

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED 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 three new sections to chapter 36-01 and a new section to
2 chapter 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of
3 animal health and the treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02,
4 36-21.1-03, 36-21.1-03.1, 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North
5 Dakota Century Code, relating to the treatment of animals; to provide a penalty; and to provide
6 for reports to the legislative management.

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

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

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

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

18 **SECTION 2.** A new section to chapter 36-01 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Assistance in criminal investigations.**

21 The board shall maintain and make available to any law enforcement agency a list of
22 veterinarians who are licensed in this state and trained to provide assistance in any criminal
23 investigation pertaining to this state's animal laws.

1 **SECTION 3.** A new section to chapter 36-01 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Reporting of violations - Biennial reports to legislative management.**

4 The board shall work with law enforcement representatives to develop a reporting
5 mechanism and compile information regarding violations of chapter 36-21.2. The board shall
6 report its findings to the legislative management biennially.

7 **SECTION 4.** Chapter 36-21.2 of the North Dakota Century Code is created and enacted as
8 follows:

9 **36-21.2-01. Neglect - Definition - Exemptions - Penalty.**

- 10 1. Any person that willfully engages in animal neglect is guilty of a class A misdemeanor.
- 11 2. For purposes of this chapter, "neglect" with respect to dogs and cats, means the
12 failure to provide an animal with:
- 13 a. Food and water, as appropriate for the species, the breed, and the animal's age
14 and physical condition;
- 15 b. Shelter from the elements, as appropriate for the species, the breed, and the
16 animal's age and physical condition;
- 17 c. Necessary medical attention; and
- 18 d. An environment that is:
- 19 (1) Ventilated in a manner appropriate for the species, the breed, and the
20 animal's age and physical condition;
- 21 (2) Cleaned in a manner appropriate for the species, the breed, and the
22 animal's age and physical condition; and
- 23 (3) Free of conditions likely to cause injury or death to an animal of that
24 species, breed, age, and physical condition.
- 25 3. For purposes of this chapter, "neglect" with respect to all animals other than those
26 included in subsection 2, means the failure to provide:
- 27 a. Food and water that is:
- 28 (1) Appropriate for the species and the breed; and
- 29 (2) Sufficient to sustain the animal's health;
- 30 b. Minimal protection from adverse weather conditions, as appropriate for the
31 species and the breed; and

- 1 c. Medical attention in the event of an injury or illness, as appropriate for the
2 species and the breed.
- 3 4. The following do not constitute violations of this section:
- 4 a. Any usual and customary practice in:
- 5 (1) The production of food, feed, fiber, or ornament;
6 (2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
7 and training of animals;
- 8 (3) The sport of rodeo;
- 9 (4) Animal racing;
- 10 (5) The use of animals by exhibitors licensed under the Animal Welfare Act,
11 7 U.S.C. 2131, et seq;
- 12 (6) Fishing, hunting, and trapping;
- 13 (7) Wildlife management;
- 14 (8) The culinary arts;
- 15 (9) Lawful research and educational activities; and
- 16 (10) Pest, vermin, predator, unwelcome animal, and animal damage control;
- 17 b. The humane or swift destruction of an animal for cause; and
- 18 c. Services provided by or under the direction of a licensed veterinarian.

19 **36-21.2-02. Animal abuse - Definition - Exemptions - Penalty.**

- 20 1. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
21 for a first or a second offense and a class C felony for a third or subsequent offense
22 occurring within ten years.
- 23 2. For purposes of this chapter, "animal abuse" means any act or omission that results in
24 physical injury to an animal or that causes the death of an animal, but does not include
25 any act that falls within the definition of animal cruelty, as set forth in section
26 36-21.2-03.
- 27 3. The following do not constitute violations of this section:
- 28 a. Any usual and customary practice in:
- 29 (1) The production of food, feed, fiber, or ornament;
30 (2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
31 and training of animals;

- 1 (3) The sport of rodeo;
- 2 (4) Animal racing;
- 3 (5) The use of animals by exhibitors licensed under the Animal Welfare Act,
- 4 7 U.S.C. 2131, et seq;
- 5 (6) Fishing, hunting, and trapping;
- 6 (7) Wildlife management;
- 7 (8) The culinary arts;
- 8 (9) Lawful research and educational activities; and
- 9 (10) Pest, vermin, predator, unwelcome animal, and animal damage control;
- 10 b. Any action taken by an individual against an animal that is attacking or is about to
- 11 attack a human, a companion animal, or livestock;
- 12 c. The humane or swift destruction of an animal for cause; and
- 13 d. Services provided by or under the direction of a licensed veterinarian.

14 **36-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.**

15 1. Any person that intentionally engages in animal cruelty is guilty of a class C felony.

