# **2013 SENATE AGRICULTURE**

SB 2211

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# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee Roosevelt Park Room, State Capitol

> SB 2211 January 24, 2013 17703

Conference Committee

The North Dakotans for Responsible Animal Care coalition initiated the bill with the goal of strengthening and clarify animal treatment laws.

Minutes:

Written testimony

Chairman Miller opened the hearing on SB 2211 relating to the treatment of animals and to provide a penalty.



Senator Flakoll, District 44, testified in support of SB 2211. He said that he is pleased to sponsor this humane treatment of animals bill. He stated that it represents countless hours of dialog and decision making from a diverse group who were driven by a sense of unified purpose. Written testimony #1

Representative Dennis Johnson, District 15, said that he was privileged to be a sponsor and supporter of SB 2211.

Senator Judy Lee, District 13, is from one of the most urban districts in North Dakota. She stated that she had many constituents and colleagues that want this issue of animal cruelty addressed properly but felt measure 5 was not the way to address the problem. This bill does what measure 5 did not do; it provides protection for all animals. She added that the stakeholders from all perspectives of animal care and welfare have worked and come together to agree to support SB 2211. She urged the committee's favorable consideration.

**Representative Delmore**, District 43 in Grand Fork, testified in support of SB 2211. She said that she believed the citizens of North Dakota have given the legislature a mandate on animal abuse and believes this bill fulfills it. She urges support of SB 2211.

Senator O'Connell, District 6, testified in support of SB 2211 and commended the Ag Commissioner on getting the working group together to help draft this bill. He stated that SB 2211 is a good bill.

**Representative Dick Anderson**, District 6, testified in support of SB 2211. As a former livestock producer and a pet owner, he believes this is a good bill. He said it allows the ranchers to continue to do what they do best, produce cattle, and also allows for the immediate destroying of an animal when deemed necessary.

Jason Schmidt, Chairman of the North Dakotan's Responsible Animal care group and immediate past president of the North Dakota Stockmen's Association, explained how this diverse group including legislators, worked together to come up with SB 2211. He stated that the working group strongly believes that North Dakotan's should write North Dakota laws and do it in the open honest debate of the ND Legislature.

Senator Miller asked what their consternation was with measure 5 versus what is in SB 2211.

Jason Schmidt replied that most of the concern came from the fact that it didn't come from the inside. North Dakotans worked and drafted this bill. It wasn't funded by outside money, and wasn't being pushed by outside interests. He added that the committee was already in place working on these issues and by passing measure 5 it would have hindered the group's ability to protect livestock producer's livelihood as well as take care of all animals.

Senator Klein asked how he could respond to the people that look at this bill and say they would be better off with measure 5.

Jason Schmidt replied that we don't want outside interest defining what the categories are. He said that the group has broken the categories down in segments so that every violation is not treated the same. He added that this Bill gives an array of penalties. They have had input from the veterinarians on the care of animals and measure 5 did not include protection for all animals.

Senator Luick asked for an example of a felony case.

Jason Schmidt said that under the cruelty section of the bill it is defined and the next speaker will be addressing it.

Julie Ellingson, representing the North Dakota Stockmen's Association testified in support of SB 2211 and explained the four levels of bad actors and penalties. The four areas are: Adequate care, Animal abuse, Animal cruelty, and Animal abandonment. Written testimony #2

Senator Miller asked how they arrived at the need to have a distinction between animal abuse and animal cruelty particularly as it relates to penalties.

Julie Ellingson said that they felt it was important to provide differentiators for clarity in the law and also to assist our State Attorneys when they need to prosecute in cases of mistreatment. She said they opted to divided abuse into two tiers, to allow for a different penalty level for those extreme horrific acts that could occur and define that solely as a C felony in the cruelty piece. She added that not all cases of abuse would rise to that level so they needed a lower level of punishment for those cases to be addressed through the process.

Senator Klein questioned her on the difference of opinion of adequate care and what is the producer's recourse.

Julie Ellingson replied that these are the questions that were asked and discussed at length through the working group. She said the adequate care definition in the bill is quite similar to the definition in existing code however SB 2211more clearly defines what would constitute lack of adequate care. She stressed that in order to be charged they have used the word willful, you have to do something bad and know it's bad and intend it to be bad.

Senator Klein asked how they arrived at the penalties.

Julie Ellingson said that they took the existing statute and types of criminal acts that were already enumerated in current statute and differentiated different types of action.

Doug Goehring, North Dakota Agriculture Commission testified in support of SB 2211. Written testimony #3

Nancy Kopp representing the North Dakota Veterinary Medical Association introduced Dr. DelRae Martin.

Dr. DelRae Martin, Past President of the North Dakota Veterinary Medical Association (NDVMA) and representing NDVMA testified in support of SB 2211. Written testimony #4

Senator Klein asked how the new law will treat these breeding operations so it wouldn't happen again.

**Dr. Martin** said her knowledge of what happened before was that the State Attorneys did not proceed with charges. She said that their hope is that the law is more clarified.

Senator Klein had some concern over whether we are fixing the problem and if every animal in a situation is a separate violation or if it is one violation.

Dr. Martin replied that she could not answer that.

Discussion followed on the lack of State Attorney prosecuting these cases.

Senator Luick asked the frequency of sever cruelty cases in North Dakota.

Dr. Martin replied that they are very infrequent in North Dakota.

**Doyle Johannes**, President of the North Dakota Farm Bureau, representing the members of the NDFB and their policy testified in support of most concepts contained in SB 2211. Written testimony #5

Senator Heckaman asked if the NDFB had a seat at the table in drafting SB 2211. She asked what the discussion was and why the felony remains in the three sections that they are opposed to.

**Doyle Johannes** said that they agreed with keeping the felony for cruelty but the others offenses would be covered by the felony provision if they were egregious enough.

He passed out amendments. Attachment #6

Kristi Schlosser Carlson, North Dakota Farmers Union (NDFU), testified in support of SB 2211. Written testimony #7

Senator Klein asked if there was any discussion in her organization about the felony provisions.

Kristi Schlosser Carlson replied yes. She said the focus that she brings today is that the effort was to provide clarity to what is in statute and their goal is to educate people on the sense of stewardship that we agree on and not to expand the scope of criminalization. Also to recognize that there are bad actors in the state and they need a response. She said that everyone agrees on the cruelty section of the bill and the part on repeated offenders, adding that those of us that have discussed it feel that repeat offenders are bad actors. The person that repeats something intentionally deserves a higher response. She told Senator Klein and the committee that NDFU agrees with the way SB 2211 is written.

Anita Thomas, Attorney for the Legislative Council is here at the request of the bill's primary sponsor. She presented a chart on the sections proposed for repeal and on how the same sections are treated in SB 2211.



Attachment #8

Cameo Skager, President of the Board of Directors for North Dakota Humane Society (CDHS) testified in support of SB 2211 and against NDFB's amendments. Written testimony #9

Senator Miller asked if the example of the offenses she described were prosecuted.

Nukhet Hendricks said nothing happened and said that the State Attorneys should be asked why offenders aren't prosecuted. Her speculation is that there are not enough teeth in the law to make it worthwhile to prosecute these offenders.

Discussion followed on why the State Attorneys aren't prosecuting these offenders now and whether they will in the future.

Nukhet Hendricks, Executive Director, Fargo-Moorhead Humane Society testified in support of SB 2211. Written testimony #10

Dr. Beth Carlson, Deputy State Veterinarian testified on behalf of the State Board of Animal Health in support of SB 2211 and the process that developed SB 2211. Written testimony # 11

Senator Luick asked if she thought the felony portion of the bill goes too far.

Dr. Carlson replied no I do not.



Senator Klein asked if the State Board of Animal Health is involved with animal health and welfare of animals or do they have any regulations as an agency.

**Dr. Carlson** replied that their office is often called by the public or law enforcement officers. She said that it was their legal responsibility to help protect the health and welfare of animals.

Amy Brossart, Mandan, testified in support of SB 2211. She gave a personal account of how her ex-husband stabbed her dog and caused his death.

**Amy Briggs**, Mountrail Co. Human Society testified in support of SB 2211 but asked that they consider legislation that limits transportation of animals with reasonable and safe restraints or kennels. She asked that they consider penalties for lost or abandon pets.

Aaron Birst representing the Association of Counties which included County State Attorneys testified in support of SB 2211.

Discussion followed on the appropriate reinforcement of SB 2211 and penalties. (1:35)

**Kristine Seabolt**, Souris Valley Animal Shelter, testified in support of SB 2211 and encourages the legislatures to consider all animals and their safety and well-being while they review SB 2211. Written testimony #12

No opposing testimony

Chairman Miller closed the hearing on SB 2211.

Additional information: Revised version dated 5-14-12.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee

Roosevelt Park Room, State Capitol

SB 2211 January 24, 2013 17710

Conference Committee

**Minutes:** 

Discussion

**Chairman Miller** called the Senate Agriculture Committee to order to discuss SB 2211 relating to the treatment of animals and to provide a penalty. He said that the committee was given amendments from the North Dakota Farm Bureau (NDFB) and they would strike the felony provision from three of the classes in the bill.

It was decided to study the information and come back tomorrow ready to discuss and possibly take action.

Chairman Miller closed the discussion on SB 2211.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee Roosevelt Park Room, State Capitol

> SB 2211 January 25, 2013 17754

Conference Committee

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Minutes:

Discussion #2

**Chairman Miller** opened discussion on SB 2211 relating to the treatment of animal and to provide a penalty.

Senator Klein said that in his opinion everyone feels very comfortable with almost all the language. Even the group that brought in the amendments is fine with the way it is written. Their only concern is the three categories related to the felony. That is where the discussion begins. He said that he agreed that animal cruelty should be charged with a class C felony. He said that he wasn't as much in agreement when it comes to adequate care and that interpretation. His question is does there need to be a class C felony on adequate care.

Senator Heckaman said that she supports SB 2211 and does not support the amendment. She reminded them that the felony penalty in the three classes is for repeat offenders. She looks at the bill as having had a two year hearing already and the stakeholders put many hours into SB 2211 and the party that brought the amendments forward had a seat at the table. She stated that she could see an amendment coming from an individual that was not a part of the working group but the stakeholders that brought the amendment forward were at the table.

Senator Miller said he has problems with the bill and even before the amendment was offered he was thinking about amendments. His concern is the seriousness of a felony.

Discussion followed on amendments, stakeholders and the importance of getting SB 2211 passed, with or without amendments. Also questioned whether a violation is one violation or one violation per animal.

Senator Miller asked Julie Ellingson to give some clarifications.

Julie Ellingson, North Dakota Stockmen's Association, explained the discussion through the working group on how they arrived at the three categories; Abandonment, Animal care (originally called neglect), and Cruelty (15:45). She said that the group thought there should be an array of penalties. The bill draft was changed at Legislative Council to make cruelty the really bad stuff and the abuse piece in a lower tier.

Senator Klein said that his concern is on adequate care and the second offense being a felony. He feels we have the bad stuff covered in the cruelty section. He asked how many versions from Legislative Council did the group work on..

Julie Ellingson said that there were five. They had concerns with the interchanging of the word neglect to adequate care. She explained other small changes and why the majority of the group thought the repeat offender should be prosecuted for a felony.

Discussion continued on the seriousness of the crime versus penalty and the importance of the word "willful" being added back in on page two, line 29. There was also discussion of the timeline.

Senator Miller asked for a copy of the draft that was agreed upon in June. It will be provided to the committee. He asked Tom Bodine to explain why they want these amendments.

**Tom Bodine**, NDFB explained their position and why they want the amendments. (31:31)

He assured the committee that they were going to support whatever comes out of this committee.

Question followed on word changing from neglect to animal care; multiple animals and how they will be treated; overcrowded jails; the seriousness of a felony; duplication of the law.

**Dr. Susan Keller**, North Dakota State Veterinarian gave some comments on what the discussions were in the group. She said that the law enforcement officers and state attorneys and veterinarians would like more clarity and direction. She explained the reasons why they have the felony penalty for cruelty and second offenders and gave examples. She also clarified that a dairy herd or dog with puppies are considered as one singular offense.

Senator Heckaman asked if some stakeholders and intern could work together to draft an amendment to add the word "willfully".

Senator Miller replied that he had asked to intern to work on this.

Questions followed on the process of how a neglect case is presently handled and the steps that the State Veterinarian office goes through from the time of the initial complaint to final decisions. Committee thought that they may need a legal opinion on what is considered as one offense or multitude offenses in regard to multiple animals in a group.

Senator Klein said that for the record, the transportation of pets is covered under other areas of the century code.

Senator Miller adjourned.





# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee Roosevelt Park Room, State Capitol

> SB 2211 January 31, 2013 18099

Conference Committee

Minutes:

Discussion #3

**Chairman Miller** opened discussion on SB 2211 relating to the treatment of animal and to provide a penalty. He distributed copies of amendments 13.0380.05001.



Anita Thomas, Legislative Council, explained the amendments. She said they changed the section on adequate care to neglect, so that a person many not willfully neglect an animal. The amendments change the penalty to a first and second offense being a class A misdemeanor offense and a class C felony for a third offense. The definition of neglect is very similar to the adequate care definition. It further defines environment for the animals. On the third page they inserted the word willfully with the respect to animal abuse and the penalties on this section are an A misdemeanor offense for first and second offense and class C felony for a third offence. In the section on Animal cruelty the only change is that they used the word willfully so it coincides with the other sections. In the animal abandonment they made some grammatical changes and added the second A misdemeanor offense and then the third offense is a C felony. On Seizure of animal section, denied adequate care was changed to neglect and changes were made in the section on Law enforcement and duty of seizure. The last page they added a clarification of a violation that contained a collective of animals.

Senator Heckaman asked if the Game and Fish concern on hunting dogs was addressed.

Anita Thomas yes it is addressed on page 3, line seventeen.

**Senator Klein** clarified that these amendments will change the offense to a class A misdemeanor for the first and second offense and the third offense a class C felony. That will be in all sections except the cruelty section which automatically goes to class C felony.

Senator Miller asked if several penalties for such acts can be given.

Anita Thomas replied that the way the law is written it involves Law enforcement and a criminal act. It does not involve any administrative fines by the ag commissioner or other agencies.



Senator Heckaman asked to hear from some stakeholders on their opinion of the amendment presented.

Jason Schmidt, North Dakota Stockmen's Association, said that they expected to see a timeline.

Senator Klein asked if the amendments should say reoccurring within ten years.

Jason Schmidt would like to keep a timeline. He said that the most important thing is that they want this to move forward and they have consensus on SB 2211 with amendments.

**Tom Bodine**, North Dakota Farm Bureau said that they do appreciate the work group coming back with amendments. The NDFB would like the three felonies deleted and keep the cruelty felony. He also said the board was very supportive of a timeline.

**Richard Schlosser**, North Dakota Farmers Union said they agree with the coalition and want to see this go forward. We agree with the amendments going forward.

**Cameo Skager**, President of the Board of Directors for the North Dakota Humane Society, said that they would have liked to pass the original bill but they did compromise and they support the amendments and also agree on the importance of a timeline.

**Nancy Kopp**, North Dakota Veterinary Medical Association, said they have worked very hard to draft these amendments in unison and hope that the committee can support them.

Discussion followed on the timeline.

Senator Klein moved for the adoption of amendments 13.0380.05001 with the change from five years to ten years.

Senator Heckaman seconded the motion.

Adopted amendment: 5-0-0

Senator Heckaman moved a Do pass as amended on SB 2211.

Senator Larson seconded the motion.

Do pass as amended: 5-0-0

Senator Luick is the carrier.

Adopted by the Agriculture Committee

1012

13.0380.05003 Title.07000

January 31, 2013

# PROPOSED AMENDMENTS TO SENATE BILL NO. 2211

Page 1, line 18, replace "Adequate care" with "Neglect"

- Page 1, remove lines 19 and 20
- Page 1, line 21, replace "2." with "1."
- Page 1, line 21, replace "fails to meet the requirements of this section" with "engages in animal neglect"

Page 1, line 22, after "first" insert "or a second"

Page 1, line 22, replace "second" with "third"

Page 1, line 23, replace "five" with "ten"

- Page 2, replace lines 1 through 10 with:
  - For purposes of this chapter, "neglect" 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;
    - <u>b.</u> 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) <u>Ventilated in a manner appropriate for the species, the breed,</u> 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."

Page 2, line 11, replace "4." with "3."

Page 2, line 14, after the second underscored comma insert "training,"

Page 2, line 26, after "that" insert "willfully"

Page 2, line 26, after "first" insert "or a second"

Page 2, line 27, replace "second" with "third"

Page 2, line 27, replace "five" with "ten"

Page 3, line 4, after the second underscored comma insert "training,"

Page 3, line 18, after "that" insert "willfully"



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Page 3, line 24, remove "willful"

Page 3, line 20, remove "willful"

Page 3, line 29, after the second underscored comma insert "training,"

Page 4, remove line 12

Page 4, line 13, replace "2." with "1."

Page 4, line 13, replace "abandons" with "engages in the abandonment of"

Page 4, line 14, after "first" insert "or a second"

Page 4, line 14, replace "second" with "third"

Page 4, line 15, replace "five" with "ten"

Page 4, line 16, replace "3." with "2."

Page 4, line 19, replace "adequately" with "provide"

Page 4, line 25, replace "4." with "3."

Page 4, line 28, after the second underscored comma insert "training."

Page 5, after line 7, insert:

"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."

Page 5, line 10, replace "denied adequate care" with "neglected"

Page 5, line 21, after "provide" insert "care for"

Page 5, line 21, remove "with adequate care"

Page 5, line 22, after the underscored period insert "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."

Page 6, line 14, remove "adequate"

Page 7, line 1, after "Provide" insert "care for"

Page 7, line 1, remove "with adequate care"

Page 8, after line 2, insert:

"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."

Page 8, line 8, replace "denied adequate care" with "neglected"

Page 8, line 30, after the second underscored comma insert "training,"

Page 9, after line 21, insert



# "36-21.2-15. Collectives - Status of offense.

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

Renumber accordingly

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Date:	1-31-	13
Roll Call	Vote #:	1

# 2013 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. 2211

Senate _	Agriculture	Committee
Chec	k here for Conference Committee	
Legislative	e Council Amendment Number Senator millers amen	adment
Action Tal	ken: Do Pass Do Not Pass Amended 🖉 Adopt	Amendment
	Rerefer to Appropriations Reconsider	

Motion Made By Senator Klean

Seconded By Senata Hochaman

Senators	Yes	No	Senator	Yes	No
Chariman Joe Miller	12				
Vice Chairman Larry Luick	L				
Senator Jerry Klein	2				
Senator Oley Larsen .	-				
Senator Joan Heckaman	V				
Total (Yes) <u>5</u>		No	0		_
Absent ()					
loor Assignment					

If the vote is on an amendment, briefly indicate intent:



Date:	1-31-	13	-
Roll Call \	/ote #: _	2	_

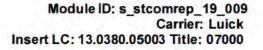
# 2013 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. <u>ススハ</u>

Senate Agri	culture		Committee
Check her	e for Conference Committee		
Legislative Cou	ncil Amendment Number		
Action Taken:	🕞 Do Pass 🗌 Do Not Pass	Amended	Adopt Amendment
	Rerefer to Appropriations	Reconsider	

Motion Made By Senator Hechamon Seconded By Senator Larver

Senators	Yes	No	Senator	Yes	No
Chariman Joe Miller	1/				
Vice Chairman Larry Luick	V				
Senator Jerry Klein	V				
Senator Oley Larsen .	V				· · · · ·
Senator Joan Heckaman	V				
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Total (Yes) 5		No	0		
Absent ()					
Floor Assignment Senator	L.	l			

If the vote is on an amendment, briefly indicate intent:



#### REPORT OF STANDING COMMITTEE

SB 2211: Agriculture Committee (Sen. Miller, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2211 was placed on the Sixth order on the calendar.

Page 1, line 18, replace "Adequate care" with "Neglect"

- Page 1, remove lines 19 and 20
- Page 1, line 21, replace "2." with "1."
- Page 1, line 21, replace "fails to meet the requirements of this section" with "engages in animal neglect"
- Page 1, line 22, after "first" insert "or a second"

Page 1, line 22, replace "second" with "third"

Page 1, line 23, replace "five" with "ten"

- Page 2, replace lines 1 through 10 with:
  - "2. For purposes of this chapter, "neglect" means the failure to provide an animal with:
    - <u>Food and water, as appropriate for the species, the breed, and the animal's age and physical condition;</u>
    - <u>b.</u> 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:
      - 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."

Page 2, line 11, replace "4." with "3."

Page 2, line 14, after the second underscored comma insert "training,"

- Page 2, line 26, after "that" insert "willfully"
- Page 2, line 26, after "first" insert "or a second"

Page 2, line 27, replace "second" with "third"

Page 2, line 27, replace "five" with "ten"

Page 3, line 4, after the second underscored comma insert "training,"

Page 3, line 18, after "that" insert "willfully"

Page 3, line 20, remove "willful"

Page 3, line 24, remove "willful"

Page 3, line 29, after the second underscored comma insert "training,"

Page 4, remove line 12

Page 4, line 13, replace "2." with "1."

Page 4, line 13, replace "abandons" with "engages in the abandonment of"

Page 4, line 14, after "first" insert "or a second"

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Page 4, line 15, replace "five" with "ten"

Page 4, line 16, replace "3." with "2."

Page 4, line 19, replace "adequately" with "provide"

Page 4, line 25, replace "4." with "3."

Page 4, line 28, after the second underscored comma insert "training,"

Page 5, after line 7, insert:

"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."

Page 5, line 10, replace "denied adequate care" with "neglected"

Page 5, line 21, after "provide" insert "care for"

Page 5, line 21, remove "with adequate care"

Page 5, line 22, after the underscored period insert "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."

Page 6, line 14, remove "adequate"

Page 7, line 1, after "Provide" insert "care for"

Page 7, line 1, remove "with adequate care"

Page 8, after line 2, insert:

"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."

Page 8, line 8, replace "denied adequate care" with "neglected"

Page 8, line 30, after the second underscored comma insert "training."

Page 9, after line 21, insert:

#### "36-21.2-15. Collectives - Status of offense.

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

Renumber accordingly



#### **2013 HOUSE AGRICULTURE**

SB 2211

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# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211 March 7, 2013 Job #19568

Conference Committee

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Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Attachments #1-13

Senator Flakoll, Co-Sponsor: (See attached #1a & 1b)

(8:30) If we water this bill down too much, those who brought us Measure 5 will be back and it will be on the shoulders of those who oppose this. This time if it comes back, it will pass. I will guarantee that.

I am disappointed with a farm group that was on the committee throughout the two-year period of time and has gone back on their word. In North Dakota that does not play well. When people break their promise, they become ineffective. They are someone who doesn't get invited back ever again. Why should they be invited if they cannot keep their word?

**Representative Headland:** You made a bold statement when you said you will guarantee if this bill gets watered down, a similar initiated measure will be back. Can you also make a bold statement and go on the record that you will guarantee they won't be back if we pass this bill? Because this bill is full of holes.

**Senator Flakoll:** That is based on some misinformation. Some people are saying they don't like certain parts. Those are things in place for years. The holes aren't there. This has been well thought out by a variety of people--law enforcement, States Attorneys, animal groups, Stockmen's Association, prosecuting attorneys, veterinary medicine, animal shelters, etc. There are about 26,000 producers out there. For every producer there are about 30 people that aren't a part of agriculture. Every generation gets further away from the land.

