

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2211
(Senators Flakoll, J. Lee, O'Connell)
(Representatives Anderson, Delmore, D. Johnson)

AN ACT to create and enact two new sections to chapter 36-01 and chapter 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of animal health and the treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02, 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 Dakota Century Code, relating to the treatment of animals; to provide a penalty; and to provide for reports to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Restriction on importation of certain animals - Exception.

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

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

Assistance in criminal investigations.

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

SECTION 3. Chapter 36-21.2 of the North Dakota Century Code is created and enacted as follows:

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

1. Any person that willfully engages in animal neglect is guilty of a class A misdemeanor.
2. For purposes of this chapter, "neglect" with respect to dogs and cats, means the failure to provide an animal with:
 - a. Food and water, as appropriate for the species, the breed, and the animal's age and physical condition;
 - b. Shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition;
 - c. Necessary medical attention; and
 - d. An environment that is:

- (1) Ventilated in a manner appropriate for the species, the breed, and the animal's age and physical condition;
 - (2) Cleaned in a manner appropriate for the species, the breed, and the animal's age and physical condition; and
 - (3) Free of conditions likely to cause injury or death to an animal of that species, breed, age, and physical condition.
3. For purposes of this chapter, "neglect" with respect to all animals other than those included in subsection 2, means the failure to provide:
 - a. Food and water that is:
 - (1) Appropriate for the species and the breed; and
 - (2) Sufficient to sustain the animal's health;
 - b. Minimal protection from adverse weather conditions, as appropriate for the species and the breed; and
 - c. Medical attention in the event of an injury or illness, as appropriate for the species and the breed.
4. The following do not constitute violations of this section:
 - a. Any usual and customary practice in:
 - (1) The production of food, feed, fiber, or ornament, including all aspects of the livestock industry;
 - (2) The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;
 - (3) The sport of rodeo;
 - (4) Animal racing;
 - (5) The use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq.;
 - (6) Fishing, hunting, and trapping;
 - (7) Wildlife management;
 - (8) The culinary arts;
 - (9) Lawful research and educational activities; and
 - (10) Pest, vermin, predator, and animal damage control, including the disposition of wild animals that have entered structures or personal property;
 - b. The humane or swift destruction of an animal for cause; and
 - c. Services provided by or under the direction of a licensed veterinarian.

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

1. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor for a first or a second offense and a class C felony for a third or subsequent offense occurring within ten years.

2. For purposes of this chapter, "animal abuse" means any act or omission that results in physical injury to an animal or that causes the death of an animal, but does not include any act that falls within the definition of animal cruelty, as set forth in section 36-21.2-03.
3. The following do not constitute violations of this section:
 - a. Any usual and customary practice in:
 - (1) The production of food, feed, fiber, or ornament, including all aspects of the livestock industry;
 - (2) The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;
 - (3) The sport of rodeo;
 - (4) Animal racing;
 - (5) The use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq.;
 - (6) Fishing, hunting, and trapping;
 - (7) Wildlife management;
 - (8) The culinary arts;
 - (9) Lawful research and educational activities; and
 - (10) Pest, vermin, predator, and animal damage control, including the disposition of wild animals that have entered structures or personal property;
 - b. Any action taken by an individual against an animal that is attacking or is about to attack a human, a companion animal, or livestock;
 - c. The humane or swift destruction of an animal for cause; and
 - d. Services provided by or under the direction of a licensed veterinarian.

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

1. Any person that intentionally engages in animal cruelty is guilty of a class C felony.
2. For purposes of this chapter, "animal cruelty" means:
 - a. Breaking an animal's bones;
 - b. Causing the prolonged impairment of an animal's health;
 - c. Mutilating an animal; or
 - d. Physically torturing an animal.
3. The following do not constitute violations of this section:
 - a. Any usual and customary practice in:
 - (1) The production of food, feed, fiber, or ornament, including all aspects of the livestock industry;

- (2) The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;
 - (3) The sport of rodeo;
 - (4) Animal racing;
 - (5) The use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq.;
 - (6) Fishing, hunting, and trapping;
 - (7) Wildlife management;
 - (8) The culinary arts;
 - (9) Lawful research and educational activities; and
 - (10) Pest, vermin, predator, and animal damage control, including the disposition of wild animals that have entered structures or personal property;
- b. Any action taken by an individual against an animal that is attacking or is about to attack a human, a companion animal, or livestock;
 - c. The humane or swift destruction of an animal for cause; and
 - d. Services provided by or under the direction of a licensed veterinarian.