16 2. For purposes of this chapter, "animal cruelty" means:

- 17 a. Breaking an animal's bones;
- 18 b. Causing an animal extreme pain;
- 19 c. Causing the prolonged impairment of an animal's health;
- 20 d. Mutilating an animal; or
- 21 e. Physically torturing an animal.

22 3. The following do not constitute violations of this section:

23 a. Any usual and customary practice in:

24 (1) The production of food, feed, fiber, or ornament;

25 (2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
26 and training of animals;

27 (3) The sport of rodeo;

28 (4) Animal racing;

29 (5) The use of animals by exhibitors licensed under the Animal Welfare Act,

30 7 U.S.C. 2131, et seq;

- 1 (6) Fishing, hunting, and trapping;
- 2 (7) Wildlife management;
- 3 (8) The culinary arts;
- 4 (9) Lawful research and educational activities; and
- 5 (10) Pest, vermin, predator, unwelcome animal, and animal damage control;
- 6 b. Any action taken by an individual against an animal that is attacking or is about to
- 7 attack a human, a companion animal, or livestock;
- 8 c. The humane or swift destruction of an animal for cause; and
- 9 d. Services provided by or under the direction of a licensed veterinarian.

10 **36-21.2-04. Animal abandonment - Definition - Exemptions - Penalty.**

- 11 1. Any person that willfully engages in the abandonment of an animal is guilty of a
- 12 class A misdemeanor.
- 13 2. For purposes of this chapter, "abandonment" means the relinquishment of a person's
- 14 custody or control, with no intention of reclaiming that custody or control, and without
- 15 placing the animal into the custody or control of another person that is able to provide
- 16 care for the animal and who knowingly and willingly accepts that responsibility. The
- 17 term includes:
- 18 a. The desertion of an animal; and
- 19 b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
- 20 conclusion of a boarding contract or other service contract, other than that
- 21 specified in section 43-29-16.1.
- 22 3. The following do not constitute violations of this section:
- 23 a. Any usual and customary practice in:
- 24 (1) The production of food, feed, fiber, or ornament;
- 25 (2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
- 26 and training of animals;
- 27 (3) The sport of rodeo;
- 28 (4) Animal racing;
- 29 (5) The use of animals by exhibitors licensed under the Animal Welfare Act,
- 30 7 U.S.C. 2131, et seq;
- 31 (6) Fishing, hunting, and trapping;

- 1 (7) Wildlife management;
2 (8) The culinary arts;
3 (9) Lawful research and educational activities; and
4 (10) Pest, vermin, predator, unwelcome animal, and animal damage control;

- 5 b. The humane or swift destruction of an animal for cause; and
6 c. Services provided by or under the direction of a licensed veterinarian.

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

10 **36-21.2-05. Seizure of animal - Court order.**

- 11 1. A law enforcement officer may petition the court for an order directing the seizure of
12 any animal believed to have been neglected, abused, treated cruelly, or subjected to
13 any act or omission in violation of this chapter.
14 2. The court may act without notice to the animal's owner or to the person having
15 custody or control of the animal and may rely solely on testimony or an affidavit in
16 considering the petition.
17 3. In the order for seizure, the court may direct that a veterinarian humanely destroy an
18 animal if the veterinarian, upon examining the animal, determines that the animal is
19 experiencing excruciating pain or suffering and that the animal's pain or suffering is not
20 likely to be alleviated using reasonable medical interventions.

21 **36-21.2-06. Law enforcement - Duty upon seizure - Notification.**

- 22 1. Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement
23 officer shall provide care for the animal, either directly or through a contractual
24 arrangement with another person. For purposes of this subsection, "care" means food,
25 water, and shelter from the elements, as appropriate for the species, the breed, and
26 the animal's age and physical condition, and necessary medical attention.
27 a. If the owner and the person having custody or control at the time of the seizure
28 are known to the officer, the officer shall:
29 (1) Provide notice of the seizure to the owner and the person having custody or
30 control of the animal; and
31 (2) Petition the court for an order directing the animal's disposition.

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

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

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

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

14 **36-21.2-07. Costs of seizure and care - Responsibility of owner - Lien.**

15 1. If convicted of violating this chapter, the owner of an animal seized under section
16 36-21.2-05 is responsible for all costs related to the animal's seizure, including
17 required notifications, attorney's fees, court costs, and any costs incurred in providing
18 the animal with care or in providing for its destruction in accordance with section
19 36-21.2-06.

20 2. a. The law enforcement agency that seized the animal has a lien upon the animal
21 for all costs incurred as a result of the seizure and conviction. The lien is superior
22 to any other claim or lien.

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

25 3. If a seized animal is sold, the proceeds must be used first to satisfy the lienholder to
26 the extent of the lien and second to satisfy any other claims involving the animal. Any
27 remaining proceeds must be returned to the owner, as directed by the court. If the
28 owner is unknown, any proceeds otherwise payable to the owner must be deposited in
29 the general fund of the county.