**Representative Headland**: I will give an example of what I feel is a hole. You talk about a manner of what is "appropriate for a species." Who is going to deem what is appropriate for a species? There isn't language in here.



(12:30)

Senator Flakoll: It would take volumes to do that.

**Representative Headland:** Doesn't that leave this language up to interpretation? Isn't that an opportunity for someone who has a beef with someone else into interpreting and causing problems--law enforcement type problems?

Senator Flakoll: That is a question that has been asked. Anyone can sue anyone. They can also be brought to court for false claims.

**Representative Headland:** You made a guarantee that an initiated measure would be back if we change this bill. I am asking if you can guarantee that it won't be back if we leave it as it is?

# (13:44)

Senator Flakoll: I think if we pass the bill, there will not be an initiated measure. If we kill this bill, that will be a grave fatal error.

**Representative Headland:** This is an opinion offered by the Senator and I can offer the same opinion that it will be back regardless.

**Representative Boschee:** If I observe an animal mistreated and I make an allegation, does it starts with a veterinarian and then to law enforcement?

Senator Flakoll: We have others here that can answer that.

# (15:54)

Senator Flakoll: Handed out amendments because there is a technical error. (See attached #1c) After "seizure", add "and conviction" in terms of cost.

**Rep. Delmore, Co-Sponsor:** I have spent time on the farm with animals. Pets and animals deserve humane treatment. Not everybody likes all aspects of it and maybe that is what makes it a very good bill. We heard the concerns and have taken action.

# (18:55)

Senator O'Connell, Co-Sponsor: The Agriculture Commissioner along with Anita Thomas spent hours and hours trying to draft a good bill. I have heard a guy say that he will get a bigger penalty for kicking his dog than his spouse. Some details need to be worked out that weren't thought about.

(20:30)

L. Anita Thomas, Attorney with Legislative Council: (See attached #2a & #2b)

# (24:35)

Jeff Ubben, Assistant Burleigh County State's Attorney: (See attached #3)

Representative Headland: What is the maximum penalty in current law?

Jeff Ubben: It would be a Class A Misdemeanor which is 1 year, a fine of \$2,000 or both per count. We are only allowed to stack five counts. We could only get a maximum of a year on each count.

Representative Headland: So the most one could get is 5 years and a \$10,000 fine?

Jeff Ubben: Yes.

**Representative Headland**: If your amendment gets put on this bill and passes, the current abuse case could be charged up to 100 counts of a felony and the individual locked up with the key thrown away?

**Jeff Ubben:** That is up to the judge to decide. We could have charged 100 counts currently in this case but we only charged five. We have never seen a case this large with 100 dead animals. He could be charged with a count for each animal but prosecutors are reasonable people and I don't see that happening.

Chairman Dennis Johnson: The way the law is now he could be charged with 100 counts?

Jeff Ubben: Yes. He could be charged for each animal but instead was charged five counts for all animals.

Representative Boschee: Can you walk us through the procedure?

**Jeff Ubben:** An observation is made by a citizen and it is reported to the Sheriff. The Sheriff investigates. He then calls the State Veterinarian to investigate. The Sheriff and State Veterinarian compile reports and forward to the appropriate County States Attorney who decides if prosecution is warranted for those charges. Then we file the complaint and go through the adjudication portion.

**Representative M. Nelson:** You were concerned about differential enforcement. You also commented that you are only allowed to stack five counts. What is it that only allows you to stack five counts?

**Jeff Ubben:** That is written into statute that you can only stack five Class A Misdemeanors for purposes of sentencing. We could have charged 100 counts but the most we could have gotten would have been five years in prison.

**Representative M. Nelson:** You said the status of the offense on the collectives is confusing and needs to be amended. Where it says, "The violation is deemed to be a singular incident for purposes of determining the status of the offense." How can that be clarified?



(32:27)

Jeff Ubben: It was confusing whether we were saying one count or one incident. One incident can carry several counts. This singular incident language doesn't make sense. This muddles what it is we are allowed to do.



**Representative Headland:** You will have to prosecute if this bill passes. Can you tell us what is proper ventilation for a certain species or what is deemed appropriate cleanliness or what is an environment that provides protection against injury, etc.? Or is it up to interpretation?

Jeff Ubben: I would rely heavily on the State Veterinarian's opinions.

## (34:52)

## Jason Schmidt, Chairman of North Dakotans for Responsible Animal Care:

We were the ones that started this discussion. This group has been together for more than two years. Our goal was to bring the entire agriculture community in on this. We had advice from the Agriculture Department and the State Veterinarian and shelters from Fargo and Bismarck. My goal and the group's goal was that we wanted all North Dakotan's that had a stake in this to put concerns on the table. We almost treated this as a rewrite of this chapter. Parts of the current law were not changed. There is nothing in this bill that was not discussed.

We had a website: <u>www.ndanimalcare.com</u>. This website published what we had printed so everybody had a chance to see what was out there and weigh in on it.

We are now handing it to the legislature. This is written by North Dakotans with us in mind. We don't want to hurt any of our producers. We want protection for animals but our people are able to do what they have always done.

**Representative Trottier:** With the initiated measure, production agriculture was not involved. It was just companion animals? Cats, dogs, horses, etc.

#### (40:19)

Jason Schmidt: Horses were considered a companion animal. We believe that would affect the ability to produce food. No, it did not include all animals. It was three species.

Representative Trottier: Now production agriculture is included?

Jason Schmidt: It does include all animals.

**Representative Trottier:** What if I am a hog producer and I don't vaccinate for a disease. I lose all my litters. Can I be charged?

Jason Schmidt: I don't know. I think that is a far reaching example. Our goal is to protect the customary practices that we have had in agriculture. That is why we involved the veterinarians. We don't want unintended consequences. Everyone has opinions. Current code addresses almost all the same things we are dealing with now. It is just written in a little different form now. "Adequate care" is in the code now.

**Representative Trottier:** How much of this measure has been instituted and pushed by the Humane Society of the United States (HSUS)? Would you agree that most of this stems back to things they have pushed for?

Jason Schmidt: No, I don't. We were very careful. I was adamant about who directs the laws of our state. Our goal was to not let the animal rights activists write our laws.

**Representative Rust:** What kinds of discussions were held in regard to the ratcheting up of penalties? Current law does not get into Class C felonies. That is a heavy thing and used more for crimes against humanity.

Jason Schmidt: We didn't come to the discussion for that purpose only. That was part of it. The following testimony will explain the differences.

**Representative Boschee:** How is the term "usual and customary" defined? Is it up to a veterinarian?

Jason Schmidt: We do have the ability to write rules to affect that. It is in current code and nothing new.

Representative Boschee: How do you define it?

Jason Schmidt: There are customs we use in ranching and from research done through the years. We have a huge scientific community and experts that deal with those animals. It is not just an onlooker driving by on the road.

Representative Boschee: Are producers regulating each other?

**Jason Schmidt:** All of us want to be good stewards of animals. We don't like a black eye as a good producer. Our biggest concern is so a producer isn't prosecuted for something typical.

**Representative Belter:** There are producers who want to raise drug-free animals and their death loss is higher. Who makes judgment? Also, there are organizations that say crates are not humane. How do these figure into a "usual and customary" practice of production?

**Jason Schmidt:** This committee was in this discussion for those questions. If we can't come together and have consistency, it invites outside definition. How you want to raise and sell your animals doesn't mean they aren't cared for.

**Representative Belter:** Have PETA and the Humane Society signed off with no intent to challenge any provisions of the law?

Jason Schmidt: I have not asked them nor do I intend to. I am asking North Dakotans how they feel about it. This is the right process to do that.

(56:24)

Julie Ellingson, North Dakota Stockmen's Association: (See attached #4)

**Representative Boschee:** In the exemptions on each of the four sections, "Any usual and customary practice in the breeding, raising, training, showing, and competition of animals." Being from a non-rural area, the abuse we see is not toward family livestock. It is the



person who gets two dogs for breeding and there is malnourishment and mistreatment. This is not a customary practice. If we don't limit it to agriculture, it ends up with a loop hole for some.

Julie Ellingson: We look at the list of exemptions. As a livestock producer, we get up early to care for animals. Those are common steps we follow every day. There are also dog breeders, etc. Animals that are not feed are not a usual or customary practice. If you don't care for them, you won't be profitable. All these definitions have the word "willful." That means you intend to be bad.

**Representative Rust:** Did your committee get any statistics on the number of times people have been convicted of third or more offenses?

Julie Ellingson: No. We looked for numbers about cases and complaints in different counties but that information was not available. We looked at some statutes in other states. Nebraska has a tiered system.

## (1:06:46)

**Representative Headland:** We both understand where this came from and the motivation behind it. We have seen what has happened in other states. Some of their agricultural practices were shut down. What is passing this bill going to do to prevent that from happening?

Julie Ellingson: We have been working on this legislation for many years. Measure 5 had holes that would create problems impacting agriculture. As stewards of animals, we need to provide expectations for protection of animals. The basis of SB 2211 is existing statute. We had advice from friends across the country. They recommend being proactive and work with your partners so it is done on our terms. SB 2211 represents that effort.

**Representative Headland:** Some of us believe those protections are in current law. They may need some refining and this bill is a vehicle to do that. I don't see this taking care of the problem from the groups that want to shut down animal agriculture.

Julie Ellingson: There are some extreme views on animal care. We can take care of these issues on our terms.

**Representative M. Nelson:** How does the unattended animal in a vehicle mesh with other parts of the bill. Is it the act of the animal unattended or is it if the animal dies that it is abuse.

Julie Ellingson: The animal in the vehicle was left as is. An animal that would die may fit under a different category.

**Representative M. Nelson:** "This Chapter does not apply to estrays." Is that the entire chapter? Or what are we trying to exempt the estrays from?

Julie Ellingson: There is a set of reporting requirements for estrays. Estrays are animals where we don't know who the owner is. That is in existing statute.





**Representative Trottier:** Did you hear of any offenses that were not covered under current statutes that needed to be addressed?

Julie Ellingson: The focus of this bill was to take our existing code, look at holes, and fix the problems.

**Representative Trottier:** In the case of the horses in New Salem, is that properly addressed? And puppy mills?

Julie Ellingson: I can't speak to those cases. Those cases are prosecuted under existing law.

# (1:15:38)

**Doug Goehring, North Dakota Agriculture Commissioner:** (See attached #5a & #5b) I have received calls about certain language being removed. Anita Thomas did address some of that. With rule-making authority, the Attorney General rendered an opinion and stated that language is already identified in NDCC 28-32-02 does not need to be repeated.

There were also concerns for removal of language about "the Commissioner shall maintain a list of investigators." A qualified individual involved in an investigation needs to be a veterinarian. You can have multiple veterinarians involved in an investigation. That helps to build a proper case to not go after someone unfairly. When law enforcement did not use a veterinarian, it caused problems. Judges will not take that kindly. We need the facts to move forward.

A flow chart (see attached #5b) was handed out to show the procedure of an investigation.

# (1:21:49)

**Representative Larson:** Who pays for the veterinary services under current law and under this law? Does law enforcement have to put that into their budget?

**Doug Goehring:** Under current law and new law, law enforcement would budget for that at the county level. There is a procedure to collect for the care of the animals. It was "clunky" before with problems of interpretation. Now there would be a better understanding of the process and collecting for the care.

**Representative M. Nelson:** In our exemptions "unusual and customary practice in production agriculture, including all aspects of the livestock industry", I don't see any definitions in this bill. What does "livestock industry" mean?

**Doug Goehring:** When you look at standards, you do not want to put that in law. Do that in rule making. That can be done through the board of animal health and through our department to look at care standards. The law identifies the structure. When you look at specific things about different species, you need to keep it in rules.

**Representative M. Nelson:** I am asking about what is the livestock industry. Is raising fox on a fur farm part of the livestock industry? How is the word "livestock" defined?

**Doug Goehring:** In North Dakota we have oversight on traditional and nontraditional livestock. We recognize beef, dairy, sheep, goats, swine, poultry, buffalo, deer, and farmed elk. Concerning fur bearing, they have been recognized in the past. We have responded to concerns and complaints. I'm not sure where our rules lie specifically. Ask Dr. Carlson. It is working with veterinarians to consider what is a "customary practice."

**Representative Boschee:** The concern about puppy mills, they are administered through USDA. Is there anything at the state level to appease the concerns about the licensing for breeding dogs?

**Doug Goehring:** I'm sure we could design for that. USDA already has oversight and we would work with them.

Representative Trottier: Do you foresee an increase in violations to animal cruelty?

Doug Goehring: Because of this? No.

**Representative Rust:** Do you have statistics on individuals who have been charged and convicted of three or more offenses?

Doug Goehring: No. If there is a pattern, there is a concern with the individual.

Nancy Kopp, North Dakota Veterinary Medical Association: Supports SB 2211. Introduced Dr. Del Rae Martin.

(1:29:20)

Dr. Del Rae Martin, Past President of the North Dakota Veterinary Medical Association: (See attached #6)

**Representative Headland:** Should state law prohibit certain citizens from owning pets or livestock? Some people don't have the ability to determine adequate ventilation, etc. Some don't think about it.

**Dr. Martin:** It should be proven that they cannot provide adequate care. You can't prejudge anyone. You need evidence.

**Representative Boschee:** You have experience with animals taken out of breeding operations. Will this bill adequately address breeding operations that are mistreating companion animals?

**Dr. Martin:** It does cover breeding facilities, etc. There are certain customary practices. That is why we brought the previous language from the old statute into this statute. Standards of care that are not being met are covered in this updated version.

Representative Boschee: Is this strengthening what was already there?

**Dr. Martin:** I think it strengthens the current statute because it provides the graded penalty tiers. The statute we already have covers usual and customary practices.

**Representative Boschee:** In your experience with inappropriate breeding and uncustomary practices, where is the willfulness?

**Dr. Martin:** "Willfulness" is when caring for a number of animals, there are standards of health that need to be maintained. Unless they are found mentally incompetent, providing proper care is up to the breeder. When that is not met it, then law enforcement needs to deal with it.

**Representative Boschee:** With the four instances you referred to in testimony, were the breeders unaware of customary practices or were they willfully mistreating animals?

Dr. Martin: I can't say as I wasn't asked to testify to that part.

**Representative Larson:** You talked about a case with matted hair, etc. They needed to come in weekly for treatment or you would confiscate the animal? How much would weekly visits cost?

Dr. Martin: At that time, about three years ago, it was about \$30 per visit.

**Representative Larson:** If that person chose to go to a different veterinarian or treat the animal at home, would you track down that animal to see if it was cared for?

**Dr. Martin:** It is on an individual basis. I would follow up. When there is a concern about rabies, we call. It is important to educate to avoid occurrences of abuse.

**Representative M. Nelson:** You testified about several breeding incidences. We heard testimony that five counts can be stacked. Under current law, that person was facing five years in jail and a \$10,000 fine. What did they actually receive?

**Dr. Martin:** There were no charges in those four cases. They were investigated and nothing was filed. I was not asked to provide testimony for any criminal proceedings.

**Representative Headland:** Do you believe it is possible that a person with good intentions could get caught in an economic situation and end up with criminal charges and jail?

**Dr. Martin:** There is an investigative process to keep that from happening. The judicial system would take that into consideration.

**Representative Headland**: The case everyone is thinking about, a veterinarian visited in December and 30 days later there were a bunch of problems. If we pass this law, this man would serve a long time in jail. I don't think the evidence is clear that there was intent. The person may have just gotten into an economic position. Thirty days is not a long time to have this happen.

Dr. Martin: I only know what I read in papers. I cannot respond. That is part of the investigative process.

# (1:45:18)

# Cameo Skager, President of Board of Central Dakota Humane Society: (See attached #7)

The process of this bill did not give us 100% of what we wanted but we understand the need for compromise.

We rescued 200 dogs from a Bowman County woman. She was not charged. She picked up a few of her dogs, moved on to new place and started over. Many of these breeders choose to let them suffer rather than tending to their medical needs. This is not part of usual and customary breeding practices.

We worked with the core working group to come up with this bill. We are not 100% in love with the bill. We want to work with North Dakotans. There is a need for a felony animal cruelty penalty. We urge a Do Pass on this bill as written.

Nukhet Hendricks, Executive Director of Humane Society, from Fargo-Moorhead: (See attached #8) Not present. Testimony handed out by Cameo Skager.

## (1:50:25)

Amy Brossart: I am speaking to the part of the bill that pertains to animal cruelty. (Played voice mail recording, left by her ex-husband, filled with expletives and threats to kill her dog.) After an hour worth of calls her two-year old dog was stabbed and put to sleep. Her daughter observed that if dad can do this to a dog, what will stop him from doing this to us. They didn't feel safe in their house.

It took two weeks to charge her ex-husband with animal cruelty. The States Attorney didn't think this case warranted any further looking into. It was a city attorney that decided to look at the case. In court the case lasted over two hours. They waited for a verdict for another month. He was found guilty. The maximum penalty in this case is 30 days in jail and \$1,000 fine. He was charged \$500. He was given 20 days in jail with all of it suspended. He has to reimburse for the dog. The judge told him he may have seen jail time but with a good paying job, it would be a shame for him to lose his job for something like this. The victims' voices are not heard.

Representative Larson: Was your ex-husband also charged with domestic abuse?

Amy Brossart: He was charged with harassment because of the repeated phone calls. He called ten times and left seven messages in an hour.

# (1:58:33)

**Dr. Shelley Lenz, Veterinarian in Killdeer and Dickinson:** Most animal abuse comes from ignorance. This bill isn't going to help that. The veterinarians are doing the heavy lifting. Ignorance with mental illness leaves us hanging. We can't save the animals from a bad situation. Sociopathy is highly correlated with malicious animal abuse.

There were questions on why there aren't many misdemeanors? Being involved in several welfare cases, the States Attorneys don't prosecute. They haven't elevated it to a level of







importance. This bill will help with that because we can't do it with just education. I give my support to this bill.

# (2:01)

# Kristi Schlosser-Carlson, North Dakota Farmers Union: (See attached #9)

There have been questions about different scenarios. We are here to make sure we are protecting good stewards. We are not apologizing for bad actors. The bad actors are those who do this intentionally, knowingly, and willfully.

# Beth Carlson, Deputy State Veterinarian, Department of Agriculture:

(See attached #10) I was a member of the group that helped draft the language.

There are three veterinarians in our office. We encourage the county to pay and if they cannot, the state pays. If one of us goes out, we are on state time. If we cannot go, we foot the bill to hire a veterinarian.

## (2:05:23)

**Representative Trottier:** The people of our state defeated Measure #5. We all heard since then, "Let the legislature address it." Current law does address animal cruelty but is it a problem with enforcement and the judicial system. Is that a true statement?

Beth Carlson: Some cases should have been pursued more aggressively by the legal system. In other cases, I don't think existing law is specific enough. We have hoarding situations with trailer houses full of cats, etc. The stench is so bad that people can't go inside. There is the authority for agencies to institute a rule-making process if there is a need to be more specific. This is a starting point.

# (2:08:06)

Kristie Skunberg, Chairwoman for North Dakotans to Stop Animal Cruelty: (See attached #11a)

Also handed out testimony for Alison Larson-Smith, Founder of the Triple H Miniature Horse Rescue: (See attached #11b)

Jessie Bateman, Administrator of the North Dakota Ag Coalition: (See attached #12) The North Dakota Ag Coalition represents 44 statewide organizations that represent commodities or have an interest in agriculture.

# **Opposition:**

## (2:11:55)

Trent Loos, Rancher in Central Nebraska: I am on the radio in 19 states. People ask, "Why do you love North Dakota so much?" It is people that care for the land and livestock.





In 2007 I was at the state capitol in Illinois testifying in front of the committee when they banned horse harvesting. We shared why this was a bad idea. I have talked to six of those legislators since. The consequences of what we did were terrible.

I believe Measure 5 was wrong and I believe this is wrong. In California in 2008 they passed proposition 2 which changed how we house animals. We lost that battle. The Humane Society of the United States (HSUS) issued a campaign. At the end of the campaign they did not leave or leave the Ag producers in California alone. They got the Ag producers to go to other states and say you are going to do the same or we will file a national relationship. And they did. The United Egg Producers nationally partnered with HSUS and asked the U.S. Government to establish animal housing guidelines for egg producers. This is not the end of people telling you how to take care of animals in the state of North Dakota.

In Michigan two individuals had 80 horses involved in the barrel racing horse business. One person in the county had a gripe against those two individuals. They had a sick horse along the road. Eighty of the horses were confiscated. After a six-month process the owners were cleared of all charges. But those horses were sold and gone. When acquitted, their property had been disbursed. The judge during the hearing said "I see you were buying used blankets for your horses. I'm not sure you care about the horses." Here is a judge that thinks using a used blanket is animal abuse. As the language is written, it opens the door for so many interpretations.

I spoke at three veterinarian schools over the past year. Kansas State University gets the most North Dakota young people that want to be veterinarians. When I spoke there, they ordered pizza and half ordered vegetarian. I am concerned about a new crop of veterinarians who are 70 percent animal rights sympathizers. Veterinarians are getting tremendous credibility and jurisdiction with SB 2211.

Customary practices in California are not what they are in North Dakota or in Ohio. Ohio tried to be proactive. Their proactiveness opened a door for discussion establishing animal handling standards. A very similar piece of legislation created the opportunity for every citizen to tell farmers and ranchers in Ohio how to take care of their animals. Ninety-six listening sessions across the State of Ohio were a complete wreck. The Dr. Leah Dorman, coordinator of the sessions, said she learned that if five veterinarians are asked to state what proper animal guidelines should be, they would all be different.

Senator Flakoll said, "Even though these occurrences are rare in North Dakota, we need to penalize the bad actors." The voters said there doesn't need to be tougher laws in North Dakota. He also said, "I guarantee you there will be another ballot initiative."

The true animal stewards are the ones that take care of the animals every day. You heard people tell you the laws we have are not being enforced. The lady who testified to a domestic abuse case is asking this body to increase the penalty for animal abuse when her ex-husband committed serious child abuse.

**Representative Trottier:** I understand companionship with animals. We are confusing some humane issues. Animals are separate from humans.







**Trent Loos:** Senator Flakoll also said, "If a dog loses an owner, they feel sympathy for the owner." That dog will mourn but will also eat that owner if it's lying there long enough. There are differences between animals and humans and we are blowing the line if this law goes into effect.

#### (2:23:40)

**Mike Heaton, Rancher and Member of Farm Bureau and IBAND:** Both organizations wanted to defeat Measure #5. I don't believe this is the right thing for North Dakota. We have a problem enforcing the laws on the book today.

Tom Bodine, North Dakota Farm Bureau: (See attached #13) We are also in opposition. From previous testimony, I didn't realize we would have a target on our backs if we disagree with some of the concepts of a bill.

Our chairman was a part of the coalition. He agreed to the concepts. About two weeks into the legislative session we had concerns about issues with the bill. We went back to the coalition and told them our concerns. When we disagree, we have the right to remove ourselves from that coalition. On the Senate side we supported the bill but we did offer amendments. The amendments were not passed on the Senate side. With no amendments, we will do everything with our resources to kill this bill. We feel it is damaging to agriculture in the State of North Dakota. It is the level of penalties that we don't agree with.

<u>Neglect</u>. Class A misdemeanor is all we can support. For definitions we would like neglect to go back to adequate food, water, and shelter. We will have to develop standards of care when it comes to species of animals. I am from South Carolina and came back to North Dakota to do farming. My brother and I started a herd of cattle in 1996 with limited resources. We didn't have a barn for many years. If we develop standards of care, you will eliminate young people from getting into agriculture.

