

Fifty-sixth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1185

Introduced by

Representatives Price, Rose

Senators DeMers, Kilzer, Thane

(At the request of the State Department of Health)

1 A BILL for an Act to create and enact chapter 23-36 of the North Dakota Century Code, relating
2 to rabies control; to repeal sections 23-01-18 and 23-01-19 of the North Dakota Century Code,
3 relating to rabies control; to provide a penalty; and to declare an emergency.

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

5 **SECTION 1.** Chapter 23-36 of the North Dakota Century Code is created and enacted
6 as follows:

7 **23-36-01. Definitions.** As used in this chapter:

- 8 1. "Bite" means any penetration of the skin by an animal's teeth.
- 9 2. "Clinical symptoms of rabies" means physical signs or symptoms, or animal
10 behavior that would lead a reasonably prudent veterinarian to conclude that a
11 diagnosis of possible rabies is indicated.
- 12 3. "Confinement" means separation of an animal from humans, other than the owner,
13 caretaker, a member of the owner's family, or the caretaker's employees, and from
14 other animals, by means of a building, cage, fence, pen, or other secure enclosure
15 that restricts the animal's movement within definite boundaries and prevents the
16 animal from exiting the enclosure.
- 17 4. "Department" means the state department of health.
- 18 5. "Domestic animal" means any dog [canis familiaris], cat [felis domestica], horse,
19 mule, bovine animal, sheep, goat, bison, llama, alpaca, swine, or captive-bred,
20 currently vaccinated ferret.
- 21 6. "Emergency" means a situation in which an immediate search and seizure of an
22 animal is necessary and authorized by section 8 of article I of the Constitution of
23 North Dakota and the fourth amendment to the Constitution of the United States
24 because of a risk of death or serious bodily injury to a human or another animal.

- 1 7. "Exposure to rabies" means any bite or scratch, and includes any nonbite contact
2 of an individual with an animal, animal tissue, or fluids that are defined as an
3 exposure to rabies by the federal advisory committee on immunization practices
4 referred to in Public Law No. 103-66 [107 Stat. 636, 642; 42 U.S.C. 1396s(e)].
- 5 8. "Impound" means quarantining an animal at a public pound or an animal facility of
6 a licensed veterinarian.
- 7 9. "Law enforcement officer" has the meaning of that term as set forth in section
8 12.1-01-04.
- 9 10. "Quarantine" means confinement in a fixed area that keeps a possibly rabid animal
10 secure and isolated from all other animals so there is no reasonable possibility of
11 rabies being mechanically transmitted from the confined area.
- 12 11. "Vaccinated animal" means an animal that has been vaccinated in compliance with
13 the compendium of animal rabies control issued by the national association of
14 state public health veterinarians.
- 15 12. "Wild mammal" means any animal of the order mammalia which is not a domestic
16 animal and includes any hybrid of a domestic animal and a mammal regardless of
17 whether the animal is:
- 18 a. Wildlife as defined in section 20.1-01-02; or
19 b. Held in private ownership.

20 **23-36-02. Policy - Local authority.**

- 21 1. The department shall establish a rabies control program that must place primary
22 emphasis on human exposure to rabies.
- 23 2. The department shall consider national peer-reviewed recommendations for the
24 control of rabies during the development of the department's rabies control
25 program.
- 26 3. This chapter may not be construed to limit the authority of any local agency to
27 control or prevent rabies, and, upon request, the department may assist any local
28 agency in rabies control and prevention activities, but the fact that possible rabies
29 exposure is subject to a local ordinance does not limit the department's authority
30 under this chapter.

1 4. This chapter may not be construed to limit a law enforcement officer's ability to
2 immediately seize, humanely kill, and request the testing of an animal for rabies if
3 emergency circumstances exist that endanger human health or safety.