1 **36-21.2-08. Abandoned animal - Law enforcement officer - Duties.**

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

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

6 (1) Provide care for the animal, either directly or through a contractual
7 arrangement with another person; and

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

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

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

15 (1) Publication in the official newspaper of the county if the newspaper is
16 published daily or in a daily newspaper serving the county;

17 (2) Any electronic means; or

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

19 3. If the owner is identified within the five-day period, the law enforcement officer shall
20 return the animal to the owner only if:

21 a. The owner demonstrates that the animal was not abandoned in violation of this
22 chapter; and

23 b. The owner pays for all costs associated with the animal's care while in custody,
24 including any costs of notifications under this section.

25 4. If the law enforcement officer refuses to return the animal to its owner, the owner may
26 petition the court for an order directing its return. In ruling on a petition under this
27 subsection, a court may direct that the animal be sold, placed for adoption, humanely
28 destroyed, or returned to its owner with or without conditions.

29 5. If the owner does not lay claim to the animal within five days, the law enforcement
30 officer shall sell the animal, place it for adoption, or humanely destroy it.

1 6. Any proceeds from the sale or adoption of an animal under this section must be
2 deposited in the county general fund.

3 7. Notwithstanding the requirements of this section, if upon examining an animal taken
4 into custody by a law enforcement officer in accordance with this section a licensed
5 veterinarian determines that the animal's condition justifies its destruction, the
6 veterinarian shall humanely destroy the animal. The law enforcement agency shall
7 reimburse the veterinarian for the cost of the animal's destruction.

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

11 **36-21.2-09. Title of animal - Sale or adoption.**

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

14 **36-21.2-10. Veterinarian.**

15 If upon examining an animal a licensed veterinarian determines that there is reasonable
16 cause to believe an animal has been neglected, abused, treated cruelly, or subjected to any act
17 or omission in violation of this chapter, the veterinarian may retain custody of the animal and
18 shall immediately notify law enforcement officials regarding the determination.

19 **36-21.2-11. Caged animals - Public display - Exemptions - Penalty.**

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

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

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

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

28 3. This section does not apply to:

29 a. The North Dakota state fair association;

30 b. Agricultural fair associations; or

31 c. Political subdivisions.

- 1 4. The following do not constitute violations of this section:
- 2 a. Any usual and customary practice in:
- 3 (1) The production of food, feed, fiber, or ornament;
- 4 (2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
- 5 and training of animals;
- 6 (3) The sport of rodeo;
- 7 (4) Animal racing;
- 8 (5) The use of animals by exhibitors licensed under the Animal Welfare Act,
- 9 7 U.S.C. 2131, et seq;
- 10 (6) Fishing, hunting, and trapping;
- 11 (7) Wildlife management;
- 12 (8) The culinary arts;
- 13 (9) Lawful research and educational activities; and
- 14 (10) Pest, vermin, predator, unwelcome animal, and animal damage control;
- 15 b. Any action taken by an individual against an animal that is attacking or is about to
- 16 attack a human, a companion animal, or livestock;
- 17 c. The humane or swift destruction of an animal for cause; and
- 18 d. Services provided by or under the direction of a licensed veterinarian.

19 **36-21.2-12. Unattended animal in motor vehicle - Penalty.**

- 20 1. An individual may not leave an animal unattended in a motor vehicle without ensuring
- 21 that the animal's health and safety is not endangered.
- 22 2. An individual who violates this section is guilty of an infraction.
- 23 3. A law enforcement officer may use reasonable means to enter a motor vehicle and
- 24 remove an animal left in violation of this section.

25 **36-21.2-13. Immunity from liability.**

26 A veterinarian is immune from civil or criminal liability if the veterinarian, on the

27 veterinarian's own initiative or at the request of a law enforcement officer or other governmental

28 entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity

29 under this section does not apply in the case of negligence.

30 **36-21.2-14. Estrays.**

31 This chapter does not apply to estrays.

1 **36-21.2-15. Multiple animals - Enhancement of offense.**

2 If a violation of this chapter involves multiple animals, whether of the same species or not,
3 the violation is deemed to be a singular offense for purposes of enhancement.

4 **SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS -**

5 **REPORT TO LEGISLATIVE MANAGEMENT.** Before July 1, 2014, representatives of
6 agricultural production groups, including representatives of this state's livestock industry, shall
7 compile information regarding the effects of this Act on the various sectors of the agricultural
8 industry. The compiled information must be presented to the legislative management for review,
9 together with any suggestions for potential statutory changes.

10 **SECTION 6. REPEAL.** Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
11 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
12 repealed.