<u>Abuse.</u> We feel it should stay at a Class A misdemeanor. We would like cruelty defined to know what acts someone does against an animal to make sure they know what they are guilty of. Unjustifiable pain is a very subjective definition.

<u>Abandonment.</u> The Class C felony needs to be removed and remain at a Class A misdemeanor. If someone is not able to take care of an animal and drops it off at an animal shelter, they could be charged with abandonment.

<u>Costs.</u> It requires a producer to be responsible for all costs associated with an investigation in the seizure of those animals. We want it only if found guilty of an infraction in this bill.

Recommended Mr. John Shockley, Attorney, and how he helped their cases. (See emails on pages 3-5 of attached #13)

(2:35:55)

**Representative Kiefert:** The laws are not being enforced. We heard testimony where the judge failed to give a sentence. Attorneys don't have time to prosecute and the jails are full. People need to get a proper sentence.

**Tom Bodine:** I couldn't agree more. States Attorneys are so overwhelmed. They don't view these acts as priorities. If someone can be charged to a year in jail, they have an opportunity to work with the States Attorneys to look at what conditions those animals can be under. Conditions can be made for someone under the current law now.

John Shockley, Attorney from West Fargo, Helped Ag producers and Farm Bureau, etc.: I also grew up on a farm. I am concerned with how SB 2211 has been drafted. If you look at the neglect provision, there has been an attempt to define it using appropriate for the species, the breed, the animal's age and physical condition. The courts must create minimum guidelines so the statute can be enforced and it must provide a notice of what you are trying to prohibit. As written this language is very broad. Previous testimony indicated we will write standards later on. Ag producers are operating right now. If you are going to pass legislation you should amend to give notice of the conduct you are trying to prohibit. If this bill passed, you may not get a conviction because the defense attorney may challenge the language as vague. It is subjective. It could depend on the animals' age. It seems hard for a producer to comply with that.

I am also concerned with the animal cruelty section. It needs to be defined. The section is lacking in that it is not criminalizing cruel conduct. It is only criminalizing acts or omissions that could lead to death or pain. It exempts out certain industries. A person who takes more than their limit of fish is not operating within the normal reasons of hunting and fishing. They would have caused the unjustifiable death of the fish that were over the limit. You are mixing omissions and trying to exempt out legal activities so you are making illegal activity cruel but never defining cruelty.

In U.S. vs. Stevens, a 1<sup>st</sup> amendment case, it prohibited the distribution of videos that involved animal cruelty. The Supreme Court struck it down because the language didn't differentiate between cruel conduct, it just made videos showing the killing of animals illegal. It didn't specify cruelty just like the ordinance here. The court said the law drew no distinction based upon the reason of the intentional killing of the animal as made illegal and includes the humane slaughter of a stolen cow. Like this statute here, an illegal act (a person's cow is stolen) is not in normal realm of normal livestock production. The person who kills it, under this bill, could be charged animal cruelty because it was willfully and wasn't within the normal livestock industry. Even though it was a humane act in the normal procedure of slaughtering a cow it could be considered cruelty. The court struck down the statute for that reason. That is why you need to amend this language so it does include cruel acts instead of trying to draw a distinction between lawful acts and then making every illegal act animal cruelty. Animal cruelty requires an intentional act by the person to be cruel. It is not a negligent act. You need to add in to the definition something that prescribes specific conduct and make sure you are trying to prohibit cruel conduct and not simply acts or omissions that are outside of your exemptions.

36-21.2-05, subsection 2, allows the court to act without notice to the animals' owner and relies solely on testimony or affidavit in considering the petition to seize the animal. That is







what we call an ex parte hearing. This means as an attorney if I am on the state's side, I get to appear before the judge without the other attorney present. That is only allowed in a true emergency or death. Otherwise you should make a reasonable attempt to notify the defendant or his attorney that their animals are going to be seized.





# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211 (p.m.) March 7, 2013 Job #19583

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

### (Continuing in the p.m.)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Attachments #14-17

### **Opposition:**

Gabe Thompson Jr., Farmer & Rancher: (See attached #14) There has been talk of standard procedures and opinions of how prosecution will occur. It is dangerous to make assumptions of how this process will be carried out without the requirements to involve people with qualifications before charges are filed.

If penalties for violations are increased, appropriate means to prevent wrongful prosecution should also be included. Language for this is on attached #14, page 1. As this bill is written there is no requirement to involve anyone of reasonable qualifications.

If this bill passes as written, North Dakota will have statutes that require a Class A misdemeanor for the first offense of abuse of an animal and a Class C felony for the third offense. If justifiable pain and suffering is included, it becomes a Class C felony for the first offense. The first offense for causing bodily injury to a family member is a Class B misdemeanor. The second or subsequent offense is a Class A misdemeanor. Only if a child is under 12 does it rise to a Class C felony. The concern over this elevation of protection for animals above or equal to that provided for humans is the reason I am opposed to this bill as written.

Introduced to pictures on last page of daughter Jamie. These ideals are keeping her from being a rancher. Cannot support this bill as written

**Representative Headland:** Do you believe the organizations behind the reason we have this bill are going to stop?

Gabe Thompson: No.

#### (6:39)

Russell Behm, Veterinarian from Minot, North Dakota: Has concerns for animal agriculture. Having to have an adequate shelter for animals will be an impediment for start-up ranchers.

There is also a concern for the provisions for seizure of animals. A law enforcement official may petition the court if he believes there is neglect, abuse, or cruelty. There is no mention of a qualified investigator. An activist or someone else could cause difficulty. I was involved with one case where law enforcement did have a bone to pick with an animal owner. If someone's animals are seized with only law enforcement and a legal writ to do it, then that person is guilty until proven innocent.

#### (10:05)

**Daryl Lies, Daryl's Racing Pigs, Douglas, North Dakota:** We raise sheep, goats, pigs, and cattle. Also, he used to operate petting zoos. Not any longer because of a regulation by animal rights groups to make a petting zoo miserable to do.

In Lincoln, Nebraska he had racing pigs and a petting zoo. First night the county sheriff accused him that he wasn't providing water and nutrition for animals. A gal had an ax to grind with the fair and used his animals. While he was emptying the water and refilling, they said he had no water. All just about went to jail and his 9-year old would have gone to social services. The sheriff put humanity ahead of animals. The next night the highway patrol showed up. The third day the city police came. I called the sheriff to file a harassment charge and they would not do it. The fourth day the city impound came with their lights on and had the same complaint.

Senator O'Connell said this legislature will improve this bill. What we have does work. The New Salem individual will be prosecuted.

**Pat Heinert, Sheriff of Burleigh County:** Opposed to p. 6, 36-21.2-07 costs of seizure and care--the lien part where the local law enforcement agency has to file a lien against any animals. Upon completion of the case we have to find an auctioneer to pay back the counties or cities. We are going to lose a lot of money. There is not a lot of property. In the recent case on the Burleigh County side, we only had horses and they are not worth anything. Some people from Menoken helped out with feed. The concern is placing responsibility on local enforcement. Burleigh County only has \$1500 in budget for animal neglect cases. The volunteers received no money from the county.

Some other way is needed to enforce this law so it doesn't cost the taxpayers.

**Representative Larson:** On p. 8, line 2 & 3. That part says "the law enforcement agency shall reimburse the veterinarian for the costs of the animal's destruction." Did you examine that part of the bill?

Pat Heinert: We did and that will come from the lien fees. That will go into the total bill package.

**Representative Larson:** The lien portion is in a different section. You have been told it will be covered?

**Pat Heinert:** Yes. Any bills we obtain during the holding of the animals will be covered by the lien if the lien covers the costs.

Representative Rust: Do you think North Dakota's current law is adequate?

**Pat Heinert:** I have concerns with felony counts because I am a jail administrator as well. We have an overfilled jail. I have investigated animal abuse. Some are and some are not. The fact that you can harm a person and not get charged with as serious a crime as you can with an animal in this bill bothers me.

**Representative Fehr:** With the issue on p. 6 liens, are you saying there should be some other funds or appropriation? Or should this section be deleted?

**Pat Heinert:** I am looking for an answer. I talked to the state veterinarians. They don't have the resources either. I've thought maybe the answer is putting the lien in the Agriculture Commissioner Department so it is one lien. But then there has to be an appropriation. This law gives the county the main lien.

**Representative Fehr:** The point of your concern isn't the lien but where to get the funding. Is that correct?

Pat Heinert: Yes and you could be dealing with other people who need a part of that lien.

**Representative Kiefert:** You mentioned that horses aren't worth anything? Could you explain why?

Pat Heinert: That is what I was told by local sales markets.

Representative Kiefert: What happened to the market?

### (33:30)

Bruce Strinden, Morton County Commission Chairman: (See attached #15)

There was a secured electronic gate on the property with the recent case in Morton County. We could not just drive in. Continued to describe the scene.

Not in strong support or opposition. There needs to be amending to clarify for prosecutors. Our jails are full. But these are rare instances. In gross abuse there should be more of a penalty.

One of the concerns in the bill, 36-21.2-05, it appears that if we had this, it would have limited our ability to charge as we did. If that is left in, this would be a step backwards.

Another question is the animal cruelty provisions in 36-21.2-03. If this legislation had been in effect for the New Salem event, could we have used this portion? I asked two different attorneys who gave two different answers. Some clarification is needed.

(40:50) Judy Estenson, Spouse of Equine and Cattle Rancher, Nurse for 35 years: Concerned about unintended consequences and opposed to the penalties.

We have common sense and we know how to take care of animals. Our equine ranching got publicity a few years back when the Humane Society of U.S. determined to target and put an end to PMU lines. They put out information about how terrible the situation was for the horses in our barns while we collected urine for the purpose of making premarin. We had a neighbor that made demands and tried to get on our land with cameras. Veterinarians had to come in to inspect our barns twice a year. We had to keep records for how much water and exercise. We didn't go out of the horse business because of HSUS. Other things came along. HSUS was very concerned we were harvesting horses. Animals should not be treated like humans. If my dog has diabetes, can I euthanize her? You can't get five doctors to agree on the same thing. I believe five veterinarians will give five different opinions. Not all veterinarians see agriculture the same way. We did slaughter horses that were old. HSUS got rid of slaughter or harvesting. That hurt us economically. Other countries want to eat horse meat.

I don't believe this is the last or the best option. The law we have does work. We have not prosecuted it. Why would another law solve that? This bill will not change the examples of abuse given this morning.

I don't think there is a guarantee that HSUS will not be back next year.

**Representative Kiefert:** Animal rights people set out with good intentions to protect the horses and it didn't work out. There is a market out there.

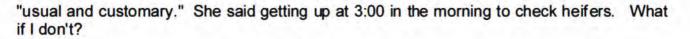
### (56:30)

Aaron Jacobson, Rancher from Noonan, North Dakota: Also in opposition.

I never intend to hurt any animals. My first concern is the vagueness. The language is open to different interpretations. The vagueness will eventually be defined by a court of law.

When the States Attorney from Burleigh County was referencing p. 9, lines 26-29, he said it doesn't make sense. I understand this section to mean one charge per act. He also stated he would have to consult other sources to define what is "adequate ventilation." This legislation does not include equine or dogs. If you reference our current law, Section 36-21.1-01, animal includes every animal except the human race. Nowhere in the proposed legislation is this replaced. It is stricken.

In reference to Julie Ellingson, p. 1, line 24, "physical condition," the beef industry defines it by a body condition score. NDSU will tell you at this time of year the adequate body condition score is a 5 or 6. I consider it at this time a 3 or 4. She also was asked what is



On p. 5, lines 10-13, seizure of an animal. This bill requires only the opinion of an untrained individual to request a court order to seize my animals and not a professional or a peer reviewed expert. This bill allows for the taking of private property before the accused party can prove innocence. I could win the court case and yet lose my ranch.

Representative Trottier asked about a sow and not vaccinating the litter of pigs. Could he be charged? The reply was that it is far reaching but it is possible. Animal activists are far reaching. North Dakota voters defeated Measure 5. A defeat of SB2211 will support agriculture for future generations from overbearing regulations.

James Wang, Attorney at Law, Minnewaukan, North Dakota: Not present. Sent email to Chairman Dennis Johnson. (See attached #17)

## Support:

### (1:06:20)

Arlette Moen, Circle of Friends Humane Society, Grand Forks: (See attached #16) Comments have been made that Measure 5 was defeated because North Dakotans didn't want animal protection. My people said we voted against it because we were promised something better. I am asking for a Do Pass of this bill.

Representative Headland: Did you witness the examples you gave?

Arlette Moen: No. There were a couple from our shelter but others were reported to me by local agencies in Grand Forks.

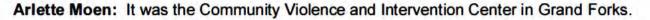
**Representative Headland:** Can you give examples of other agencies? I know there are a lot of stories. We are trying to craft legislation that works. There have been many examples in this bill that aren't going to work. Yet you are asking us to pass this bill. You believe animals have rights. We have to properly address the concerns of the people that will fall under the penalties. Is it fair to bring examples to play on the emotions of those making the decisions?

Arlette Moen: My information is true. I am an advocate not an activist.

**Representative Headland:** I would like evidence to prove that something so egregious as a father sending a puppy to his children for dinner. I find it offensive and would like evidence that it did happen.

Arlette Moen: I can do that.

**Representative Boschee:** Can you tell us the agencies where the information came from?



**Representative Trottier**: If these are true, these people are sick. If I have an elderly neighbor that has a cat that is starving, could she be charged?

Arlette Moen: I don't know what law enforcement would do.

**Representative Trottier:** What if it is the same breed but it is so fat it can hardly walk. Can he be charged?

Arlette Moen: If someone called me, I would refer to law enforcement.

Representative Trottier: Were any of these people prosecuted?

Arlette Moen: Not to my knowledge.

Representative Trottier: Was there no law?

Arlette Moen: That is the current law?

**Representative Larson:** You got these examples from a domestic violence shelter. None of these people that used animals to terrorize their family were charged under domestic violence?

Arlette Moen: I don't have that information?

**Representative Belter:** The examples you have given us are the most egregious. This goes beyond animal cruelty such as child abuse and you don't have information that these people were charged. It seems impossible that our current laws don't protect children and spouses from these activities.

Arlette Moen: I will check with the agency.

**Representative Belter:** That is very important information. In a lot of testimony today that was presented, the animals were a victim of the violence but so are the families. I wonder if we aren't directing our attention to the wrong issue. The issue is the violence to fellow man and the poor animal is caught in the process.

**Representative Kiefert:** There is no fiscal note. Where does money come from? The States Attorneys don't have time to enforce court orders involving people? How will they have time to pursue the complaints with this bill?

Arlette Moen: I don't have that information.

**Representative Headland:** Are there any individuals here that would testify on behalf of the people responsible, HSUS or PETA? If there isn't, doesn't that speak volumes? We have been accused of not addressing this issue. They are using that as their excuse to

come with an initiated measure. But they are not here to witness what we are experiencing in this hearing.

Representative Larson: Identified an individual who would not come forward.

**Cameo Skager, Central Dakota Humane Society:** We are not members of HSUS. We are one of the instigators of this bill but did not instigate it at the direction of HSUS or PETA. I don't deal with them. We brought this forward because we thought it was time to protect animals. These are the problems we see.

Chairman Dennis Johnson: Closed the hearing

Chairman Dennis Johnson: Appointed a subcommittee consisting of the following: Representative Belter, Chairman Representative Rust Representative M. Nelson

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211 March 14, 2013 Job #19948

Conference Committee

Nac

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

## (Subcommittee)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Attachments #1 & 2



Time: 2:30 p.m.

Location: Peace Garden Room

Members: Representative Belter, Chairman, Representative Rust, Representative M. Nelson

**Others:** Anita Thomas, Representative Haak, Representative Boschee, Representative Dennis Johnson, Representative Trottier, Representative Kiefert

Topics:

Chairman Belter: My objective is to get an overview from the subcommittee members.

For some people penalties are an issue. Confiscation of animals needs to be dealt with. Many of the horrific acts of violence against animals were also a part of domestic violence. I would hope there is a possibility of addressing those two issues.

Representative Rust: People who have contacted me wonder about the seizure of animals and the sale of animals and then later they find out if someone is guilty or innocent.

Another concern is defining animals. Century code 36-21.1-01 was used. Someone contacted me and said please define them as they currently are.

I think of felonies for crimes against humanity rather than animals. I would hate to see any part of that law where the crime and punishment for the abuse of an animal is greater than that of a child.

Representative M. Nelson: Areas of concern for me is the list of things that do not constitute violations. We have to be careful to not violate the equal protection clause of the

constitution. That would mean that we make prosecution under this chapter impossible and at the same time we have to provide guidance to our law enforcement and our courts. Many things are not defined. For example, one of the things that do not constitute a violation is "the humane destruction of an animal for cause." At the same time we also see under animal cruelty "any act or omission that causes an animal unjustifiable pain, suffering, or death." The court system would have a fun time trying to figure out where one leaves off and where the other one starts. We need to do some definitions as we go through this. I am not sure that death in and of itself is an act cruelty. The things that lead up to that death would be.

Some states are moving to make acts of threatening an animal or abusing an animal in the presence of a child a more serious offense. It is an offense against a child and is used to control family members or other people through the animal.

The hoarding issue is more of a mental issue rather than a criminal issue. It is a mental health case.

**Chairman Belter:** It is important that we don't open doors to potential litigation to groups that are anti-animal agriculture. The pet issue is an easier area to deal with than the potential litigation for animal agriculture.



Representative Rust: That would be another concern of mine.

Chairman Belter: If anyone has amendments, now would be the time.

### (8:50)

Tom Bodine, North Dakota Farm Bureau: (Amendments--see attached #1) At the hearing we did speak on the opposition side.

We have a lot of the same concerns that were just expressed--especially about the subjectivity of some of the language and the unintended consequences if there is a charge against the producer. If the producer is able to defend himself, he still has the cost of litigation.

The areas that look at neglect, abuse, and abandonment--we feel that the Class C felony is very severe. We would like it to remain as a Class A misdemeanor. Not providing an animal certain conditions is less than doing an egregious act to an animal. I know there is a stepped up process to add protection to a producer but we feel it should remain as a Class A misdemeanor.

We have always agreed to a Class C felony in an egregious act on an animal. That area is very subjective. We would like it more defined. We suggest to define cruelty as a "willful or malicious crushing, suffocating, blinding, beating to death, dragging to death, or starving to death an animal." We are open to suggestions for that.

If your animals are seized, on p. 6, line 18, we believe you should bear the cost only if found guilty of the charges. On p. 6, line 20 add "and conviction."



We have the same concerns with seizure and notification. We don't have an amendment to address that area. We are working on one. We will get it to the committee as soon as possible.

Also, where an animal is used as a tool in a domestic abuse case, we will try to address that as well.

On p. 9, delete the last area, lines 26-29 where it holds one case. That was all with the intention with the stepped up process. The language wouldn't be needed if you can only get charged with a misdemeanor in those three areas.

**Representative Rust:** On the farm when we had too many cats and we needed to destroy a litter, would that be beating to death?

Tom Bodine: That might be considered. There might be other options for euthanizing.

### (15:55)

### Julie Ellingson, North Dakota Stockmen's Association:

We support the stepped up process from the Class A misdemeanor to the Class C felony. The repeat offenses speak to the character of the persons that are committing those crimes.

Page 2, line 11 refers to the "usual and customary practices in production agriculture including all aspects of the livestock industry." The concern about raising mink, etc. needs further definition.

The cruelty definition on p. 3, we support Senator Flakoll's amendments for technical correction. We would have concerns about enumerating specific acts that were suggested by the previous speaker. What if we miss something that is part of the process? We should refine existing statute.

On p. 6 we concur with the Farm Bureau. That is also in Senator Flakoll's amendments about those who are not convicted should not be subject to the court costs. We also endorse that.

Page 9, the collective's language was added to provide clarification when this was heard in the Senate Agriculture Committee. We apparently need to clarify further. I am not sure if Senator Flakoll's amendment will take care of that. I would like to explain the vision and maybe we can find the right words to make that happen. Because of the three crimes (neglect, abandonment, and abuse) have the stepped up process--the question in the Senate Agriculture Committee was as follows: If a person has three dogs, does that take you to an automatic felony. The intention was "No" that would not change. Under current statue and under this bill, prosecutors have the discretion to charge three counts of neglect. The intent of this language was to clarify that in order to step up the process, it was based on the number of times.





The role of the Board of Animal Health and the field investigators' process isn't changed with this bill. In order to enhance the transparency and understanding of this issue, one suggestion was that maybe it would be appropriate that there would be a reporting requirement from the States Attorney to the board so we have a better handle on the number of cases. That would give a central data base.

**Representative M. Nelson:** If the owner of the animals is not liable for the costs, then who is liable?

Julie Ellingson: The jurisdiction bringing the charges as it is the case now.

**Representative M. Nelson:** The Board of Animal Health has a list of investigators. Is that list still intact after this bill?

Julie Ellingson: The intent is that the process doesn't change.

**Representative Belter**: With the penalties on neglect, was there discussion on an individual with, for example, 200 cats? An individual like that could end up with a felony.

Julie Ellingson: We did talk about mental illness and how it relates to this crime. We go back to the lower level crimes. The key word is "willfully." Did they choose to do that on purpose? To become a felon under those crimes, you have to be convicted three times to be at that higher tier. The burden of proof is on the States Attorney to make the case that they willfully did that under those circumstances. We think that automatically takes out some of those concerns.

**Representative Trottier:** Is there anything in the bill that addresses those who turn people in? For example, if there is a concentrated effort by a group or someone?

Kristi Schlosser-Carlson, North Dakota Farmers Union: In answer to Representative Trottier, that would be a harassment charge under a different section of the criminal code.

The seizure issue: an officer would have to get a warrant to even go onto the property. Then the officer would have to give notice to the owner. This is clarifying the current statute which didn't have a lot of that process in there. This will then match with other criminal statutes that protect the rights of people before they are charged.

With domestic abuse we suggest looking at those statutes and increasing the penalties there also. I talked to a prosecutor about the idea of cross referencing. From a prosecutor's perspective they would have to prove different elements. When we are looking at criminal law, we are looking at an incident which in this case it is abuse of a human. Other states have is so that if you are abusing an animal in front of a child, that could be wrapped into the domestic abuse statutes. That could be an element of a terrorizing crime. The criminal lawyers would like more tools in their tool box. Where you have abuse against a human as well as an animal, it is nice to have an additional tool. The prosecutor has to prove that case to a jury.



I am preparing a tool to compare current statute to what is changing in the new bill.

The point about subjectivity, this is a criminal law statute. You find a lot of these standards are similar throughout the criminal code. These are things that have to be proved. A prosecutor won't bring a case before the court unless everything is in order.

With regard to further defining things like cruelty, we have concerns about identifying those specific acts because they do match Measure 5 which we worked so hard to discredit that effort.

**Representative M. Nelson:** The old statute had to do with animals used for work. The new statute doesn't address working animals. Is that no longer needed?

**Kristi Schlosser-Carlson:** If the concern is that people will be able to get away with more because we haven't listed things like overworking, I am not comfortable agreeing to that. We are protecting the people that are using animals appropriately in production agriculture.

**Representative Rust:** Does the Farmers Union still want stepped up charges to a felony for abuse, neglect, and abandonment?

Kristi Schlosser-Carlson: Yes, someone charged and convicted three times in ten years is a bad person.

