f. Exhibitors licensed by the United States department of agriculture.

17 4. The following do not constitute violations of this section:

18 a. Any usual and customary practice in production agriculture, including all aspects
19 of the livestock industry;

20 b. Any usual and customary practice in the breeding, raising, training, showing, and
21 competition of animals;

22 c. Any usual and customary practice in the sport of rodeo and in animal racing;

23 d. Any usual and customary practice in livestock exhibitions and competitions;

24 e. Lawful fishing, hunting, and trapping;

25 f. Lawful wildlife management practices;

26 g. Lawful research and educational activities involving the use of animals;

27 h. Lawful control of pests, rodents, and predators;

28 i. Lawful animal damage control activities; and

29 j. Services provided by or under the direction of a licensed veterinarian.

1 **36-21.2-12. Unattended animal in motor vehicle - Penalty.**

2 1. A person may not leave an animal unattended in a motor vehicle without ensuring that
3 the animal's health and safety is not endangered.

4 2. Any person that violates this section is guilty of an infraction.

5 3. A law enforcement officer may use reasonable means to enter a motor vehicle and
6 remove an animal left in violation of this section.

7 **36-21.2-13. Immunity from liability.**

8 A veterinarian is immune from civil or criminal liability if the veterinarian, on the
9 veterinarian's own initiative or at the request of a law enforcement officer or other governmental
10 entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity
11 under this section does not apply in the case of negligence.

12 **36-21.2-14. Estrays.**

13 This chapter does not apply to estrays.

14 **36-21.2-15. Collectives - Status of offense.**

15 If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
16 same-species animals, the violation is deemed to be a singular incident for purposes of
17 determining the status of the offense.

18 **SECTION 3. REPEAL.** Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
19 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
20 repealed.