4 **23-36-03. Enforcement authority.**

- 5 1. The department, or an agency acting on the department's behalf, may promptly
6 seize and humanely kill, impound at the owner's expense, or quarantine any
7 animal if the state health officer, or the state health officer's designee, has
8 probable cause to believe the animal presents clinical symptoms of rabies.
- 9 2. The department, or an agency acting on the department's behalf, may promptly
10 seize and humanely kill, impound at the owner's expense, or quarantine any wild
11 mammal that is not currently vaccinated for rabies by a vaccine approved for use
12 on that species by the national association of state public health veterinarians, inc.,
13 or any stray or unwanted domestic animal, if the state health officer, or the state
14 health officer's designee, determines the animal is a threat to human life or safety
15 due to the possible exposure of an individual to rabies.
- 16 3. The department, or an agency acting on the department's behalf, may promptly
17 seize and quarantine, or impound at the owner's expense, any dog, cat, or
18 currently vaccinated ferret for a period of ten days, or any other domestic animal
19 for a period not exceeding six months, if the state health officer, or the state health
20 officer's designee, determines the animal is a threat to human life or safety due to
21 the possible exposure of an individual to rabies.
- 22 4. If an animal is humanely killed under this section, then at the request of the state
23 health officer, or the state health officer's designee, the animal's brain must be
24 tested for rabies by the state microbiology laboratory of the department if there is
25 possible human exposure to rabies and by the North Dakota veterinary diagnostic
26 laboratory in any other case.
- 27 5. If an animal that has bitten or otherwise exposed an individual or another animal is
28 not seized for testing, a law enforcement officer with jurisdiction over the place
29 where the animal is located may determine whether to impound or quarantine the
30 animal under subsection 3 and which method of confinement to use.

1 6. A licensed veterinarian shall examine, at the owner's expense, a confined animal
2 on the first and last day of the animal's confinement and, at the request of the
3 department or a local public health unit, at any other time during confinement.

4 **23-36-04. Administrative search warrant.** Except in the case of an emergency, the
5 department, or another state or local agency acting on the department's behalf, may seize an
6 animal located on private property only as authorized by an administrative search warrant
7 issued under chapter 29-29.1. A warrant to seize an animal under this section must include a
8 request to quarantine, impound, or humanely kill and test the animal.

9 **23-36-05. Assistance of state and local agencies.** If a warrant is issued under
10 section 23-36-04 and upon written request of the department, the game and fish department,
11 the state veterinarian, or the wildlife services program of the United States department of
12 agriculture animal and plant health inspection service shall provide assistance to the
13 department in any action to seize, impound, quarantine, or test an animal suspected of having
14 rabies or that has possibly exposed an individual to rabies, and shall carry out any other
15 preventive measures the department requests. For purposes of this section, a request from the
16 department means only a request for assistance as to a particular and singular suspicion of
17 exposure to rabies and does not constitute a continuous request for assistance.

18 The duty of the game and fish department to cooperate and provide assistance under
19 this section is limited to cases involving a wild mammal and is applicable only if no other
20 agency is available for law enforcement or animal control services.

21 **23-36-06. Payment for postexposure treatment.** The department may provide, at no
22 cost, rabies postexposure vaccine to an individual possibly exposed to rabies if the department
23 determines the individual is financially unable to pay for the postexposure vaccine treatment.

24 **23-36-07. Penalty for violation of order or interference.** A person is guilty of an
25 infraction if the person:

- 26 1. Conceals, releases, or removes an animal from the place where the animal is
27 located with intent to impair that animal's availability for seizure under that warrant
28 or order while the person is under the belief that a search warrant or judicial order
29 is pending or is about to be issued for the seizure of an animal;
- 30 2. Fails to impound or quarantine an animal for the period and at the place specified
31 after having been ordered to impound or quarantine the animal; or

1 3. Recklessly hinders any state or local official in any pending or prospective action to
2 seize, impound, quarantine, or test an animal under this chapter.

3 **23-36-08. Limitation on liability.** Subject to any other requirements of section
4 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover an
5 amount up to the replacement value of the animal, if the owner establishes that before the
6 animal was seized and tested for rabies under this chapter, the state health officer, or the state
7 health officer's designee, knew or recklessly failed to determine that the animal, at the time of
8 the exposure, was lawfully owned and licensed and that:

9 1. The animal was a wild mammal, and, at the time of the exposure, was currently
10 vaccinated with a vaccine approved for use on an animal of that species by the
11 national association of state public health veterinarians, inc.;

12 2. The animal had not bitten, scratched, or otherwise possibly exposed a person to
13 rabies; or

14 3. The animal was a domestic animal and there was not probable cause to believe
15 the animal was rabid.

16 **23-36-09. Owner's responsibility.**

17 1. The owner of an animal is liable for the cost of quarantine and veterinary services,
18 and for the cost of any postexposure treatment received by an individual who is
19 possibly exposed to rabies by the owner's animal, if the animal is not:

20 a. Licensed or registered as required by any state or local law or rule applicable
21 to that species; or

22 b. Confined or vaccinated as required by any state or local law or rule applicable
23 to that species.

24 2. This section may not be construed to limit any other liability of an animal owner for
25 injury or damage caused by the owner's animal.

26 **SECTION 2. REPEAL.** Sections 23-01-18 and 23-01-19 of the 1997 Supplement to
27 the North Dakota Century Code are repealed.

28 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.