**Representative Kiefert:** The problem I see is that we don't have a judicial system that will prosecute. The Human Services Committee had HB 1351 which was a bill to force the prosecutor and the sheriff's department to do their job. The bill failed in the House regarding court orders, divorce, etc. which are court orders. Until we replace judges and States Attorneys who don't their jobs, where is the satisfaction?

**Representative Dennis Johnson** brought in amendments given to him from Feld Entertainment/Barnum & Bailey Circus. (See attached #2) It talks about temporary exhibitions and federally licensed exhibitors. The highlighted is new language.

Adjourned at 3:13 p.m.

Will meet next week.



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211--Subcommittee March 21, 2013 Job #20330

Conference Committee

Committee Clerk Signature Re War Kuch

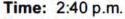
Explanation or reason for introduction of bill/resolution:

## (Subcommittee)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Attachment #1 and amendments .07001 & .07005



Location: Peace Garden Room

Members: Representative Belter, Chairman, Representative Rust, Representative M. Nelson

Others: Anita Thomas, Representative Boschee, Representative Haak, Chairman Dennis Johnson

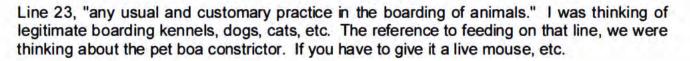
## Topics:

**Representative Belter:** At the last meeting Anita took notes on a number of concerns. Now we have amendment .07005 with the markup.

Anita Thomas, Legislative Council: Addressed concerns placed in amendment .07005 The State Board of Animal Health can restrict the importation and sale of wild animals. That is in current law. One of the suggestions was that there should be an exception for scientific and educational purposes or for temporary exhibitions.

The second section is new. There has been conversation about a list of core veterinarians that had training and assisting with investigations. This would direct the State Board of Animal Health to maintain a list of trained veterinarians and make it available to law enforcement.

Page 2, we got into the list of activities that do not constitute violations of the act. We were asked to look at a definition of production agriculture. We used what is very close to language used in California. "The production of any plant, animal, or animal product that is used for food, feed, fiber, or ornament and which is distributed commercially."



Lines 27 and 28 is a long way of referencing the circus.

Representative Belter: The animal welfare act takes care of the circus?

Anita Thomas: Yes, those are the exhibitors licensed under that section.

Anita Thomas: Usual and customary practice in the culinary arts. We started thinking about certain restaurant chains where they have lobsters in tanks.

"Lawful fishing, hunting, and trapping" was in the bill originally. We added "and any usual customary practices in the handling of animals obtained in accordance with this subdivision. If you are fishing and put your fish in the live well, you have to hit the fish to clean it or you are going to drain your water as required by Game and Fish. This means you will suffocate it.

Page 3, lawful control of pests, rodents, and predators--disposition and destruction of any that enter personal property.

Page 7, the owner is responsible for court costs "if convicted" was inserted.

**Representative Rust:** Item 3 deals with seizure of animals being sold. I was looking for something with conviction. Can they be sold prior to being convicted?

Anita Thomas: If the animal is neglected, the law officer has to petition the court for an order directing the seizure. Once seized, the law enforcement is to provide for its care. If the owner is known, the law enforcement officer has to provide the owner with notice of the seizure and petition the court for an order directing the animal's disposition. If the owner is not known, notice has to be published. Those are on pages 6 & 7 of the marked up copy.

**Representative Belter:** There is nothing that precludes the sale of an animal prior to a judicial procedure.

Anita Thomas: Yes. When you seize the animal, then you have the court involved.

**Representative Belter:** What language precludes them from selling the animal prior to any judicial action?

Anita Thomas: Look on page 7, line 5. "Petition the court for an order directing the animal's disposition." If there is an ongoing case, the court would provide for placement of those animals while their custody is determined.



**Representative Belter:** I question whether the court doesn't have the authority to sell if the procedure hasn't gone through. If they are determined to be not guilty and they have sold the animals, there is an issue.





Representative Rust: That was my question also.

Page 7, line 5--"If the owners are known, the officer shall petition the court for an order directing the animal's disposition." The court could say to sell them because the trial may take a long time.

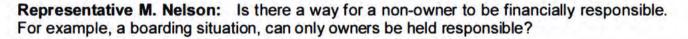
Anita Thomas: The court would have to determine there has been a violation. If the animal is suffering, then a veterinarian can come in to relieve the suffering. Beyond that the animal will stay in someone's care until the case is determined.

**Representative Rust:** You don't think it would happen where the officer would go to court and they would say to sell due to length of time.

Anita Thomas: No, with large numbers of animals there is a cost while the legal process is going on.

**Representative Belter:** With the case going on now with the horses, they have been sold and the procedure has not been completed.

Anita Thomas: That would be with the consent of the owner.



Anita Thomas: We reference the owners or the person having custody.

**Representative M. Nelson:** Somebody was abusing a dog that is not his or a cow. Can the person doing the criminal act be held responsible for court costs?

Anita Thomas: In the case of a dog, that neighbor can be charged for abuse. The owner would go back on the individual. If I have to pay law enforcement, then I would go back to the person injuring the animal. So you have a civil matter.

**Representative Belter:** I put a horse out for board. That person is found negligent. Will the owner of the horse be responsible for costs?

Anita Thomas: It looks like now the owner of the animal would be responsible for the costs. I am looking at p. 7, line 20. The bill does not address it if someone else is responsible.

Representative Belter: Then you would have litigation between the boarder and the owner.

Anita Thomas: Page 9, caged animals on public display. This section does not apply to the State Fair, Ag. Fair Associations, Livestock Exhibitions, Political Subdivisions, educational exhibitions, and circuses.

### (22:35)

Then we go to the standard list of the various practices that do not constitute violations of this section. Does this list need to be part of the caged animal section?

**Representative Rust:** What is the harm of having something there that isn't going to happen?

Anita Thomas: Nothing.

Anita Thomas: The remaining two changes on page 10 are referencing an individual leaving an animal unattended in a motor vehicle. It would not be a corporation, partnership, or an organization.

Anita Thomas: On p. 11 we took another run at the collectives. The prior language suggested that if you had a hundred horses, you could still be charged with multiple counts of abuse or neglect. We were going to look at it as one instance for purposes of the misdemeanor or felony. If you have a dog, a cat, and a horse you have three different animals they would not have come under the collective exception. So we put in language which talks about multiple animals. If a violation of the chapter involves multiple animals whether of the same species or not, the violation is determined to be a singular offense for purposes of enhancement.

Representative Rust: There still could be multiple charges?

Anita Thomas: That is correct.

Representative Rust: I am comfortable with amendments .07005.

Anita Thomas: The Farm Bureau amendments prepared for Representative Headland are .07001.

Neglect would be a Class A Misdemeanor. There would not be the opportunity for a Class C Felony charge on a third or subsequent offense within ten years. The amendments also redo the definition of neglect. Now the language before you is that neglect would be the denial of "food and water as appropriate for the species, breed, animal's age, shelter as appropriate, necessary medical condition, description of an appropriate environment. This would change all of that so the only thing a person would have to provide is food, water and shelter.

On the bottom of page 2, animal abuse would be considered a Class A Misdemeanor. The reference to a C Felony as a third or subsequent offense is removed.

Animal cruelty--it was suggested that various activities be listed within this section. The list is fairly extensive. I would suggest when looking at the list, be aware of omissions from the list. We don't have the ability of an etc. clause on the list. If you think of something else, it would need to be added.





Animal abandonment would be turned into a Class A Misdemeanor and the Class C Felony would be removed.

On page 5 there is an overstrike and that has to do where we put in the reference to care. We require that the person provide food, water, and shelter. That enabled us to remove the definition on line 22-24. The same thing on page 6.

Page 7, this verbiage was in the last version. "If the person is found guilty of violating the chapter, they would be expected to absorb the costs of seizure and conviction."

Page 8, we shortened the definition of the word "care" to mean the "provision of food, water, and shelter." We removed specifying breeds taking into account the animal's age and physical condition.

Page 9, same thing.

Page 10, the amendment would remove all references to the collectives and any enhancement of the offense.

**Representative Belter:** Looking at other state laws, these .07001 amendments specifically point out various acts. Is that language common in other states?

Anita Thomas: I didn't look at other states. This was language that was given to us. I can check other states.

Representative Belter: I know you can leave things out.

**Representative M. Nelson:** On the caged animals page 9, it doesn't apply to the State Fair, etc. Does that mean the State Fair can put an animal in a cage but not somebody else? Or are we just trying to provide guidance into what are acceptable cages?

Anita Thomas: We are trying to ensure that State Fair activities can continue. They are aware of what is appropriate for the animals it exhibits.

Representative Belter: Does current law address the State Fair?

Anita Thomas: This is similar to current law.

**Representative M. Nelson:** A chicken is in the cage for a week at the fair. If it is okay for them to do it, it is okay for me to do it?

Anita Thomas: We hope the fair would never be found in a questionable situation. The zoos and fairs are regulated.



**Representative Rust:** Page 1, line 23, food, water, and shelter. That eliminated "as appropriate for the species, the breed, and the animal's age and physical condition." Why was page 2, part a, at the top pulled? It was in the original law.

Tom Bodine, ND Farm Bureau: We don't want to develop standards of care for specific livestock. That language is in Montana for example.

**Representative Rust:** You see including that statement getting to standards and regulations of care.

**Tom Bodine:** When we look at a cattle herd with different ages and conditions, it would be up to the investigator or veterinarian to determine what is adequate food, water, and shelter.

**Representative Belter**: Refers to chart from the Humane Society. (See attached #1) It shows a felony is different from state to state. Can we have a different felony for this bill for animal cruelty? Each state has different standards of punishment.

Anita Thomas: You can go up or down. The felonies in North Dakota are set with respect to the fines and jail time.

Representative Belter: We can't have two classes of felonies?

Anita Thomas: You could make that amendment, but it would have a lot of dominos in the code.

Representative M. Nelson: .07001 bottom of page 3. Why was all that removed?

Tom Bodine: It goes to the subjectivity when you go from a charge to a Class C Felony.

If it had to stay in there, we would be fine. People would know where they are at.

**Representative M. Nelson:** Are there any limitations on a felony? If we had a hundred animals, is there a limitation to stacking them?

Anita Thomas: I am not comfortable in that area. I will get someone to handle multiple counts of a felony.

Representative Belter: Back to .07005, and take testimony on the changes.

**Tom Bodine:** We would support the amendments offered. It does help explain the definitions of exemptions. The last one on p. 11, if there is a charge I don't think that language would be necessary.

Julie Ellingson, ND Stockmen's Association: We support version .07005. We would ask continued work on page 1, that list should be available to state's attorneys and the defense attorney. We could take that one step further and have the notification requirement to the board of animal health. The other is the definition for production agriculture. I want to make sure we clearly define where horses fit, and it is exempted whether they are raised or used as a pleasure horse. Page 2, line 19 and several places throughout the rest of the bill.







Beth Carlson, Assistant State Veterinarian: .07005, page 2, line 21 & 22, "which is distributed commercially." The concern would be it should be any animals for food production whether for private use or commercial use.

The normal seizure process is that there are animals that are believe to be neglected or abused. A seizure order is obtained which is like a search warrant from a judge. The owner can request a hearing to get the animals back. If they don't request the hearing, they are waving their right to the animals. In those cases, the animals can be sold after a certain time period that the owner can contest the seizure. If they request the hearing, the judge can choose to give the animals back to the owner or say they were right to seize them. Then the animals can be sold. That is what happened in the Morton and Burleigh County cases that are ongoing criminally. The evidence showed the owner was not able to care for them. That is separate from the criminal charges as to whether they are guilty of the crime. In the large scale cases, cost is a factor.

### (51:54)

Representative Rust: That is part of law or part of regulation on the hearings?

Beth Carlson: That is currently in 36-21.1-06. Exposure of animals.

Representative M. Nelson: That is one of the sections that this repeals.

Beth Carlson: That is now outlined in the Seizure of Animal Court Order.

Representative Rust: Did much of current law get put back into this bill?

Anita Thomas: At both the Senate and House hearings, we showed the repealed sections and where the content was moved.

Beth Carlson: On page 7, line 5, "if the owner is known, the officer shall provide notice of the seizure and petition the court for an order directing the animal's disposition. Now the owner can request the animal back. Now that is mandatory. In current law the owner has to request that.

Anita Thomas: Part of the difficulty is reading through the current law. What you referenced earlier, a practice has developed but that is not clear from current law.

### (57:32)

**Representative M. Nelson:** In the .07005 version, page 1, section 2, the list of veterinarians. Could it be someone else? Maybe someone from Game & Fish or a zoo keeper.

**Beth Carlson:** In general a veterinarian would be the most appropriate person. Wildlife would have their own veterinarian. It would be a veterinarian with training in those areas. Others could provide insight.

Representative M. Nelson: How does the State Board of Animal Health and investigators work together?

Beth Carlson: A complaint comes in. A deputy will evaluate the situation. If they determine that there are concerns, they ask for a veterinarian. That veterinarian would evaluate and issue a report.

Representative M. Nelson: Who monitors it? Who keeps track of the case?

Beth Carlson: Sometimes we are involved. It is the county's responsibility.

**Representative M. Nelson:** With a puppy mill, how is APHIS (Animal & Plant Health Inspection Service) involved?

**Beth Carlson:** There are very few entities in North Dakota required to be licensed by USDA. Regulations were written before the internet so they can sell privately over the internet. There are efforts on the nation level to close that loophole. The animal care people have very strict guidelines.

**Representative M. Nelson**: Has the State Board of Animal Health come up with minimum regulations for dog and cat breeding?

Beth Carlson: No. Other states have had to add 5 to 10 staff people. Since our entire staff is 8 people, you probably don't want to do that.

**Representative Belter:** Page 7 of .07005 everything refers to the owner. People go on vacation and leave their dog at a kennel. Don't we need clarification on who is responsible? The owner should not be responsible.

Anita Thomas: The owner has the responsibility when selecting the boarding arrangement. That is a civil matter.

**Representative Belter:** With the horse problem in New Salem, the owner should be cautious of where they put their animals. The situation could arise where three months later you are on the list for paying.

Representative Rust: Is that any different with a car when you let somebody use it?

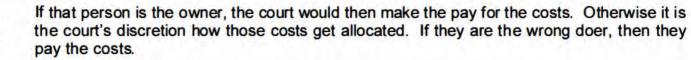
Representative Belter: What about cattle in custom feedlots?

Anita Thomas: That is a part of doing business.

**Beth Carlson:** Page 7, we are fine with amending. We did have a case of a feedlot where cattle were dying and the owners did not know. Because cattle have value the costs were covered.

Kristi Schlosser-Carlson, Farmers Union: With the amendment you are considering, if convicted the owner would pay those costs.

There is the seizure process and there are the criminal charges against the wrong doer.



Anita Thomas: We were talking about having the Board of Animal Health extend its list to include state's attorneys. Definition of production agriculture and where horses fit in.

Also clarify commercial or private. (1:15)

**Representative M. Nelson:** This chapter does not apply to estrays. We have a felony to animals but not estrays. If I don't produce a bill of sale it is an estray. You can't charge with a felony because it is an estray.

Julie Ellingson: We have that exemption in existing statute. There are steps to identify an estray.

**Representative M. Nelson:** If estrays exempted under current law, did the court have to prove that anything with a brand was not an estray? This says the whole chapter doesn't apply.

Anita Thomas: Under the new estray law, there is a short window of opportunity. If you don't notify of an estray, then you have other criminal penalties.

**Representative Belter:** A farmer has livestock and the neighbor's dog is chasing cattle and you shoot the dog and it gets back to the neighbor's house. Are you subject to abuse?

Beth Carlson: Any dog chasing livestock may be shot in code 36-21-10.

Meet at 10:30 tomorrow (Friday)

**Representative Belter:** One other issue, the Class C Felony for neglect, abandonment, abuse, I want everyone to give it some thought so we don't lose this bill over felony charges.

Time Adjourned: 4:12 p.m.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211--Subcommittee March 22, 2013 Job #20375

**Conference** Committee Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

## (Subcommittee)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Marked up version 13.0380.07006 Amendment 13.0380.07006

# Time: 10:45

Location: Peace Garden Room

Committee Members: Representative Belter, Chairman; Representative Rust; Representative M. Nelson

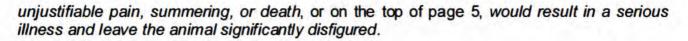
Others Representatives and Counsel in Attendance: Representative Trottier, Representative Haak, Representative Boschee, Representative Dennis Johnson, Representative Wall, Anita Thomas

Representative Belter called subcommittee to order.

**Representative Belter:** New amendments 13.0380.07006 have been prepared based on the discussion yesterday. We'll have Anita Thomas from Legislative Council walk through those as well as what was discussed yesterday and some language from the Farm Bureau.

0:55 Anita Thomas: (Note: Page numbers are for the marked-up version.) This is essentially the amendment we were talking about yesterday with a couple of changes beginning on page 2, line 29. To the list of exemptions, we added *any usual and customary practices in the slaughtering of animals.* That shows in the list of exemptions on pages 3, 5, 6, and 11. On page 2, line 23, we have an exemption for the *usual and customary practice in the boarding, breeding, feeding, raising, training, showing, and competition of animals.* There has been discussion about whether the word *riding* ought to be added. What has been known as the Farm Bureau amendment on page 4. We get into the definition of cruelty, and we listed egregious activities. I added *dismembering* to the list. We kept the language from the beginning about *any other act or omission that causes* 





3:55 **Representative Rust:** Yesterday we had two sets of amendments. I think those were 7005 and 7001. Is version 7006 a combination?

4:31 Anita Thomas: No, it is not a complete combination. It includes the list of egregious acts under cruelty. This committee did not give direction on the misdemeanor and felony issues that were also in the 01 amendment.

4:53 **Representative Rust:** So it is the 7005 plus the list from 7001 with the addition of the slaughtering exception. (Anita Thomas confirms.)

5:18 **Representative Rust:** I like the amendments that were in 7005, and but I also would like to have some things included that came from what we've been calling the Farm Bureau amendments. Question to clarify how to proceed.

6:27 **Representative Belter:** On page 4, line 20, on the list under cruelty, you added drowning an animal. That is a practice that takes place when someone has too many kittens and puppies. I am uncomfortable with that. Another question is on line 15, burning an animal. Will that be construed as branding?

8:14 Representative M. Nelson: I wouldn't perceive it that way.

Representative Rust: Suggested the phrasing burning an animal except branding.

Representative Belter: Maybe we're covered under the portion regarding usual practices.

**Representative M. Nelson:** I think a court would get enough guidance regarding the usual practices of agriculture that they would not take branding the same as throwing an animal into a fire.

**Representative Belter:** I'd like input from the livestock industry. Are you concerned about that?

9:33 Julie Ellingson, North Dakota Stockmen's Association: We advocated for the more generalized language. If you go with this list, make sure the exemption is clear in the production ag exemption that would cover the usual and customary practice in agriculture. Our preference would be to return to the original language brought forth in the bill instead of including the enumerated list.

10:06 **Representative Belter:** Do the Farm Bureau or Farmers Union have any comments on the question of whether burning an animal would be construed to include branding?



10:48 **Tom Bodine, North Dakota Farm Bureau:** We think that would fall under ordinary and customary practices. When it talks about egregious acts, we would like specific lists.

We had concern with *unjustifiable pain and suffering* and specificity. In the amendments we offered, we had concerns about poisoning and about skinning if that pertains to fishing. We feel comfortable with the rest of them, but if you had to remove some, we would be okay with that.

12:35 **Representative Rust:** I move amendment 7006, excluding the drowning of an animal.

12:50 **Representative Belter:** I think we have a problem with burning and with suffocating if it's a problem with fishing. Referred to original list from the Farm Bureau. I think the overall question we need to consider is do we want to include some of these, but I am concerned about burning and whether suffocating takes into account the fishing industry. The law does require that when you take a boat out of water, you have to let the water out of your live well. Does the language in the bill regarding customary practices cover that?

16:29 Anita Thomas: Be careful that you don't put two equal sections of conflict into the bill. In one section, we're saying that branding is a usual and customary practice, and on the other section we're saying that you cannot burn your animal. We know what we mean, but that is not good legislation.

17:08 Representative Belter: What about poisoning rats?

17:44 **Representative M. Nelson:** That is why a number of states are very specific about what is an animal under the animal cruelty legislation. They literally will say pests are not animals. That is why they limit the animals under the cruelty. We may have to narrow the focus of the animals to exclude arthropods and fish. It's tough to put fish and mammals in the same bill. That's why I'm leaning toward being more specific.

**Representative Belter:** Was there any discussion during the drafting of this bill for making an exclusion for fish and rodents?

19:53 Anita Thomas: Current law references an animal as anything other than a human being. Because that was not particularly helpful, we did not carry that definition over in the drafting of this. It was at that point when I got involved with this bill. I would not be able to speak for those who worked on the concept prior to that.

**Representative Belter:** Audience, was that a consideration that that should be listed as an exemption?

20:58 **Julie Ellingson:** It was important that pests were included as an exemption. Our thought was that fishing and hunting exemption would cover some of those practices. It was also important that we could achieve a reasonable law that could be applicable. It was important that we have protection and clarity for all animals. We aimed to address some of those concerns through the list of exemptions.



21:45 **Representative Belter:** Are you comfortable with the language as far as the lawful control of pests and rodents? Would you be comfortable if we were to adopt that list?

22:23 **Julie Ellingson:** In the drafting and the work of the working group, we had focused on the enumerated list of exemptions. We thought it important to specify what did not qualify. We had a different view of the definition of cruelty, so we did not have that built-in conflict. Again, we're focusing on the exemptions as part of those definitions to identify the differences.

23:16 **Representative Belter:** What is your consensus? Do you want to strike some of those individual acts or go back to the original language? Any thoughts on that?

22:42 **Representative M. Nelson:** It would be a little more workable to have animal abuse being the unjustifiable pain, suffering, or death. Have it be injuries that are more temporary in nature. We should go to the cruelty being serious unjustifiable pain, suffering, or death or leaves the substantial risk of death, disfigurement, long-term impairment. It breaks out the seriousness of the act. It is a problem to go to individual actions. For example, if impaling is not allowed, what is bow and arrow? Listing individual actions gets to be a problem. It does seem that the original bill didn't spell out a difference between cruelty and abuse. Cruelty was unjustifiable pain, suffering or death. Under that, I couldn't figure out anything that that would be abuse that would not cause pain or suffering. Elaborated. I don't know that exemption is the right word; it's more guidance for the court as to normal practices. Elaborated. If we narrowed our focus a bit as to types of animals, that would help. Cruelty is an egregious act that causes long-term impairment or a suffering death; abuse is a lesser level.

28:09 **Representative Belter:** If you look at the original language, which is on line 27, are you not comfortable with that definition of cruelty?

28:25 **Representative M. Nelson:** I am not because of the inclusive language. What would be abuse that does not cause some level of unjustifiable suffering, pain, or death? Suggested *leads to* rather than *including*. If we went back to abuse, we could be pretty inclusive with that language that it's unjustifiable suffering, pain, or death. We could take the cruelty as being the egregious acts that lead to long-term disfigurement and a suffering death.

29:35 **Representative Rust:** I would leave burning an animal in there but specify that that does not include branding. I'd pull out drowning an animal. On line 27, take out *including* and use *resulting in*. Referenced 7006 version, line 13; line 20; line 27. Summarized changes suggested. I realize there is a danger in a list, but there is something about a list that gives people an idea of what we're driving at.