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

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

- (6) Fishing, hunting, and trapping;
 - (7) Wildlife management;
 - (8) The culinary arts;
 - (9) Lawful research and educational activities; and
 - (10) Pest, vermin, predator, and animal damage control, including the disposition of wild animals that have entered structures or personal property;
- b. The humane or swift destruction of an animal for cause; and
 - c. Services provided by or under the direction of a licensed veterinarian.
4. For purposes of this section, "care" means food, water, and shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition, and necessary medical attention.

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

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

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

1. Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement officer shall provide care for the animal, either directly or through a contractual arrangement with another person. For purposes of this subsection, "care" means food, water, and shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition, and necessary medical attention.
 - a. If the owner and the person having custody or control at the time of the seizure are known to the officer, the officer shall:
 - (1) Provide notice of the seizure to the owner and the person having custody or control of the animal; and
 - (2) Petition the court for an order directing the animal's disposition.
 - b. If the animal's owner is not known to the law enforcement officer, the officer shall publish notice of the animal's seizure in the official newspaper of the county and indicate that if the owner does not claim the animal within five days, the animal will be sold, placed for adoption, or humanely destroyed, at the direction of the law enforcement officer.
 - (1) If the owner does not claim the animal within five days, as required by this subdivision, the law enforcement officer shall sell the animal, place the animal for adoption, or provide for its humane destruction.

- (2) If the owner is identified within the five-day period, the law enforcement officer shall petition the court for an order directing the animal's disposition.
2. In ruling on a petition for an animal's disposition under this section, a court may direct that the animal be sold, placed for adoption, humanely destroyed, or returned to its owner, with or without conditions.

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

1. If convicted of violating this chapter, the owner of an animal seized under section 36-21.2-05 is responsible for all costs related to the animal's seizure, including required notifications, attorney's fees, court costs, and any costs incurred in providing the animal with care or in providing for its destruction in accordance with section 36-21.2-06.
2.
 - a. The law enforcement agency that seized the animal has a lien upon the animal for all costs incurred as a result of the seizure and conviction. The lien is superior to any other claim or lien.
 - b. If the lien is not satisfied by the animal's owner, the law enforcement agency may apply to the court for an order enforcing the lien.
3. If a seized animal is sold, the proceeds must be used first to satisfy the lienholder to the extent of the lien and second to satisfy any other claims involving the animal. Any remaining proceeds must be returned to the owner, as directed by the court. If the owner is unknown, any proceeds otherwise payable to the owner must be deposited in the general fund of the county.

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

1. A law enforcement officer may take custody of an animal if the officer has reasonable cause to believe that the animal has been abandoned in violation of this chapter.
2.
 - a. Upon taking custody of an animal in accordance with this section, the law enforcement officer shall:
 - (1) Provide care for the animal, either directly or through a contractual arrangement with another person; and
 - (2)
 - (a) Notify the owner, if known to the officer; or
 - (b) If the owner is not known to the officer, provide notice of the animal's custody, indicate that if the owner does not lay claim to the animal within five days, the animal will be sold, placed for adoption, or humanely destroyed, at the direction of the law enforcement officer, and include the officer's contact information.
 - b. For purposes of this subdivision, notice may be provided by:
 - (1) Publication in the official newspaper of the county if the newspaper is published daily or in a daily newspaper serving the county;
 - (2) Any electronic means; or
 - (3) Posting a description and a photograph at the local law enforcement center.
3. If the owner is identified within the five-day period, the law enforcement officer shall return the animal to the owner only if:

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

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

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

36-21.2-10. Veterinarian.

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

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

1. In addition to any other requirements set forth in this chapter, a person placing a caged animal on public display shall ensure that:
 - a. The size of the cage allows the animal to stand up, lie down, and turn or move about; and
 - b. The cage provides the animal with protection from the elements, as appropriate for the species, the breed, and the animal's age and physical condition.
2. Any person that willfully fails to meet the requirements of this section is guilty of a class A misdemeanor.
3. This section does not apply to:
 - a. The North Dakota state fair association;
 - b. Agricultural fair associations; or
 - c. Political subdivisions.

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

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

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

36-21.2-13. Immunity from liability.

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

36-21.2-14. Estrays.

This chapter does not apply to estrays.

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

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

SECTION 4. REPEAL. Sections 36-21.1-01, 36-21.1-02, 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 Dakota Century Code are repealed.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2211.

Senate Vote: Yeas 43 Nays 3 Absent 1

House Vote: Yeas 80 Nays 12 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State