31:55 **Representative M. Nelson:** I agree with that. It seems to me that the *causes unjustifiable pain, suffering, or death....* Number 1 and 2 should maybe be moved to the top. Then the list that we have should be more underneath that as examples of the behavior rather than leading the pack and then trying to clean it up with the other language.



32:20 Representative Rust: We talked about that before.





32:31 Representative Belter: If we are going to go with the list, I'd prefer the list on top.

32:41 **Representative Rust:** That kind of sets the state for the mention of any other act or omission. Yes basically the last couple statements indicate that we cannot list them all.

33:31 **Representative M. Nelson:** I'm iffy on poisoning because it's broad. In humanely dispatching animals at the veterinarian, we poison them. Poisons can cause a lot of suffering. I'm not saying make it legal to poison your neighbor's animals, but I'm not sure if poisoning an animal is going to automatically be a felony.

34:30 Representative Belter: We're going to strike h, j. What about m, suffocating?

Representative Rust: Yes.

Representative Belter: The question is, what do you want to do on c with branding?

Representative Rust: I put the comma, except branding.

Representative Belter: Legally, what would you suggest?



35:04 **Anita Thomas:** We can certainly do *c*) *burning an animal, excluding branding.* We can do *beating an animal to its death, excluding fishing.* The thing you're going to have to be careful of is going to the next thought, which is *unless otherwise exempted by this act.* You can do that, but you're going to have to be careful. Elaborated on the fine line.

35:47 **Representative M. Nelson:** If we leave the clause in there of leaving an animal significantly disfigured, prolonged impairment, and so on, we would remove the burning from the standpoint... I'm thinking that clause is covering the type of cruel burning we're thinking of. It's back to letting the general catch-all clause take care of it; in would encompass burning but not branding. It makes it cleaner if we remove burning from the list.

36:40 Anita Thomas: A question I would have regarding line 27 and down.... We're talking about cruelty being an act that causes an animal unjustifiable pain, suffering, or death. If it fits into one of those three categories, I would question whether you need to have the additional language in terms of the infliction of injury that results in substantial risk of death or leaves an animal disfigured. Those are examples that if this were a rewrite, I would question you needed to reference those.

37:23 **Representative Rust:** I'd leave it in. It's a qualifying statement for unjustifiable pain, suffering, and death. If you stop there, you get a lot of things that can get thrown into the picture. But if you're saying it's a qualifying statement, resulting in... I would feel more comfortable leaving lines 28-30 in.

38:09 **Representative Belter:** I took your point that this subsection 1 essentially covers the list. Or did I misinterpret what you said?



38:24 Representative Rust: So you would eliminate the entire list?

38:28 **Representative Belter:** I think that was the point that counsel was making. If we strike c, h, i, j, and m from the list and then go with that language...

Representative Rust: And strike including and put resulting in on line 27.

39:30 Representative M. Nelson: I like that better. There you are saying this is what it is.

Representative Belter: Are we in agreement then on that section?

39:55 Anita Thomas: So then we would be defining cruelty as any act or omission that causes an animal unjustifiable pain or suffering and results in a substantial risk of death, leaves an animal significantly disfigured, results in broken bones, or causes prolonged impairment of an animal's health. Then you still need to deal with the death.

Representative Belter: We did not strike death.

**Representative M. Nelson:** I'd probably include the word *inhumane* because we have the humane destruction of animal. We really need to define what that is. If we would add *inhumane* here, that would be setting us up for when we define humane destruction of an animal. It would make is so that if you killed an animal, the fact that would did it humanely would be your defense. Rather than removing death entirely, say an *inhumane death*.

41:17 Anita Thomas: The humane destruction is already exempted.

Representative M. Nelson: Exempted, but not defined.

Anita Thomas: I think there were reasons the group had for not exploring that further. The verbiage that you're looking at in terms of the unjustifiable pain and suffering and the examples with the substantial risk of death, that flows. I'm just trying to narrow down what you want to do with the actual causing of the death. If you want to say *causing an inhumane and unjustifiable death* as a separate category of cruelty, we could do that.

42:03 Kristi Schlosser-Carlson: When the working committee finalized its draft, we had defined serious injury and serious illness. How we defined those kind of shows up in this, but we don't use the words *unjustifiable pain, suffering, or death.* We defined it as "any injury that creates a substantial risk of death, leaves an animal significantly disfigured, causes broken bones, or causes prolonged impairment of health." I'd recommend this as a definition of cruelty. The second part of the illness piece, which I think you see reflected in b. "Any illness that creates a substantial risk of death, leaves an animal significantly disfigured, or causes prolonged impairment of health." In effect, what you might see reflected is if you take out the unjustifiable pain, suffering, or death. That seems to be causing some of the concern on your part. You're trying to distinguish that from abuse and sort of the subjective nature of that. It kinds of matches up with what we had originally come up with.



43:39 **Representative M. Nelson:** You're saying to remove the unjustifiable pain, suffering, death and to leave the other part to make it more sensible.

Representative Belter: Does counsel have those words?

Anita Thomas: Counsel has those words. But then you also need to reference death beyond only saying creating a substantial risk of death. Otherwise killing an animal would not be cruelty.

44:35 Kristi Schlosser-Carlson: We also had death as included.

Anita Thomas: We could reference a substantial risk of or death itself.

44:52 Representative Belter: The death has to be a result of the act of cruelty.

**Representative M. Nelson:** Where I struggled with the death because it might be an unjustifiable death but if it is a swift death, it's not cruel. It might be abuse, but it's not cruel. If it's a lingering, suffering type of death, then it is cruel.

45:44 **Representative Rust:** Starting on line 27, causes the unjustifiable death of an animal or the unjustifiable pain and suffering of an animal resulting in... How is that? Did we get them both?

Representative M. Nelson: I think the original language would do the same thing.

**Representative Rust:** Basically that *resulting in* is all part of the pain and suffering, it's not part of death, so you really need to separate the death out.

46:34 **Representative Belter:** We walked in sure that death is the result of cruelty so that we're explicit.

**Representative Rust:** Are we still looking at that list, excluding burning, drowning, poisoning, and suffocating? I'd be okay with that.

Representative M. Nelson: I'd be okay with that.

**Representative Belter:** We're in agreement on the list, with those changes. Then to clarify the issue of death.

**Representative M. Nelson:** It's back to the cruelty which results in the death, but I'm not sure that death itself is really the act. I'm not certain that we have to leave the death there. If there's a serious risk of death, it's cruel even if the animal does not die as a result.

Representative Belter: Maybe it's simplest to leave death out.



Representative M. Nelson: The death in and of itself does not change the act of cruelty. It changes its effect on other people, but I don't know of its effect on the animal.



Anita Thomas: I think we can work with the words. I would want to give some thought to omitting reference to the actual death. Otherwise it sounds like as long as don't quite kill the animal, you have cruelty; as long as you kill the animal, whatever you did to get to that stage does not matter anymore. We want to be careful that that is not the end result. On the list, we can look at it. You may also want to look at beating; that's what some do in the killing of a fish. Representative M. Nelson had mentioned bow hunting and impaling.

**Representative Belter:** We talk about lawful hunting, fishing, trapping, and the usual and customary practices in handling animals. Are we not covered there?

Anita Thomas: From a drafter's perspective, it would be a lot clearer to use a general reference here and then have the exemptions that are already in the act. I think that is less confusing in terms of whether a particular act should go in one category or the other.

Subcommittee members discussed their availability to continue to work on this bill the following week.

51:48 **Tom Bodine:** Farm Bureau is trying to be cautions. Cruelty goes straight to a C felony; it's not a stepped-up process. As for the egregious acts, we believe anything that does not fall under a definition goes to abuse. So whatever you do not define in the cruelty will be abuse.





# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211 Subcommittee March 25, 2013 Job #20437

**Conference Committee** Committee Clerk Signature

Explanation or reason for introduction of bill/resolution: Subcommittee

Minutes:

Handout, marked up version 13.0380.07007 Handout, amendment 13.0380.07007

Subcommittee meeting location: Peace Garden Room

Meeting called to order at 3:35 pm

Subcommittee members present: Representative Belter (chair); Representative M. Nelson; Representative Rust

Also present: Anita Thomas from Legislative Council

Meeting called to order.

0:57 Anita Thomas, Legislative Counsel, walked through marked-up version of latest amendment, 13.0380.07007, attachment 1. Distributed text of amendment, attachment 2.

8:41 Rep. Rust asked about page 11, line 19, about the inclusion of political subdivisions. Anita Thomas clarified.

9:15 Rep. Belter asked about page 3, line 14, unwelcome animal. Anita Thomas clarified that there is no definition provided.

9:58 Rep. Nelson spoke of history of exemptions about caged animals. Drew attention to page 11, line 11, and necessity of exemptions due to state fair. Anita Thomas drew attention to page 12, line 7, and exemption for exhibition.

11:35 Rep. Belter asked Rep. Nelson if concerns from last meeting have been addressed. Rep. Nelson said this is a lot better.



13:14 Rep. Nelson asked drew attention to the definition of animal cruelty, page 5. Includes state of mind of the person but no longer includes mention of long-term crippling, sever physical injury, etc. Rep. Nelson would like the inclusion of more than only the purpose of inflicting pain.



16:57 Rep. Belter and Rep. Rust referred members to page 5, lines 2-3, of attachment 1. Discussion of strength of existing language.

18:07 Discussion of language regarding purpose of inflicting pain.

19:12 Discussion of incorporating content of section a (page 5, lines 1-3) into page 5, lines 23-25, a and b. Discussion of inclusion of language regarding torture as cruelty.

21:21 Rep. Belter stated importance of being specific when dealing with activities that are felonies.

21:48 Discussion of whether reference to broken bones needs to be included. Rep. Nelson recommends that reference to broken bones be taken out.

23:18 Rep. Belter raised question of whether we are defining well enough the difference between cruelty and abuse. Discussion ensued.

25:14 Consensus that under animal cruelty, we should incorporate the language from page 5, lines 1-4, with the exclusion of mentioning broken bones. Lines 5 and 6 do not need to be included.

26:26 Examination of definitions of abuse; review of changes in this draft.

27:18 Rep. Nelson would like extra wording so that an owner who decides to swiftly and humanly destroy an animal for cause should not have to show cause. Page 3, lines 21-24, and page 4, lines 24-25. The question was raised whether there is another area where an owner is exempted. Anita Thomas clarified what would be considered cause.

30:46 Anita Thomas stated that we are trying to make a distinction between a rational decision and someone deciding to use the animal for target practice.

31:56 Page 5, line 25, for the purpose of inflicting pain will be revised by council.

32:45 Page 7, line 25. Rep. Belter asked what constitutes shelter. Rep. Nelson brought up customary practices. Rep. Rust referred to wording regarding appropriate to species, age, and condition.

345:38 Rep. Rust drew attention to page 12, line 7, regarding exhibition. Page 11 refers to state fair, agricultural fair associations, and political subdivisions. Do we want to include both sections and retain the specific list? Rep. Belter would support leaving those in so there will be no doubt about it. Rep. Rust concurs with leaving those in. Rep. Nelson concurs with leaving in the exemption.

39:04 **Doyle Johannes, chairman of the North Dakota Farm Bureau:** Comfortable with the amendment distributed without the top of page 5 being integrated back in.

39:59 Kristi Carlson, North Dakota Farmers Union: On the definition of cruelty, would like the first 5 lines to be put back. Appreciated discussion of integrating top of page 5 back





in. Distinguished between the act itself or the intent, and the result of the act. Appreciated effort to clarify exemptions on page 3. Question regarding swift destruction as an exemption.

43:50 Rep. Nelson asked whether the horse fits under those exemptions. Kristi Carlson provided examples when situations in which a horse would fit under the exemptions. Discussion whether riding falls under the exemptions.

44:55 Rep. Nelson spoke about depravity of mind and wanton disregard.

46:57 Kristi Carlson referred to previous discussion about the Board of Animal Health and the previous discussions about notification of the Board of Animal Health. Discussion about the inclusion of other agencies, requirement to contact the board.

49:25 Anita Thomas spoke of the importance of looking at the role of the Board of Animal Health. In this particular instance, there is not much of a role after selecting a list of veterinarians. Clarified what is meant by providing or compiling information to law enforcement. Spoke about what typically is and is not included in the Century Code in regard to roles.

50:51 Rep. Nelson spoke about notification and keeping track of potential problems.

51:46 Beth Carlson, Board of Animal Health, came to podium to answer questions.

52:00 Rep. Belter asked about notification of board when incidents or activities take place. Stated that he would like to see that the board is officially notified.

52:59 Beth Carlson stated that board likes to be aware of cases. Indicated situations in which board notification is beneficial to the public and to the board.

52:20 Rep. Nelson asked if the board is aware of cases now when notification is not required. Beth Carlson indicated that there are a lot of cases of which the board is not aware. Rep. Nelson and Beth Carlson spoke about the number of notifications and requests for information. Beth Carlson said that people (public and law enforcement) contact the board for advice or to request help with an investigation.

56:34 Rep. Belter asked if the committee should look at language about notification. Beth Carlson indicated that the board would be comfortable with that. Beth Carlson stated it would be troublesome if obligated to be involved in every case, but they are obligated to assist when asked. Discussion that a notification requirement would allow for better tracking of actual numbers. Discussion about caution regarding the release of names of parties involved.



59:43 Rep. Belter asked who would need to notify the Board of Animal Health. Anita Thomas enumerated a list of questions for which answers would be needed if contact to the board is required. Anita Thomas asked what would need to be done with the information compiled and if a report would be needed. If so, it would make sense to request the report statutorily.

1:01:02 Rep. Belter asked for clarification regarding how the notification process would work. Rep. Nelson asked about a current online database.

1:02:27 **Susan Keller, Board of Animal Health,** requested that notifications be when a charge is being brought forward by a prosecutor or when they are thinking of prosecuting, not when people call about something like a barking dog. Gave examples of the type of guidance the board can provide.

1:04:18 Rep. Belter asked if the Board of Animal Health could send out a monthly e-mail to state attorneys requesting information about pending cases. That is something the board could think about for discussion at the next subcommittee meeting. Information about pending cases is important for the board to have so that they are aware.

1:05:35 Susan Keller summarized conversation Kristi Carlson had had with an individual from the Association of Counties, and that person indicated that the state attorneys would not be opposed to notifying the board when they have decided to press charges.

1:06:19 Rep. Nelson asked Susan Keller to look at the language to determine if it is this sufficient to deal with puppy mills.

1:07:22 Susan Keller spoke about change to definition of cruelty; the addition of the portion from the top of page 5 will address most of their concerns. Question about state of mind or wanton disregard and how those will be determined. Question about where starvation would fit; appears to be a hole within the current version. Clarification of serious illness resulting from abusive treatment.

1:10:29 Rep. Belter asked if definition of what constitute abuse is sufficient. Susan Keller said that it is consistent with elsewhere in the code in that it is broad enough to encompass the results. Rep. Rust expressed comfort with the definition of animal abuse.

1:12:03 Anita Thomas reminded that there needs to be a clear delineation between cruelty and abuse. Further discussion of implications if page 5, 1-4, are included in definition of cruelty and what would be left for the definition of abuse. Anita Thomas clarified that it does not matter in which definition those elements are included as long as the distinction is clear to those who read it. Discussion of removing page 5, lines 1-4, from the definition of cruelty. Discussion of possible definitions.

1:20:07 Kristi Carlson spoke of ambiguity of the word *torture*. Spoke of having a balance between clarity in a definition and room for interpretation. We would continue to advocate for the definition in lines 1-6.

1:22:19 **Tom Bodine, North Dakota Farm Bureau:** Anything that falls outside of cruelty would still be abuse. Because of the felony level of cruelty, we want it to be clearly defined. Abuse would not need to be as well defined in that it would include anything outside the definition of cruelty. However, page 5, lines 1-4 are too broad and too subjective.





1:25:40 Julie Ellingson, Stockmen's Association: Expressed support of retaining the language from page 5, lines 1-6. Spoke of removal of subjective language, *unjustifiable pain and suffering*, and replace those. Suggested *an act or omission that causes death*, and the then include the other items in the list. That would be more reflective of the language in the starting draft and might help clarify the intent of the law.

1:26:25 Rep. Rust requested that Anita Thomas rework lines 23-25 to include page 5, 1-4 so it can be compared with this version. Rep. Rust outlined two paths.

1:27:18 Rep. Belter asked committee members if they are comfortable with the definition of abuse. Rep. Rust stated that the committee needs to define cruelty

1:28:02 Jason Schmidt, former past president of Stockmen's Association: Referred to current code regarding cruelty. Spoke of working draft put together by working group. Some of the language is current code. Encouraged committee to keep things simple and to avoid subjective language, especially in the definitions. Provided copies of working draft to committee members.

1:31:47 Anita Thomas recommended that the subcommittee focus on what they want within the definition of cruelty. Once you've decided that, then you can look at abuse and decide if there are activities that should fall under that particular heading.

1:32:34 Eric Aasmunstad, North Dakota Farm Bureau: The current law needs fixing. Stated they had submitted a list of terms which could constitute cruelty. It does not have to be all-inclusive. Because we're going to Class C felony on the first step, cruelty has to be well defined.

1:35:47 Anita Thomas stated that she will give the subcommittee members a sheet with only the definitions of abuse and the definition of cruelty so they can focus in on those sections.

1:36:01 Beth Carlson spoke of starvation. Page 5, lines 23-25, does not make it clear that omission can be a cruel act.

1:37:31 Council will work with the Board of Animal Health regarding information about notification so that they will be aware of potential prosecutions.

Subcommittee will meet Tuesday, March 26, at 3:30.

Meeting adjourned at 5:10 pm



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211 Subcommittee March 26, 2013 Job #20525

**Conference** Committee Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

## (Subcommittee)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Handouts, attachments 1 and 2

Amendment #13.0380.07008 & 13.0380.07009

Meeting location: Peace Garden Room

Called to order: 3:30 p.m.

Members present: Representative Belter, Chair; Representative Rust; Representative M. Nelson

Others: Anita Thomas, Legislative Council

Minutes:

**Representative Belter:** Anita provided definitions between neglect, abuse, and cruelty. See attachment #1.

0:47 Anita Thomas, Legislative Council: Walked subcommittee members through attachment 1. Across the top in line 1 is the language in the bill currently. There has been no conversation about making changes to the definition of neglect. Abuse is defined physical abuse of the animal, but we do not encourage the use the term being defined in the definition. Line 2 shows the revised definition of abuse from our meeting yesterday. Part of the discussion goes back to last Friday when the subcommittee was trying to decide if a swift death is the same as a death after prolonged suffering. That discussion is still open. As you determined yesterday, once you decide what cruelty means, then you can go back and decide what changes need to be made on the abuse section. In the third column about cruelty, the first box is the language as it appears in the bill. The second box (line 2) is language you looked at yesterday. I looked at all 50 laws. I was able to eliminate the states which still use old language similar to what we have in current law. A few states use language which clearly would not fit with this state. We are left with this middle portion as some phraseology that you might want to look at if considering a short definition of cruelty.



2:55 Anita Thomas: On page 2 at the top shows the cruelty language in current law. There was discussion yesterday regarding unjustifiable pain, suffering, or death. Reads Option #1 & #2 and offered background and explanations.

6:24 **Representative M. Nelson:** Option #2 is the closest to what I like. It is not just the death but protracted suffering.

7:08 Representative Belter: I would concur with that.

7:31 **Representative Rust:** On page 2, I would go with option #2 before I'd go with option #1. I would look at cruelty on page 1 to be the second definition. But I would by okay with including the injury or killing of the animal with a depravity of mind and a wonton disregard for its life. I probably would even go with injury in there. As I look at the two cases out there and think about cruelty, there is a difference in starving an animal. It might be a willful decision, which would be cruelty. It might be poor practice, which would be more of abuse or neglect. Cruelty is an act of willfully inflicting injury or death, and there is a mindset beyond a normal mindset. I liked the one from yesterday. Abuse is anything not cruelty. Remember with cruelty you are going immediately to a felony. The second to last one (page 1, line 8) is not bad either.

10:50 **Representative M. Nelson:** Do we have anything which gives us guidance on the legal meaning of the depravity of mind?

Anita Thomas: I did not search on that. In a trial one side would try to convince the jury that the action is beyond the pale of what reasonable, sane people would do.

11:40 **Representative Rust:** I'm thinking of a old lady with 30 cats in her trailer that are starving to death. That is not necessarily cruelty because she wouldn't enjoy watching suffering, but it a case of someone who has lost direction. In the current definition, I have difficulty with phrase results in broken bones. Maybe that is part of the unjustifiable pain, suffering, and death.

13:24 Anita Thomas: The results in broken bones would one of several options that would have to accompany the act. We are talking about a willful act. In your example, the little old lady would have wanted to cause suffering in order for that to be considered cruelty.

**Representative Rust:** We're getting to a point where we need to make a decision. I could go with option 2 on page 2.

14:41 **Representative Belter:** Is it our intent that option 2 is alternative to the existing language or in addition to the existing language?

Anita Thomas: Instead of existing language.

15:06 Eric Aasmundstad, North Dakota Farm Bureau: Distributed attachment #2. (Was presented in hand-written form during subcommittee and was retyped by committee clerk.)

Walked through proposed definition of cruelty for a Class C felony. It would be intentional; you meant to do it.

16:24 Representative Belter: You language is closest to which option we have here?

**Eric Aasmundstad:** The closest would be option #2. We would like to see the section about illness struck. While there could be something cruel that results in an illness, there could be something not cruel and not intentional that resulted in illness or death. Referred to current cases. There is a difference in the frame of mind between someone who sets out to do harm and one who in a situation in which the harm occurs recklessly--I don't know what the word is.

18:18 Representative Belter : Are you comfortable with letter d on options 1 and 2?

Eric Aasmundstad: That causes prolonged impairment of an animal's health? Yes, sir.

**Representative M. Nelson:** So if we did go with option 2, you'd like to see it something like any willful act or omission. You'd want to get back to the willfulness.

18:49 Anita Thomas: The word willful is in the bill. Under the criminal code willful includes intentionally, knowingly, or recklessly.

20:01 Julie Ellingson, Stockmen's Association: What we heard yesterday is that you wanted to see a distinction between abuse and cruelty and to have a bigger alley between the two. Several options you're considering provide that clarity. We look at option #2 as the best. It has many similarities to the handout from Eric Aasmundstad. Cruelty should be reserved for extreme acts. We want to widen that alley to make sure there is a clear avenue for state's attorneys to follow when they move forward.

21:20 Kristi Schlosser-Carlson, Farmers Union: We do have levels of intent that are required to show in a criminal case. The highest level is intentional; then is knowingly and recklessly. The word willfully is kinds of a catch-all for those. It was suggested today in the group that came up with attachment 2 that to get to that point, to raise the level of intent to be required before someone would be convicted of cruelty.

23:40 Ladd Erickson, McLean County State's Attorney: In 1997 or 1999, several of us worked on those provisions and some of the problems we were addressing. I talked with some of the people present today about what we do to bring changes when these cases come in. If you are going to charge a felony in this area, you need to distinguish the conducts from a mental state. Intentional conduct is a lot different. Read definition of animal cruelty from attachment 2. Those are intentional actions out of sexual gratification, mental depravity. I wouldn't put those kind of words in there because then the jury will want to know what depravity is, and we don't define that. Stay away from words like depravity, maliciousness. If you want to get at the heart of the person who is trying to cause animal pain and suffering for some sort of untoward reason, that is the C felony. I have concern with the animal abuse and neglect. From my experience, you are dealing with a lot of people who are old and can't handle the animals but cannot give them up. It takes a number of warnings, and you try to resolve the issue without charges.

willfully starve down an animal to make it docile and then will send it in that docile condition to the sales ring, and when the buyer gets it home and feeds it, the horse is wild. Normally, the lack of food and water is from people who are irresponsible and should not have animals or people who are becoming physically unable to handle them. I'd be careful about getting into felonies on those, except for maybe repeated behavior. Read from attachment 2 under Class A misdemeanor for animal abuse or neglect. The current bill refers to owner not caretaker. Gave examples of protection with consideration given to the species and age. Gave examples of willful infliction of pain. There was a huge battle in the 1990s over the seizure of animals. The current bill is deleting some important language. We used to have a problem getting sheriff's departments involved because of the cost. We created that law, Title 36, so the sheriff's departments get priority liens on those seizure costs to carry out their jobs.

30:59 Representative M. Nelson: The priority lien is still there on line 7-9 on page 9.

Ladd Erickson: Livestock need a search warrant unless it is an emergency situation. Then we hire trucks to haul them to a livestock barn. The owner is given notice that within five days, the animals will be sold. The court process is set up so that the government needs to show evidence why the animals cannot be taken care of. The costs of transport are taken out the sale proceeds first, and then other creditors are taken care of. Everyone is trained is the process. I'm not sure what led to the deletion of the current procedure.

Representative Belter: We can address that, but we had better get back on the abuse definition.

33:26 Ladd Erickson: Animal cruelty needs to be an intentional act, broken out from failure to feed, water, or shelter. Those come in different forms. There is no sexual gratification to starve an animal. That is present when people try to inflict maiming and mutilation. They start with abusing animals and escalate.

34:22 Representative Belter: Is attachment #2 your language?

Ladd Erickson: I worked with others. We kicked around each word to get to that.

Representative Rust: Class C Felony, is everyone in agreement?

35:04 **Representative M. Nelson:** You have that causes extreme pain. How do you determine that an animal felt extreme pain?

Ladd Erickson: The vets are always involved and can tell you. Gave examples of how determinations are made.

36:25 **Representative Belter:** We have attachment 2 with the definitions. Is everyone on the same page with these?

37:01 **Representative Rust:** Attachment 2 combines abuse and neglect. We have been separating them out.

37:25 Ladd Erickson: I suggested combining them. If you're going to use enhancements, you can charge at two counts for the same incident if you have two different statutes. I don't see any practical difference between the jury instructions for abuse and for neglect. I couldn't find a reason to have two Class A misdemeanors so close in subject matter, one for neglect and one for abuse. Elaborated on cases under current law.

38:40 Julie Ellingson: We would disagree about combining the abuse and the neglect pieces. In 2008, state's attorneys were concerned that cruelty, torture, and neglect were all wrapped together. The direction at that time was to create distinct definitions. We think there is a difference and want them separated. Elaborated on differences. The suggestions Anita presented for the alternate abuse definition would be satisfactory.

40:13 Tom Bodine, North Dakota Farm Bureau: We have no problem with what is presented. You can see the elevation where it comes to a felony. We have always considered an A misdemeanor sufficient for those lower acts. For one animal, they could get two Class A misdemeanors. We would be fine if they were combined.

42:08 **Representative Belter:** Committee members, I don't know where your thinking is about whether to combine or to keep them separate. There is a difference between abuse and neglect. Abuse is more severe than neglect in my mind.

43:05 **Representative Rust:** I even see it in children that there is a difference between abuse and neglect. You bring it up one more notch to abuse them.

43:40 **Representative M. Nelson:** It is how things happen. A person could have two neglect cases and then an abuse case but still be at a Class A misdemeanor. If we just went with animal neglect and then went to means and then when we got down to *or the willful*, we could just say *animal abuse is the willful infliction of physical harm or pain for no legitimate purpose.* We end up in effect combining the two so there is not the multiple charge concern. But there would be distinct definitions. For charges, they're the same, so you wouldn't have a person who would have two abuse or neglect cases before a felony. I like the definition on attachment 2 works for abuse and neglect. Instead of saying *animal abuse or neglect*, I'd take out the *abuse or* and it would just be *animal neglect* and then go through the whole thing until you get to the *comma or*. Then say *animal abuse is the willful infliction of physical harm or pain for no legitimate purpose*. Instead of *pain*, I'd prefer *pain or death*. We wouldn't want necessarily want a person to get both an abuse charge and a neglect charge for one animal at the same time. In the definition of abuse, we probably want to include that it is things that do not rise to the level of cruelty. I like the neglect definition on attachment 2.

46:49 **Representative Belter:** You would strike the animal abuse on line 2 and just go with neglect with that definition.

**Representative Rust:** You'd still keep them separate. I would, too. I like the including that it does not fall in the definition of animal cruelty for the abuse.

47:50 Representative M. Nelson: Question on correct wording.

Anita Thomas: When we get the point of massaging that, we'll be in good shape.

48:12 **Representative Rust:** Looking at the C Felony section of attachment 2, I see prolonged impairment and broken bones in option 2 from attachment 1. This one says mutilate; option 2 says animal significantly disfigured. I didn't see torture....

**Representative M. Nelson:** It's the protracted suffering. The question would be is it just protracted suffering if it does not result in one of these things specifically? Would that still be considered cruelty?

**Representative Rust:** Earlier in the bill, we have willfully, which you said is equivalent to intentionally.

Representative M. Nelson: No, it includes more things.

Anita Thomas: Willfully includes intentionally, knowingly, and recklessly.

**Representative M. Nelson:** For the felony for cruelty, I like going with intentionally. That would work in conjunction with the abuse, since that is just willful. If something did not rise to the level of intentional, it would fall back to abuse. I'm not sure if recklessly should be a felony.

50:13 Ladd Erickson: Everything uses the willfully. Elaborated. If you separate those, you will have the prosecutor charging two counts. Child abuse and neglect are all in one statute.

51:30 **Representative M. Nelson:** Where the person not feeding is not feeding, there is neglect going on. Could you still have cruelty on the same animal because it is a separate part?

51:43 Ladd Erickson: The way the cruelty is written, intentional mutilation, physical torture. The word physical is in there for a reason because you could argue that a starving horse is being tortured. They are separated from the starving cases. You would have prosecutors charging for two Class A misdemeanors. Elaborated on charges and jury instructions.

53:02 Representative Belter: What does reckless mean?

53:10 Anita Thomas: Reads definition.

53:53 Ladd Erickson: I'd be cautious about going to (audio faint) based on that different people's norms when dealing with animals may not be accepted by some neighbors but should not necessarily be criminal animal abuse. If you go to negligent, you're going to broaden. Having reckless in there should put the burdens at the right place.

Representative Belter: So you wouldn't use the term negligence?

Ladd Erickson: That's below reckless. That is a lot easier for a prosecutor to prove. That is a lot broader. What you want is reckless. Reckless is deviating from normal action.

55:12 Kristi Schlosser-Carlson: Willful would include all three. There was never a goal of putting negligence in here. We are fine making sure that cruelty, which is intentional, is the highest level.

56:30 **Representative M. Nelson:** Under abuse and neglect when it is willful infliction of physical harm, would death be a physical harm?

Ladd Erickson: (audio faint) Yes, it would be under the circumstances. I have had to euthanize my dog. It would be if it is not legitimate purpose. Some training with dog collar is legitimate.

57:44 **Representative Belter:** Let's go back to the C felony. Do you want to go with the language on attachment #2 or do we stay or go back to option 2 from attachment #1?

Representative M. Nelson: I would prefer attachment 2.

58:34 **Representative Rust:** Looking at engrossed version 13.038.07007, page 4, line 29, change willfully to intentionally. Then on page 5, line 23, do we need intentionally again? You could list physical torture, mutilation, causes extreme pain, broken bones, or prolonged impairment to the animal's health. Would we substitute then for lines 23-25? Line 26, leave those? Leave Section 3 through page 6, line 12. It appears we have a definition for cruelty.

Anita Thomas: What is the difference between physical torture and mutilation?

**Representative Rust:** You cannot mutilate without torturing. Can you torture without mutilating? You can, so they are different. We need to include both.

Representative M. Nelson: Was your question whether mutilation was in the list?

Anita Thomas: Whether it needed to be.

**Representative Rust:** I asked if you can torture an animal without mutilating it. If the answer is yes, then I'd say to include them both.

1:02:48 **Beth Carlson, Deputy State Veterinarian:** There are case where starvation is an act of cruelty. We have dealt with several cases in which it is obvious that animals are dying due to starvation, but the acts continue and continue. I think there needs to be some option for those cases in which there is an obvious recognition by the person failing to feed the animals that their action is resulting in the death of multiple animals. I know that the board of animal health agrees that starvation can be an act of cruelty.

Representative M. Nelson: Would something like that fall under the wanton disregard for life?

Beth Carlson: Animals nearly starved have prolonged impairment of health. I think starvation can be torture in and of itself. Elaborated.

1:05:20 Representative Belter: Go back to attachment #1, row 4 under cruelty.

1:05:55 **Representative M. Nelson:** Just the fact the animal died, I think the prolonged impairment occurred beforehand.

1:06:06 **Beth Carlson:** Attachment 1, option 2, talks about protracted suffering and resulting in the animal's death. I'm comfortable with that. I didn't think that was clear in attachment 2 as it was read, but I didn't see it.

1:07:14 **Representative Rust:** Looking through the cruelty thing, I don't see animal's death. Reading from C felony of attached #2 and adding, *or an animal's death.* 

1:07:54 **Representative M. Nelson:** I'm wondering if just adding *protracted suffering* to the extreme pain, broken bones, prolonged impairment of animals health.

**Representative Belter:** Do we want to add the depriving of food and water and medical attention?

**Representative Rust:** You've got that in abuse. I'm comfortable with what I gave you. Other than that, I probably could have added... On the 7007 version, page 4, the last line, for the purpose of this chapter, animal cruelty means. Then on page 5, line 23, I would add physical torture, mutilation, causes, extreme pain, broken bones, prolonged impairment of animals health, or causes death. (Note: Page and line numbers refer to the marked-up version distributed during a previous subcommittee meeting.)

**Representative M. Nelson:** We cannot just go to death; we're talking the death at the end of a period of suffering.

Representative Belter: You want to leave starvation or depriving of food and water...

Representative Rust: Prolonged impairment of an animal's health is starvation.

1:10:13 Anita Thomas: Looking at option #2 from attachment #1, we start out defining that as any act or omission that causes an animal protracted suffering. How different is that from causes extreme pain? That is what is in attachment 2. Extreme pain can be very sudden and very short. Protracted suffering is a longer period. The next thing is leaves an animal to eminent danger or death. We don't really get to that in attachment 2. Leaves an animal significantly disfigured; I think that's what you're probably looking at with the reference to mutilation. Results in broken bones; you have that one the C felony. Causes the prolonged impairment of an animal's health; you have that. Results in a serious illness; that seems to be the one that is still up in the air. Or results in the animal's death.

Representative Rust: We don't have anything about torture or mutilation.

Anita Thomas: You have significant disfigurement.

Representative Rust: How about physical torture?

Anita Thomas: I would look at that as an act that causes protracted suffering.

1:12:08 **Representative Belter:** If you are charging a Class C felony, does starvation need to be defined?

1:12:27 Ladd Erickson: I agree with Dr. Carlson. The mental state for keeping food and water from animals is not the same as for causing physical pain. From a prosecutor's point of view, putting starvation in animal cruelty would make sense, but here is what would happen. On the neglect cases, you'd start all your charges at the C felony with that in there. You might plead it out on the Class A. I would like to see Dr. Carlson's concerns addressed, but I want you to see how it works in practice. The A misdemeanor should be for neglect. If you have intentionally starved and you make it a C felony, then when the sheriff's departments and the Stockmen's Association go out on these cases, they'll start them at a C felony.

1:15:08 **Representative Belter:** If you take the example of the elderly person and have starvation under cruelty, as a prosecutor are you going to decide not to prosecute him as a felony? If we have starvation under cruelty, are you going to be forced to charge him with a Class C felony?

Ladd Erickson: I don't think you're forced to do that. You'd still have room in the Class A. Elaborated on scenario and with additional scenarios. If Dr. Carlson is seeing a reason to have that in there... I have concerns. What I was understanding is there were concerns trying to make this cut. I tried to create tight definitions. There are cases when an individual is lazy and not feeding his animals during a blizzard, and I'd love to have a felony for that. If you put intentional starvation in there, there will be more felony charges in the area of people not managing their animals.

Representative Belter: Responded to scenario.

1:17:55 Ladd Erickson: Provided details on how vets objectively determine if an animal is starving.

1:18:19 **Representative M. Nelson:** Have you ever charged a case of animal abuse when it has been overfeeding?

Ladd Erickson: No, I haven't.

1:18:42 **Representative Belter:** Do you want to put the starvation, depriving food and water...

Representative Rust: No. I think it is under prolonged impairment of an animal's health.

**Representative M. Nelson:** I think that could cause us problems with passage of the bill. I think we're better off leaving it off.

**Representative Belter:** We have agreement on Representative Rust's wording, and counsel has Representative Rust's suggestion?

1:19:28 Anita Thomas: It is essentially the definition of the C felony.

1:19:43 Representative Belter: Let's go back to the abuse.

1:20:00 Representative Rust: On the 7007 version, page 3, line 21.

Representative Belter: So the second item down here is what's in the bill? (attachment 1)

Anita Thomas: Under abuse, the first one is what was in the bill; the second one is what you were given yesterday in the 7007 version. If there is a motion, I can put it in the appropriate place in the final bill draft as long as we have the language we want.

1:21:08 **Representative M. Nelson:** I'm not so unhappy with the definition of abuse that we have. We have the list of exemptions, but I like the no legitimate purpose wording from attachment 2. Add the words for no legitimate purpose to definition for abuse.

Representative Rust: I'm with you.

Representative Belter: I'd support that.

**Representative Rust:** So now we have a definition of abuse. And also but does not include any act that falls within the definition of animal cruelty.

1:22:43 Anita Thomas: I was thinking of the phrase *no legitimate purpose*. It seems to fit. But on the other hand, you have the list of exemptions in the statute already which would address all the legitimate purposes. I don't think you need to have the additional phrase.

1:23:07 Representative Belter: Are we okay with the abuse definition in 7007?

Representative M. Nelson: I guess we are. We've pretty well covered everything with the exemptions.

1:23:35 **Representative Belter:** Let's go to neglect. The only question I have is on *ventilated.* Are we opening the door to litigating a hog house or production agriculture?

1:24:55 **Representative Rust:** I like the definition on attachment 2, the bottom of page. Some things are the same. It is fairly close to what we have on page 2, lines 6-10.

1:25:56 Representative Belter: So you're saying to drop off lines 11-17?

Representative Rust: You have food and water, sufficient in quantity and quality. You have minimal protection from adverse weather. You have medical attention with consideration of species. I think that would be sufficient for neglect.

Representative M. Nelson: The two of them are close. If you take that one thing off, I don't think it matters.

Representative Belter: Are we in agreement we'll make that our definition?

1:27:12 Anita Thomas: In attachment 2, we're talking about consideration given to the species. That doesn't include different breeds. Examples.

Representative Rust: That would be good to include.

**Representative M. Nelson:** Basically if we drop out item D, I'm thinking the draft really isn't that far off either way. It's whether you shelter or give minimal protection.

1:28:51 Eric Aasmundstad: We have no issue with adding species and breed. Where we get into trouble is when we start talking about age and condition because that brings into the standards of care realm.

1:30:00 Julie Ellingson: Very important were lines 11-15 with puppy mills, etc. I don't remember the reason for lines 16 & 17, and to me those could be struck.

**Representative Belter:** When it comes to production agriculture, will the exemption cover that?

Julie Ellingson: We thought this language was preferential in exchange for the wholesome exchange of air language that we have in existing statute, so that's how it was arrived at. We were concerned about some of the things which I think are on your mind. This is important to our shelter and veterinarian friends.

1:31:52 **Susan Keller, State Veterinarian:** Lines 11 through 16 or 17 are important. We have had calls for which the wardens can't even go into the building without a gas mask. Related example of situation in Bismarck. In agriculture, adequate ventilation outside is not a problem as long as they are not dying. I don't see the concern.

1:34:02 **Representative Belter:** We know there are anti-animal agriculture groups looking for a hole in the law for litigation. That was my concern about the ventilation. You are comfortable that the language we have covers that.

Susan Keller: Given what I know what veterinarians in North Dakota consider usual and customary practices, yes. If you have consulted legislative council and they don't see a concern or different interpretations than how we'd interpret that now.

1:35:31 Ladd Erickson: I don't have much experience in what she is dealing with. You could add words about proper sanitation.

**Representative Belter:** We want to make sure we cover the puppy mill situations but that we in no way open the door to litigation of animal agriculture.

Ladd Erickson: You have exemptions for production agriculture. This is one of those bills you'll have to monitor and see how the cases come in.

1:37:32 Eric Aasmundstad: We have fought this battle in the past, and it had nothing to do with animal care. It had to do with whether we could even cite a hog barn. We took that to the Supreme Court of North Dakota. The issue with ventilation is not only brought by animal rights activists and but those opposed to factory farming. This is the first place they go to try to eliminate large-scale animal agriculture confinement basis. There are defined engineering standards for CFM, sanitary conditions, and so on, but they are never good enough. Hog numbers are going down and will continue to decline if we do not start making changes and making overt gestures to welcome those people to North Dakota. Putting something like this into law will signal large-scale animal agriculture not to locate in North Dakota. Maybe the issue of puppy mills should be addressed in a place other than where we address the entirety of animal agriculture. Do not do anything that puts animal agriculture at risk.

1:40:53 Karen Thunshelle, Humane Society of the United States: Gave examples of animals kept without proper ventilation. Asking for adequate ventilation may seem redundant in this bill, but it has to be spelled out to protect these mass of breeders. Measure 3 will help protect agriculture. I would like to see lines 11-17 stay in there. This does not seem over the top. It is very important to ask for these basic things for these large-scale things. No one is out to get the little grandma in the trailer with the cats. These conditions are horrific, and the ventilation is a huge thing in these puppy mills and in some of these breeders. Gave examples of conditions. I look at this bill and see good things that protect the way we like to live here and the exemptions for agriculture that keep everyone comfortable. I think of the group that worked together with everyone working toward the same goal, and to me that is the dream group to work on this. I would like to see lines 11-17 stay in there.

1:45:36 **Representative Belter:** It was not my intent to deprive any enforcement of our animal laws dealing with the situations you're talking about. We want to make sure we're taking care of both worlds.

Karen Thunshelle: I thought I could add experience from my background. There are some pretty bad things as far as environmental conditions.

1:46:45 **Representative M. Nelson:** We are lacking the personal experience. What happens in a veterinarian practice when an animal comes in with ammonia burns?

**Karen Thunshelle:** At our clinic, it would have to be up to the owner who bought the puppy. There really is not a course of action, unless the owner would want to pursue that. Often they choose not to, so you treat the animal as best you can. The breeder or the mill is going to say bring back the puppy and we'll give you a different puppy. There is not a lot of recourse. It is the owner's animal, so they treat it, euthanize it, or pursue a civil case. It often goes untouched.

1:48:19 **Representative M. Nelson:** You're saying it is not routine to contact the state's attorney or the board of animal health.

Karen Thunshelle: For a private individual, most people would call the humane society or the shelter. I'd work with them to report it to the state vet or to that county's sheriff's department or do the proper chain of where you had to go with that. But there really is not a lot to do if they have adequate food, water, and shelter, which is what we have now. So adding more teeth to things is a huge deal. It is getting to be a problem here. Spoke of recent example in North Dakota.

Representative Belter: Counsel, do you know where to go from here?

Anita Thomas: Yes, today I know what you would like.

Representative Rust: We probably don't know on neglect yet. We'll think on that a bit.

Anita Thomas: Would you like me to put what you have agreed to in a dressed-up format?

Representative Belter: Yes.

Adjourned: 5:22 p.m.

Meet Wednesday, March 27, at 3:30 p.m.





## 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211–Subcommittee March 27, 2013 Job #20579

Conference Committee

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Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

## (Subcommittee)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty.

### Minutes:

Attached .07010 bill and amendments, 07011 bill and amendments, testimony #1



Time: 3:30 p.m.

Members present: Representative Belter, Chairman, Representative Rust, Representative M. Nelson

Anita Thomas, Legislative Council: We will be working off the .07010 version today. Page 1 section on assistance of criminal investigation. This requires the state board maintain and make a list of trained vets available to assist in any criminal investigation. Section 3 is new. The board of animal health shall work with law enforcement representatives. This would include state's attorneys as well as the various police forces Together they can develop a reporting mechanism and compile around the state. information regarding the violations of the chapter. The board of animal health then would report its findings to the legislative management biannually. During interim process information would be shared by legislators. Definition of neglect means the failure to provide an animal with food and water that is appropriate for the species and the breed and its sufficient to sustain the animal's health. You would have to provide at least minimal protection from adverse weather conditions and provide medical attention in the event of an injury or illness as appropriate for the species and the breed. On page 4 we incorporated the definition of abuse; 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 cruelty. The definition of cruelty starts on page five. Any person that intentionally engages in animal cruelty would be guilty of a class c felony. On page 6 the possible actions that could constitute a felony would include breaking an animal's bones, causing an animal extreme pain, causing the prolonged impairment of an animal's health, mutilating an animal, or physically torturing an animal. The last change is on page 13: this section would provide by July 1, 2014 the representatives of the agriculture production groups shall compile information regarding the effects of this act on their various



agricultural sectors and present to legislative management for review together with any suggestions for potential statutory changes.

**Representative M. Nelson**: In section 5, the compiling information regarding the effects of this act, the only problem I have with that is it wouldn't go into effect until July 1, 2013. I'm not sure that there's much time to see effects on the parts of the commodity groups. I'm concerned with the time frame.

Representative Rust: The legislature meets within 6 months of that.

Representative Belter: Legislative management meets at any time.

Anita Thomas: July 1, 2014 is suggested to the groups because the interim committees are wrapping up.

Representative Rust: We were also given some other handouts so do we want to go over those?

**Representative Belter**: I requested Anita to look at the possibility of a division between the pet category versus production agriculture which is 7011 version.

Anita Thomas: This puts another subsection into the definition of neglect. It has the same criteria as the current bill. Section 3 says as it applies to all other animals, version 07011.

Representative Rust: Other domestic pets?

Anita Thomas: Gerbils, parakeets, etc.

Representative Belter: I had suggested that we need language that does not classify a horse as a pet.

**Representative Rust**: I do like 07011. One segment I didn't like was the standards of care. The other didn't like the fact that it was excluded because of the puppy mills and those things. By separating them into two categories you can address both concerns.

Kristi Schlosser-Carlson, North Dakota Farmers Union: I would be very troubled if we distinguished between types of animals. We are already trying to figure out the definition for production agriculture. What we had originally is well written. The reason we added those comments in there and made those distinctions of species, breed, age, and so on is to protect those folks who have varying ages within their herds and so on. To go that step farther and distinguish between the two would be very dangerous for us and especially for agriculture. I would stronger encourage you to avoid trying to define that distinction.



Representative Belter: Why would you consider it dangerous?

Kristi Schlosser-Carlson: Folks have horses for different reasons and when you start trying to figure out which category they fall into, are we going to talk about the animal itself



or the uses you have for each of those animals? I think it would open up a bigger and harder discussion for a lot of us in this room if we did that.

Beth Carlson, State Board of Animal Health: I concur with Kristi. A pot-bellied pig is a pet. Rabbits are raised for meat sometimes. We have the exemptions for food animals so when bunnies are raised as food animals there are different expectations of how they are raised as when they are raised as pets. Animals are animals and there are different purposes for the animals but it doesn't help to lump them all as pets or livestock.

**Cameo Skager, Central Dakota Humane Society:** Part of the reason we chose to oppose Measure 5 was that it did not cover all animals. We rescued dogs but there were also dead horses on that property. We see the correlation on what is considered a pet and what is considered livestock. We promised our constituency when we urged them to vote no on Measure 5 that we would fight for something that covered all animals.

**Representative Belter**: It is not my intent to exempt anyone from these laws. It is my intent that as a state we are protecting the animal industry. There are groups that are antianimal agriculture and those groups will not go away; they will continue to press animal agriculture wherever they can. My intent is to protect all animals regardless as whether you classify them as pets or agriculture. We don't want to open any doors to the animal agriculture movement that opens us up to unnecessary litigation in production agriculture.

**Cameo Skager**: The reason we sat on the working group is because we believe in North Dakota agriculture as well. We see heinous things whether it's a horse, pot-bellied pig, dog, or a cat; we believe they should be punished on the level that they deserve to be punished when they do something heinous.

Representative Belter: I wouldn't disagree with that.

**Representative Rust**: Does this preclude them from being protected? It would add some additional protection for domestic pets.

**Cameo Skager**: For that group it makes it exactly what the working group intended it to be. But for the other groups when we go to puppy mills they are usually in rural areas and what if there are cattle? You run into the idea of what is a domestic pet and who makes that call and what is that consideration.

Representative Belter: Are we exempting anybody here?

Cameo Skager: You're changing the definition of neglect for other animals.

**Representative M. Nelson**: When you work with these cases, what are you seeing that causes injury or death?

**Cameo Skager**: In the puppy mill situations they are put into cages with wire poking out, cages are stacked on top of each other with urine and feces going on the dogs below. Infections aren't treated so they die.





Julie Ellingson, North Dakota Stockmen's Association: We concur with earlier speakers. We reject the idea of separating those categories. One of the concerns we had is that it carved out different standards for dogs, cats, and horses. I think we should instead find standards acceptable and defensible across all species. We would also prefer the earlier version.

Eric Aasmundsted, North Dakota Farm Bureau: We see a clear need for a well-defined division between companion animals and agriculture. We don't believe nor do we want to cause harm to anything or exclude any animal covered by this law. Either the amendments that council has prepared or what we offered you works well for us. We need a separation between pets and agriculture. We believe we have successfully defined a companion animal as not a horse. In our opinion horses are livestock and must remain in that category. We don't see the ventilation issue as a problem in agriculture. Generally agriculture does a good job.

Karen Thunshelle, Minot, Humane Society of the United States: I would concur with the majority of the people spoken. I think there is a dangerous line and how do we put a face on cruelty or neglect. For some people horses are companions. I don't think there is any reclassification of that; horses are livestock and that's how they're classified and I don't feel there is any reclassification going on here. I feel that there is proper protections in here by the group that drafted this bill for our agriculture people. As stated earlier, this is a good bill but it won't please everybody.

\*\*Representative M. Nelson: There is a huge concern of the current language under neglect on the part of a lot of ranchers and such. I would move the 7011 amendments.

\*\*Representative Rust: Seconded the motion.

Representative Belter: I would agree.

Anita Thomas: On page 2 of 07011, line 18 the language we were given references at least minimal protection. In terms of statutory clean-up I would request your permission to eliminate the "at least", minimal protection is the threshold.

Representative Belter: Is the committee agreeable to that change?

Committee: Yes.

Representative Rust: We haven't done anything with 07010.

**Representative Belter**: What are the committee's thoughts on horses? Are we okay with the definition of dogs, cats, and other domestic pets?

**Representative M. Nelson:** Normally it is going to end up in the livestock category. If we say species by species I think it will confuse the issue. We have the criteria of a pet. I don't think it creates a problem.

Representative Belter: We will leave that issue alone.

Representative Rust: With regard to 07010 I would move to adopt it with 07011 into it.

Representative M. Nelson: Seconded.

Representative Belter: I would agree with that.

We will meet at 9:30 tomorrow morning.

**Representative Rust**: I would like to talk about Class C felonies tomorrow. Overriding input that I get deals with Class C felonies in the cases.

Representative Belter: Closed at 4:07pm.





## 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211--Subcommittee March 28, 2013 Job #20630

Conference Committee



Explanation or reason for introduction of bill/resolution:

## (Subcommittee)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Amendment #13.0380.07012

Time: 9:32 a.m.

Members present: Representative Belter, Chair; Representative Rust, Representative M. Nelson

**Others:** Representative Trottier, Representative Haak, Representative Boschee, Representative Heilman, Representative Dennis Johnson, Representative Headland, Representative Kiefert

Representative Belter: We have the .07012 amendments and markup.

**Representative M. Nelson:** On neglect, I would move on p. 2, line 11 to strike lines 12 & 13 to leave neglect at a Class A Misdemeanor. The reason is I think the way it flows. If they cause the death of an animal, it would flow to abuse. My intention would be to leave the third time offense at a felony on abuse.

Representative Rust: | agree.

Representative Belter: Also agrees

**Representative M. Nelson:** I would also go to a misdemeanor on abandonment. Again if it is so egregious that it causes physical harm or death, it can still go to abuse. That would be on p. 7, line 7 & 8.



Representative Rust: I agree. As I think about the whole bill, there are two concerns both of which are equally important.

1. We are protecting the animals. We want to discourage people from doing heinous things to animals.

2. We want to protect production agriculture and the livestock industry. Agriculture is our #1 industry in North Dakota. A big part of that is livestock production and food for people.

It is difficult to find the balance of where does one hurt the other. I see these crimes as being in a progression. I see the order of severity as:

- 1. Abandonment--they don't want to kill it. They just want to let it go.
- 2. Neglect -- they just aren't attending to their duty
- 3. Abuse--somebody wants to inflict some pain
- 4. Cruelty-this is done with a deliberate action to do something heinous to an animal

In trying to get the bill through the house, the comments and emails I received, the difficulty is the felony. Some say a Class A Misdemeanor for neglect isn't strong enough. But if you are able to give a multiple charge on a singular incident, you could go to five years and \$10,000. If you are talking about neglect getting to the death of an animal, you are probably into abuse rather than neglect. Neglect that leads to starving goes to abuse. Then you are into a felony.

**Representative M. Nelson:** Moved to strike lines 12 & 13 on page 2 and add the period on line 11. On page 7, remove lines 7 & 8.

Representative Rust: Seconded the motion.

All three in favor.

Representative Belter: I hope all parties are supportive of this measure.

Representative Rust: Moved the .07012 version as amended to full committee

Representative M. Nelson: Seconded it.

All three in favor.

Adjourned at 9:45 a.m.

## 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee Peace Garden Room, State Capitol

> SB 2211--Committee Work March 29, 2013 Job # 20698

> Conference Committee



Explanation or reason for introduction of bill/resolution:

(Committee work)

Relating to the duties of the state board of animal health and the treatment of animals; and to provide a penalty

Minutes:

Attachments #1 & 2 and amendment #.07014 Marked up version 13.0380.07014



## Report of the subcommittee (seven meetings)

Representative Belter: Explained the amendment #13.0380.07014

Page 1, we have the provisions for assistance for the Animal Board of Health for Law Enforcement.

**Page 2**, Section 3, reporting violations to Legislative Management. Section 4, neglect provisions. The committee removed the felony charge and left it as a Class A Misdemeanor. The Class A Misdemeanor is one year in jail, up to a fine of \$2,000 or both. The Class C Felony is a maximum of five years, a fine of \$5,000 or both.

In Section 4, subsection 2, line 14, we divided out dogs, cats and other domestic pets. Then we have the definition of neglect.

**Page 3**, line 12, we set out provisions under neglect for animals other than those in subsection 2. We are dealing with production agriculture. You have the definitions of neglect. Line 20 has lists of what do not constitute violations of the law.

Animal abuse is defined in Section 2. Animal abuse is a Class A for the first two offenses and then a Class C.

Page 4, Line 30 has the start of the list of violations that do not constitute a violation. That goes to page 5.

Page 5, line 6 the animal welfare act. That provision of federal law is to protect exhibitions such as circuses, etc. That goes throughout the entire bill. Line 17, has the cruelty, on

line 18 we went from "willfully" to "intentionally engages." There again we have the felony charge.

Page 6, line 12, are the new definitions of cruelty that were spelled out. On Line 17 are the exemptions.

Page 7, line 12 is about abandonment. We deleted the felony charge. Subsection 2 is the definition of abandonment.

Page 8, lists what does not constitute abandonment.

Page 8, line 20, no changes on the seizure of animals.

Page 9, line 26, we changed "If convicted of violating this chapter" for the costs of seizure and care.

Page 10, law enforcement duties with abandoned animals.

Page 11, title of animal sales and adoption and regulations by the veterinarian and the caged animal display exemption.

Page 12, line 7, this section does not apply to a list of exemptions. On Line 27 is the list of what does not constitute violations.

**Page 13**, lines 15 and 17, unattended animal in motor vehicle. We changed from a person to an individual. Line 20 gives veterinarians immunity.

Page 13, line 15, estrays and outlines the procedures that deal with estray animals.

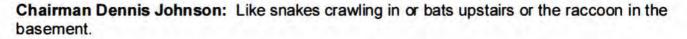
**Page 14**, by July 1 the representative from the agriculture groups should report how this bill is working along with the information that has been compiled.

**Representative M. Nelson**: What we were trying to do with the penalties, was to get into the thought process of the violators. Abandoning is not intending to hurt the animal. A felony doesn't fit. Some may say neglect with the food causes them to starve. Abuse talks about the death of an animal. If people are starving animals to the point of dying, it is not a neglect case anymore. For cruelty we are speaking of someone who is a depraved individual and intentionally hurting these animals. That is where we go to an immediate felony.

**Representative Rust:** There were two major considerations. One dealt with animal welfare and appropriate penalties to deter individuals from behavior that was detrimental to animals. The other is the prevention of unintended consequences on North Dakota's number one industry which is agriculture. There needs to be a balance so one of them is not compromised in the protection of the other.

## (12:15)

Representative Larson: On page 13, line 9, what is an unwelcome animal?



(Recess for floor session)

### (15:54)

Chairman Dennis Johnson: I have one amendment (see attached #1) on page 2, line 14 to remove other domestic pets. The reason is they wanted to leave the classification dogs and cats. There would be a hard time determining what a domestic pet is. Moved the amendment.

Representative Rust: Seconded the motion.

Representative Boschee: As I read it, neglect is only related to dogs and cats?

**Representative Belter:** No. Neglect is covered under all animals. This section is just dealing with dogs and cats. The next page you have the section dealing with all other animals.

**Representative Rust:** We separated those out. In particular we are worried about the puppy mills, etc. that are separate from other domesticated animals. With the dogs and cats we have a section that deals with environment about being ventilated properly, cleaned properly, and free of conditions that might cause injury.

Representative Belter: moved .07014 amendment

Vice Chair John Wall: Seconded the motion

**Representative Fehr:** On page 3, line 31, wildlife as an exclusion can only be claimed by a government agency?

**Representative M. Nelson:** That is what we were thinking about because we have the fishing, hunting, and trapping. There could be a private case.

**Representative Fehr:** Is there a definition of wildlife management? Can some say, "I was just doing wildlife management"? Can it be used as a loophole?

**Representative M. Nelson:** There are a lot of potential loopholes like unwelcomed animals. Animal cruelty would be a more difficult legal case.

**Representative Boschee:** Each time neglect is charged, it is a Class A Misdemeanor. The shelters in my community are concerned. Some bad actors are repeat people especially around domestic animals. They are concerned we are taking out that third offense in ten years to be a felony.

**Representative Belter:** It was the subcommittee's thoughts that if a report is put in and litigated that neglect and abandonment are in a different category. Abuse and cruelty are a more severe activity. That is why we removed the felony charge on those two areas.





House Agriculture Committee SB 2211–Committee Work March 29, 2013 Page 4

**Representative Rust:** If there are multiple animals, you can have multiple charges under one offense.

**Representative Boschee:** It is not more than one animal. It is repeat offenders. It is the judiciary system that is failing us. At the request of our shelters, we should put back that graduated penalty to provide more movement in the judiciary system.

Moved an amendment that would put neglect back to the original standing in the .07000 version of the bill. (See attached #2)

Representative Haak: Seconded the motion.

Representative M. Nelson: Speaks against Representative Boschee amendment.

In addition with the definition on neglect you need to look at the definition on abuse where there are multiple counts. If neglect gets to the point that it is causing physical harm or death of the animal, that is not neglect. That is abuse. It is still there. With the neglect the animal is not dying. They are not suffering physical harm. The law still works. Many cases of egregious nature were spoken about. Often these are not being forwarded or nothing happens. The felony is still on the table if the person is neglecting their animals to the point that they are dying or physically harmed. The law flows better without adding that under neglect. If we are forcing the hand of the District Attorney to charge the abuse, the person has the two counts and then they are into a felony. If we leave it with the multiple counts, they could have a couple counts of neglect, a couple counts of abuse, a couple counts of abandonment before they even get into a felony. This would be cleaner to leave it with the felony with the multiple counts in the abuse.

**Representative Rust:** I agree with Representative M. Nelson. I also oppose the amendment. The subcommittee tried to differentiate about the mindset of the person. Most of the time neglect and abandonment are not the same mindset as a person who abuses or someone who is very cruel to an animal. Some people have difficulty with the felony. We think the felony should be reserved for those individuals who willfully want to inflict pain on some animal or who are doing heinous acts to animals.

Representative Fehr: What is the maximum penalty for a Class A Misdemeanor?

Representative Belter: One year, \$2,000 fine or both.

Chairman Dennis Johnson: We'll vote on Representative Boschee's amendment.

A Roll Call vote was taken: Yes 2, No 11, Absent 0.

Amendment failed.

Chairman Dennis Johnson: Go to the amendment that puts a period after "cats" and removes and "other domestic pets" on lines 14 and 15.

**Representative Fehr:** What was the thinking to keep it only to cats and dogs as opposed to pets?

**Chairman Dennis Johnson:** The thoughts were from the commissioner to determine what a pet is. Is it a cow, a goat, etc.? This would go back to just dogs or cats.

**Representative M. Nelson:** I will resist this motion to amend. Pets have a different place in our life than other animals. You could have a pot-bellied pig as a pet vs. someone raising hogs. I would encourage leaving it as it is.

A Roll Call vote was taken: Yes <u>8</u>, No <u>5</u>, Absent <u>0</u>. Amendment passed.

**Representative Headland:** Move to further amend on page 4, lines 8 & 9. Overstrike offense occurring within ten years. Insert new language "an offense being subject to our statute of limitations which is seven years."

Representative Trottier: Seconded the motion.

**Representative Fehr:** The statute of limitations has to do with time afterwards that you can be charged with a crime--from when it is committed to when it is charged. This is an unusual way of thinking about the statute of limitations. We are talking about multiple offenses not the time from when committing to when you are charged.

**Representative Headland:** We are talking about the same offense occurring within a period of time. The first offense of a misdemeanor would be removed from your record after a period of seven years even if you are charged with the second offense of it.

**Representative Belter:** I oppose that amendment. Whether it is abuse or cruelty, the person could be a perpetual committer of abuse. Having a longer period of time under which they have to abide by the law is better.

**Representative Headland:** I will resubmit an amendment that would be for a period of seven years.

A Roll Call vote was taken: Yes <u>3</u>, No <u>10</u>, Absent <u>0</u>. Amendment failed.

**Representative Rust:** We have a bill that will be a balance to protect animals and protect agriculture.

**Representative Belter:** I also think we have a bill that will help law enforcement and the animal sectors protect against brutality to animals.

Voice Vote taken on amendment .07014 as further amended Amendment passed

Representative Belter: Moved Do Pass as amended.

Representative Rust: Seconded the motion

Representative Headland: I will support the recommendation with reservations.

A Roll Call vote was taken: Yes <u>13</u>, No <u>0</u>, Absent <u>0</u>.

SB 2211 Do Pass as amended carries.

Representative Rust will carry the bill.





Adopted by the House Agriculture Committee

13.0380.07015 Title.08000

March 27, 2013

### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, replace "a" with "three"

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after the second "and" insert "a new section to"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to the legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

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

#### Reporting of violations - Biennial reports to legislative management.

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

Page 1, remove line 20

Page 1, line 21, remove "occurring within ten years"

Page 1, line 22, after ""neglect"" insert "with respect to dogs and cats."

Page 2, replace lines 11 through 24 with:

- "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. <u>Minimal protection from adverse weather conditions</u>, 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.
- 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;
    - (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, unwelcome animal, and animal damage control;
  - <u>b.</u> The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"

Page 2, line 30, remove "or omission"

Page 3, replace lines 1 through 16 with:

- "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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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;

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- (9) Lawful research and educational activities; and
- (10) Pest, vermin, predator, unwelcome animal, and animal damage control;
- 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."
- Page 3, line 18, replace "willfully" with "intentionally"
- Page 3, remove lines 20 through 31

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- Page 4, replace lines 1 through 10 with:
  - "a. Breaking an animal's bones;
  - b. Causing an animal extreme pain;
  - c. Causing the prolonged impairment of an animal's health;
  - d. Mutilating an animal; or
  - e. 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;
      - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
      - (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, unwelcome animal, and animal damage control;
    - 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."

Page 4, line 13, remove "for a first or a second offense and a class C felony for a third or"

Page 4, line 14, remove "subsequent offense occurring within ten years"

Page 4, remove lines 24 through 31

Page 5, replace lines 1 through 6 with:

- "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;
    - (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, unwelcome animal, and animal damage <u>control;</u>
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

Page 8, remove lines 29 through 31

Page 9, replace lines 1 through 12 with:

- "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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;</u>

Page No. 4

13.0380.07015

- (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, unwelcome animal, and animal damage control;
- 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."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person that" with "An individual who"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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 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."

Renumber accordingly





			Date:3/2	29/13	
			Roll Call Vote #	ŧ1	_
	ROLL C	CALL	NG COMMITTEE VOTES NO. 2211		
House Agriculture	_			Comr	nittee
egislative Council Amendment N	Number	13.038	80.07014		
<u> </u>	Appropria	tions	Reconsider	onsent Ca	alend
Representatives	Yes	No	Representatives	Yes	No
Representatives Chairman Dennis Johnson	Yes	No	Representatives Rep. Joshua Boschee	Yes	No
Chairman Dennis Johnson	Yes	No	Representatives Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall	Yes	No	Rep. Joshua Boschee	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr	Yes	No	Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland	Yes	No	Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman	Yes	No	Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert	Yes		Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	Yes	No	Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes		Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	Yes	e	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	e	Rep. Joshua Boschee Rep. Jessica Haak	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	e	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	e	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	Yes	No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Doe Heilman Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	V0:0	e P N	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson		No
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	V0:0	e P N	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson		

# Amendments from seven subcommittee meetings--5 pages

			Roll Call Vote #		
			Ron Call Vole #		_
	ROLL	CALL	NG COMMITTEE VOTES NO. <u>2211</u>		
House Agriculture				Comr	nittee
egislative Council Amendment N	lumber	Att	achment #1		
Action Taken: Do Pass		ot Pas	s 🗌 Amended 🗌 Co	nsent Ca	alend
		orr us		noont ot	alenia
Rerefer to	Appropria	tions	Reconsider		
	ripproprie	laono			_
Representatives	Yes	No	Representatives	Yes	No
Representatives Chairman Dennis Johnson	Yes X	No	Representatives Rep. Joshua Boschee	Yes	No
Chairman Dennis Johnson		No	Representatives           Rep. Joshua Boschee           Rep. Jessica Haak		No X
Chairman Dennis Johnson Vice Chairman John Wall	X	No X	Rep. Joshua Boschee		
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr	X		Rep. Joshua Boschee Rep. Jessica Haak		X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland	X X	x	Rep. Joshua Boschee Rep. Jessica Haak	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman	X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert	X X X	x	Rep. Joshua Boschee Rep. Jessica Haak	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X
Chairman Dennis Johnson         Vice Chairman John Wall         Rep. Wesley Belter         Rep. Alan Fehr         Rep. Craig Headland         Rep. Joe Heilman         Rep. Dwight Kiefert         Rep. Diane Larson         Rep. Wayne Trottier	X X X X X X X	x	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	_	X

# Remove "and other domestic pets"



			Date:3/	29/13	-
			Roll Call Vote	#:3	-
	ROLL C	CALL	ING COMMITTEE VOTES NO. <u>2211</u>		
Agriculture				Com	nittee
egislative Council Amendment	Number	Att	achment #2		
	o Appropria	tions	Reconsider	onsent Ca	alenda
Representatives	Vee	No	Representatives	Ves	No
Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	Yes	X	Rep. Joshua Boschee	X	No
Chairman Dennis Johnson Vice Chairman John Wall	Yes	1	Rep. Joshua Boschee Rep. Jessica Haak		No X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter	Yes	X X	Rep. Joshua Boschee	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr	Yes	X X X	Rep. Joshua Boschee Rep. Jessica Haak	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland	Yes	X X X X	Rep. Joshua Boschee Rep. Jessica Haak	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman	Yes	X X X X X	Rep. Joshua Boschee Rep. Jessica Haak	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	Yes	X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	X X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
RepresentativesChairman Dennis JohnsonVice Chairman John WallRep. Wesley BelterRep. Alan FehrRep. Craig HeadlandRep. Joe HeilmanRep. Dwight KiefertRep. Diane LarsonRep. David RustRep. Wayne Trottier	Yes	X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	X X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	X X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	X X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	Yes	X X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier		X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier		X X X X X X X X X X	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X	

Put neglect back to original standing.



			Date:3/2	9/13	
			Roll Call Vote #	4	-
	ROLL C	CALL	NG COMMITTEE VOTES NO. <u>2211</u>		
House Agriculture				Com	nittee
egislative Council Amendment N	umber _				
Rerefer to	Appropria	tions	s Amended Co	insent Ca	alend
Notion Made By <u>Rep. Headlar</u> Representatives	Yes	No	Representatives	Yes	No
	103	X	Rep. Joshua Boschee	Tes	
Chairman Dennis Johnson					
	-			-	X
Vice Chairman John Wall	-	X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter		X			X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr	x	X X	Rep. Jessica Haak		X
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman	x	X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert	x	X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson		X X X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X	X X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson		X X X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X	X X X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X	X X X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X	X X X X X	Rep. Jessica Haak		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X	X X X X X	Rep. Jessica Haak Rep. Marvin Nelson		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	X	X X X X X	Rep. Jessica Haak Rep. Marvin Nelson		X
Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	X	X X X X X	Rep. Jessica Haak Rep. Marvin Nelson		X

# Page 4, line 9 change to seven years

			Date: 3/2		
			Roll Call Vote #	:5	-
	ROLL	CALL	ING COMMITTEE VOTES NO. 2211		
House Agriculture				Comr	nittee
egislative Council Amendment Nu	mber	13.	0380.07015		
Action Taken: 🛛 Do Pass		ot Pas	s 🛛 Amended 🗌 Co	nsent Ca	alend
		otras		insent of	aiciru
Rerefer to A	ppropria	tions	Reconsider		
Representatives	Yes	No	Representatives	Yes	No
Representatives	103		Representatives	163	
Chairman Dennis Johnson	X	NO	Rep. Joshua Boschee	X	NO
		NO			NO
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter	X X X		Rep. Joshua Boschee	X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr	X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland	X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman	X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert	X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson	X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust	X X X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Doight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	X X X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Dwight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	X X X X X X X X X X X X	N	Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X X	
Chairman Dennis Johnson Vice Chairman John Wall Rep. Wesley Belter Rep. Alan Fehr Rep. Craig Headland Rep. Joe Heilman Rep. Doight Kiefert Rep. Diane Larson Rep. David Rust Rep. Wayne Trottier	X X X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X X	
Chairman Dennis Johnson         Vice Chairman John Wall         Rep. Wesley Belter         Rep. Alan Fehr         Rep. Craig Headland         Rep. Joe Heilman         Rep. Dwight Kiefert         Rep. David Rust         Rep. Wayne Trottier	X X X X X X X X X X		Rep. Joshua Boschee Rep. Jessica Haak Rep. Marvin Nelson	X X	

#### REPORT OF STANDING COMMITTEE

SB 2211, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2211 was placed on the Sixth order on the calendar.

- Page 1, line 1, replace "a" with "three"
- Page 1, line 1, replace "section" with "sections"
- Page 1, line 1, after the second "and" insert "a new section to"
- Page 1, line 5, remove "and"
- Page 1, line 5, after "penalty" insert "; and to provide for reports to the legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

- Page 1, line 15, after "purposes" insert ", or temporary exhibitions"
- Page 1, after line 15, insert:

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

#### Reporting of violations - Biennial reports to legislative management.

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

Page 1, remove line 20

Page 1, line 21, remove "occurring within ten years"

Page 1, line 22, after ""neglect"" insert "with respect to dogs and cats."

Page 2, replace lines 11 through 24 with:

- "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:
    - Appropriate for the species and the breed; and
    - (2) Sufficient to sustain the animal's health;
  - <u>Minimal protection from adverse weather conditions, as appropriate</u> for the species and the breed; and



- Medical attention in the event of an injury or illness, as appropriate for the species and the breed.
- The following do not constitute violations of this section:
  - Any usual and customary practice in:
    - (1) The production of food, feed, fiber, or ornament;
    - (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, unwelcome animal, and animal damage control;
  - b. The humane or swift destruction of an animal for cause; and
  - <u>Services provided by or under the direction of a licensed</u> veterinarian."
- Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"

Page 2, line 30, remove "or omission"

Page 3, replace lines 1 through 16 with:

- "3. The following do not constitute violations of this section:
  - a. Any usual and customary practice in:
    - The production of food, feed, fiber, or ornament;
    - (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, unwelcome animal, and animal damage control;
- 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."

Page 3, line 18, replace "willfully" with "intentionally"

Page 3, remove lines 20 through 31

Page 4, replace lines 1 through 10 with:

- "a. Breaking an animal's bones;
- <u>b.</u> Causing an animal extreme pain;
- <u>c.</u> Causing the prolonged impairment of an animal's health;
- d. Mutilating an animal; or
- e. Physically torturing an animal.
- The following do not constitute violations of this section:
  - Any usual and customary practice in:
    - The production of food, feed, fiber, or ornament;
    - (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, unwelcome animal, and animal damage control;
  - <u>Any action taken by an individual against an animal that is attacking</u> 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."

Page 4, line 13, remove "for a first or a second offense and a class C felony for a third or"

Page 4, line 14, remove "subsequent offense occurring within ten years"

Page 4, remove lines 24 through 31

- Page 5, replace lines 1 through 6 with:
  - "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;
      - (2) <u>The boarding, breeding, competition, exhibition, feeding,</u> 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, unwelcome animal, and animal damage control;
    - <u>The humane or swift destruction of an animal for cause; and</u>
    - c. Services provided by or under the direction of a licensed veterinarian."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

Page 8, remove lines 29 through 31

Page 9, replace lines 1 through 12 with:

- "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;
    - (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;
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    - (10) Pest, vermin, predator, unwelcome animal, and animal damage control;
  - <u>Any action taken by an individual against an animal that is attacking</u> 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."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person that" with "An individual who"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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 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."

Renumber accordingly



#### 2013 CONFERENCE COMMITTEE

SB 2211

# 2013 SENATE STANDING COMMITTEE MINUTES

#### **Senate Agriculture Committee**

Roosevelt Park Room, State Capitol

SB 2211 April 16, 2013 21158 Conference Committee

Relating to the treatment of animals; and to provide a penalty

Minutes:

**Chairman Miller** opened the conference committee on SB 2211. All committee members were present: Senators Miller, Klien, Heckaman; Representatives Johnson, Rust, Nelson.

Representative Rust explained the House amendments.

Section 1, we added temporary exhibitions.

Section 2, added the entire section. The board of animal health shall maintain and make available to any law enforcement agency a list of veterinarians (see version .07015).

Senator Heckaman: What kind of training do veterinarians need in order to do this?

**Rep. Rust**: They are trained to be veterinarians and there is no other specific additional training.

Section 3: Is a new section and it deals with reporting of violations - biennial reports to legislative management.

Senator Miller: What was the purpose for this?

Rep. Rust: In every bill it is good to see if it is working.

Senator Miller: Did this originate from the committee or somewhere else?

Rep. Rust: Legislative council brought it to us.

Senator Miller: Did law enforcement weigh in on this?

**Rep. Rust**: We did have law enforcement in the committee meetings periodically but I don't remember if they weighed in on section 3.

Section 4: We remove the felony on neglect. In part 2, we sub-divided 2 & 3. Two was to deal with cats and dogs and eliminated some the exclusions and put them in with the other animals in part 3. He explained (7:20). He explained what they did in Animal abuse, where they changed the definition and restated the exclusions.

Senate Agriculture Committee SB 2211 April 16, 2013 Page 2

In 36-21.2-03, Animal Cruelty, they changed the word "willfully" to "intentionally". Intentionally is a stronger word than willfully. We redefined cruelty and inserted the exclusions.

Senator Klein asked him to explain number (10), on pests, vermin etc.?

**Rep. Rust**: He explained why they felt this was necessary and added that there is not a nice way of killing pests.

Discussion followed on unwelcomed animals on different scenarios and how these circumstances could be handled.

36-21.2-04 Animal abandonment: We eliminated the felony and redefined the exclusions. 36-21.2-07 Costs of seizure and care. We added "if convicted of violating this chapter". 36-21.2-11 Caged animals. We redefined the exclusions.

36-21.2-12 Unattended animals in motor vehicle. We change language from "a person" to "an individual".

36-21.2-15 We changed wording from "collective" to multiple animals" and "status" to "Enhancement". We stated that if a violation on this chapter involves multiple animals, whether of the same species or not, the violation is deemed to be a singular offense for the purpose of enhancement.

Section 5: We added this section. We are asking representatives of agricultural production groups, including representative of this state's livestock industry, shall compile information regarding the effects of this Act on the various sectors of the agricultural industry and present to legislative management for review etc.

**Senator Klein**: Went over the penalties again and questioned the word change from willful to intentional.

**Rep. Nelson** explained that there are levels of burden of proof and further explained. (24:35)

**Rep. Rust**: You have to remember that on cruelty, the first offense is a felony. That is a heavy hit and seems logical that we have the burden of proof be that of intentionally.

There was further explanation on abandonment and neglect and extreme cruelty.

Senator Miller: What seemed to be the attitude of the House?

**Rep. Johnson**: It passed with one dissenting vote.

**Rep. Rust**: We wanted the bill to pass the House and the feeling we got was that if felonies remained in from the beginning, that bill was probably going to be in trouble. There were individuals who were concerned that we may have raised the penalties of animals above that of human beings.

Senator Miller: Our time is up so we will adjourn the conference committee.

## 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee Roosevelt Park Room, State Capitol

> SB 2211 April 18, 2013 21243 Conference Committee

Relating to the treatment of animals; and to provide a penalty.

Minutes:

Chairman Miller opened the conference committee on SB 2211. All committee members were present: Senators Miller, Klein, Heckaman; Representatives D Johnson, Rust, M. Nelson.

**Chairman Miller** explained amendment 13.0380.07018. The first major change would be the omission of the reporting requirement to the legislative assembly. Next major change is on page 3, line 15 adding the language, "including all aspects of the livestock industry. Line 27 unwelcomed animals is replaced with "including the disposition of wild animals that have entered structures or personal property". This is repeated in other sections. On top of page 4 in the Animal Abuse section, this amendment goes back to the original language in the bill "class A misdemeanor for a first offense and a class C felony for a second or subsequent offense occurring within five years". He explained (3:21). On page 6, line 10, removed reference to extreme pain.

**Rep. Rust**: Do you see any problems that if we remove the reporting mechanism, we will probably end up not comparing apples to apples?

Senator Miller: It is the Board of Animal Health purgative to compile the information and report it. The legislative assembly can ask for whatever information they want at any time.

Senator Klein: I would agree with the Chairman that it may not be necessary to give that information at that biennium meeting because it can always be requested.

**Rep. Rust**: In 36-21.2-02 in the Animal Abuse section, going from a class A misdemeanor to a class C felony for a second offense within five years is really tightening it up.

Discussion followed on the length of time, the reasons for the felony, the concern that we are raising the level for animals higher than humans. Many examples were given on both sides. (9:00).

**Rep. Nelson** presented some information on his own research of simple assault penalties for humans.

Senate Agriculture Committee SB 2211 April 18, 2013 Page 2

**Chairman Miller** presented and explained amendment 13.0380.07019. In chapter 36-21.2-07.5 on seizure for cause, adds "The hearing must be held no later than fifteen days after the seizure." I am not sure we need to adopt these but there are concerns.

**Rep. Rust**: I am trying to figure out how this correlates to this bill or if it goes back to current law.

Anita Thomas, Legislative Council: This would be a new section to the bill.

**Rep. Rust**: To take that property without a court order leaves the person whose property is being seized with no regress. We pass laws to limit government not to give government more things. We believe in our individual rights. I would have to do some thinking on this.

Chairman Miller adjourned and will reschedule another conference committee.

### 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee Roosevelt Park Room, State Capitol

> SB 2211 April 18, 2013 21286 Conference Committee

Relating to the treatment of animals; and to provide a penalty

Minutes:

Chairman Miller opened the Conference committee on SB 2211. All committee members were present: Senators Miller, Klein, Heckaman; Representatives D. Johnson, Rust, M. Nelson.

**Representative D. Johnson** moved amendment 13.0380.07018 after taking out the amendment that takes the language "class A misdemeanor for a first offense and a class C felony for a second or subsequent offense occurring within five years and change it back to a class A misdemeanor for a first and second offense and class C felony for the third offense occurring within ten years resulting in Amendment 13.0380.07020.

Senator Klein seconded.

Senator Klein: The amendments presented this morning addressed many of the issues and I did like the amendments the Chairman had drafted as it related to that abuse section. I didn't think we were adding that much of an issue but I sense there is an issue. In order to keep this moving and alive, I will support it.

Chairman Miller asked Rep. Johnson if he felt any major changes in these penalty provisions would seriously jeopardize the bill.

**Rep. Johnson**: I would rather not address the felony penalties on the House floor. If we bring it back to the floor and talk about changing the penalties, I would rather not go down that road at this time.

Senator M. Nelson: I had a few people contact me because they were concerned about the changes made in the unwelcomed animal language. They were concerned we were going to open up a statewide deer season. I just wanted to get it into the records that these exemptions, no way exempt people from other sections of the century code or regulations.

**Senator Heckaman**: I agree with Rep. Johnson and Senator Klein on taking that penalty from 2 and 5 back to 3 and 10. There is still a penalty and there are still options for the judicial system. Overall, we have a product that addresses the problem; we aren't always

Senate Agriculture Committee SB 2295 February 7, 2013 Page 2

going to get the perfect one. I think we have a product that almost all of the stakeholders approve of.

**Senator Miller**: Certainly, the bill represents a much stronger piece of legislation then what we currently have.

**Chairman Miller** called for the vote to let the House recede from the amendments and committee further amends.

Roll call vote: 5-0-0

13.0380.07020 Title. Adopted by the Conference Committee

4/20/13

April 18, 2013

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

That the House recede from its amendments as printed on pages 1088-1093 of the Senate Journal and pages 1176-1181 of the House Journal and that Engrossed Senate Bill No. 2211 b e amended as follows:

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 1 remove "a new section to"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to the legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

"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."

Page 1, remove line 20

Page 1, line 21, remove "occurring within ten years"

Page 1, line 22, after ""neglect"" insert "with respect to dogs and cats,"

Page 2, replace lines 11 through 24 with:

- "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.
- 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."
- Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"

Page 2, line 30, remove "or omission"

Page 3, replace lines 1 through 16 with:

- "3. The following do not constitute violations of this section:
  - a. Any usual and customary practice in:
    - The production of food, feed, fiber, or ornament, including all aspects of the livestock industry;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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

13.0380.07020

- (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."
- Page 3, line 18, replace "willfully" with "intentionally"
- Page 3, remove lines 20 through 31
- Page 4, replace lines 1 through 10 with:
  - "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) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> showing, and training of animals;
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      - (7) Wildlife management;
      - (8) The culinary arts:
      - (9) Lawful research and educational activities; and
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    - c. The humane or swift destruction of an animal for cause; and
    - d. Services provided by or under the direction of a licensed veterinarian."

Page 4, line 13, remove "for a first or a second offense and a class C felony for a third or"

Page 4, line 14, remove "subsequent offense occurring within ten years"

#### Page 4, remove lines 24 through 31

Page 5, replace lines 1 through 6 with:

- "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;
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    - (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."
- Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

- Page 8, line 28, replace "d." with "c."
- Page 8, line 28, replace the underscored semicolon with an underscored period
- Page 8, remove lines 29 through 31
- Page 9, replace lines 1 through 12 with:
  - "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;
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- (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;
- <u>b.</u> Any action taken by an individual against an animal that is attacking or is about to attack a human, a companion animal, or livestock;
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- d. Services provided by or under the direction of a licensed veterinarian."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person that" with "An individual who"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with "<u>If a violation of this chapter involves multiple animals</u>, whether of the same species or not, the violation is deemed to be a singular offense for purposes of enhancement."

Page 10, after line 3, insert:

"SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS - REPORT TO THE 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."

Renumber accordingly

Date <u>4-18-13</u> Roll Call Vote #\_\_\_\_

#### 2013 SENATE CONFERENCE COMMITTEE **ROLL CALL VOTES**

BILL/RESOLUTION NO. 2211 as (re) engrossed

## Senate Agricutural Committee

Action Taken SENATE accede to House Amendments

SENATE accede to House Amendments and further amend

HOUSE recede from House amendments

HOUSE recede from House amendments and amend as follows

Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by:			Seconded by:			
Senators	Yes	No	Representatives		Yes	No
Senator Miller	V		Rep. Johnson		-	
Senator Klein	V		Rep. Rust		-	
Senator Heckaman	v		Rep. Nelson		V	-
Total Senate Vote	3		Total Rep. Vote		3	
Vote Count Yes:	6		No:	Absent:	0	
Senate Carrier	ler		House Carrier <u>A</u> Ja	nusan	>	
LC Number			• <u>87620</u> of amendment			
LC Number			. of engrossment			

#### REPORT OF CONFERENCE COMMITTEE

SB 2211, as engrossed: Your conference committee (Sens. Miller, Klein, Heckaman and Reps. D. Johnson, Rust, M. Nelson) recommends that the HOUSE RECEDE from the House amendments as printed on SJ pages 1088-1093, adopt amendments as follows, and place SB 2211 on the Seventh order:

That the House recede from its amendments as printed on pages 1088-1093 of the Senate Journal and pages 1176-1181 of the House Journal and that Engrossed Senate Bill No. 2211 be amended as follows:

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 1 remove "a new section to"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to the legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

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

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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."

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Page 1, line 21, remove "occurring within ten years"

Page 1, line 22, after ""neglect"" insert "with respect to dogs and cats,"

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- "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;
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  - 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) <u>The boarding, breeding, competition, exhibition, feeding,</u> 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."
- Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"
- Page 2, line 30, remove "or omission"
- Page 3, replace lines 1 through 16 with:
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      - (6) Fishing, hunting, and trapping;
      - (7) Wildlife management;
      - (8) The culinary arts:

(1) DESK (2) COMMITTEE

- (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;
- Any action taken by an individual against an animal that is attacking or is about to attack a human, a companion animal, or livestock;
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  - c. Mutilating an animal; or
  - <u>d.</u> Physically torturing an animal.
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    - a. Any usual and customary practice in:
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      - (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;
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    - 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

<u>d.</u> <u>Services provided by or under the direction of a licensed</u> <u>veterinarian.</u>"

Page 4, line 13, remove "for a first or a second offense and a class C felony for a third or"

- Page 4, line 14, remove "subsequent offense occurring within ten years"
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      - The production of food, feed, fiber, or ornament, including all aspects of the livestock industry;
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      - (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.;
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      - (7) Wildlife management;
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      - (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;
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Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

Page 8, remove lines 29 through 31

Page 9, replace lines 1 through 12 with:

- "4. The following do not constitute violations of this section:
  - a. Any usual and customary practice in:
    - 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;
  - <u>b.</u> 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."
- Page 9, line 14, replace "Aperson" with "An individual"

Page 9, line 16, replace "Any person that" with "An individual who"

Page 9, line 26, replace "Collectives" with "Multiple animals"

- Page 9, line 26, replace "Status" with "Enhancement"
- Page 9, replace lines 27 through 29 with "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."

Page 10, after line 3, insert:

"SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS - REPORT TO THE 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."

Renumber accordingly

Insert LC: 13.0380.07020

Engrossed SB 2211 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2211





# SB 2211

#### Senator Tim Flakoll - January 22, 2013

Chairman Miller and members of the Senate Agriculture committee. For the record I am Senator Tim Flakoll of District 44 of Fargo. I am pleased to sponsor this humane treatment of animals' bill. It represents countless hours of dialog and decision making from a diverse group who were driven by a sense of unified purpose.

My support comes from a broad spectrum of experiences and interests. I grew up on a farm, taught Animal Science classes and conducted research at NDSU and served as Chair of the Senate Agriculture Committee for 10 years. I have owed horses, cattle, swine, sheep, dogs and cats.....although one can argue that you never really "own" a cat. Like many of you here today animals have been an important part of my life.

They are even central to arguments at times. My Mother and I disagree about heaven. She says there are no dogs in heaven.... and I tell her "there is in <u>my</u> heaven because how can it be heaven if it is not filled with man's best friend?"

Unfortunately we know that many people do bad things to animals for a variety of reasons, even though these are rare occurrences.

The bill you have before you is an exceptionally wonderful bill. SB2211 provides protection for animals <u>and</u> their owners. It provides a comprehensive and lasting resolution to the issue of the humane treatment of animals. The language of the bill is largely the result of the North Dakotans for Responsible Animal Care group. This group is comprised of representatives from the ND Veterinary Medical Association, ND Stockman's, ND Farm Bureau, ND Farmer's Union, the Dakota Zoo, ND Department of Agriculture, Central Dakota Humane Society, Fargo-Moorhead Humane Society, State Board of Animal Health and with the able assistance of law enforcement, the North Dakota Attorney General's Office, bill sponsors and Legislative Council.

The group's dogged determination and desire to protect animals and their owners is commendable and I hope their efforts are rightly rewarded with the passage of this bill.

SB 2211 provides graduated levels of sanctions against "bad actors" who improperly treat animals. While we know that there is nothing that will fully prevent improper actions by individuals, SB 2211 provides the proper law enforcement and legal remedies. At its highest level, a person can receive a felony conviction in those most egregious cases.

I have supplemental sheets which provide a quick reference for the type of violation and the penalty associate with it.

For some, the bill might not be perfect, but it is important that we not push aside a wonderful bill in search of perfect. Because perfect can be migratory and elusive and we know that what was perfect 100 years ago very well might not be perfect today.



Mr. Chairman, I served on the Faculty of the Animal Science Department at NDSU for 11 years and yet I have little knowledge as to how well an animal can reason or how they communicate, but I do know that they can suffer, be it physical pain or the pain of loss that a momma cow has when their calf dies or the depression a dog feels when their owner dies.

While civilized society cannot prevent all of life's pains for humans or their animals there is certainly an expectation of a standard of quality of life that we can support.

SB 2211 deals with those individuals who intentionally inflict cruelties on defenseless creatures or are a party to such acts of abuse or neglect. Some would say that if we do not bring sanctions against the offenders, we share in their guilt.

While North Dakota is not fraught with violations, I feel the need to provide the proper framework to address those who violate the natural laws of goodness and we need to provide sanctions against the violators. The bill also insures the proper care of, or if necessary, the dignified end to the animals God has given us.

I fully admit that I voted against Measure 5 and encouraged others to do the same. Not because I don't want animals protected, but rather I wanted to have legislation in place that would properly address a broad spectrum of issues. The type of issues, that even though rare, are more likely to occur in our state than some obscure occurrence. Additionally if Measure 5 would have passed, I would not have felt comfortable in offering legislation to improve it or make it more inclusive..... because "the people had spoken."

SB 2211 is a wonderfully crafted bill. If you pass this bill as presented to you, you can look yourself in the mirror at the end of the day and say "I have done something good today."

There are many animal industry stakeholders who are here to testify this morning – a testament to the broad-based support for this bill. Members of the working group have opted to speak to the bill in a section-by-section fashion to give you a clear understanding of the bill and what it means from their industry perspective.

Chairman Miller that completes my testimony and I would be happy to answer questions.

# ### End ###

Human Treatment of Animals' bill		
Offense	Initial offense	Second offense if within 5 years
Lack of adequate care	Class A misdemeanor	Class C felony
Animal Abuse	Class A misdemeanor	Class C felony
Animal Cruelty	Class C felony	
Animal Abandonment	Class A misdemeanor	Class C felony
Violation of Caged Animal Law	Class A misdemeanor	
Unattended animal in a motor vehicle	Infraction	

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## Penalties by Classification of Offense

**12.1-32-01.** Classification of offenses - Penalties. Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

- 1. **Class AA felony** maximum life imprisonment without parole The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole.
- 2. Class A felony maximum 20 years, a fine of \$10,000, or both.
- 3. Class B felony maximum 10 years, a fine of \$10,000, or both.
- 4. Class C felony maximum 5 years, a fine of \$5,000, or both.
- 5. Class A misdemeanor maximum 1 year, a fine of \$2,000, or both.
- 6. Class B misdemeanor maximum 30 days, a fine of \$1,000 or both.
- 7. Infraction maximum \$500 fine.





## **BURDENS OF PROOF**

Burden of Proof In a legal action, one party typically has the burden or duty to affirmatively prove a fact or facts in dispute. That is called the "burden of proof." To what degree the party has to establish a fact or facts varies depending on the type of action.

Preponderance of the evidence (civil actions) "Preponderance of the evidence" simply means the greater weight of the evidence indicates that the fact [sought to be proved] is more likely true than not true. A plaintiff in the typical civil action must meet this burden of proof.

Clear and convincing evidence (civil actions) In some types of actions, the burden of proof is "clear and convincing evidence." This means the jury or judge must have a firm belief or conviction that the allegations are true. "Clear and convincing evidence" is an intermediate standard of proof, requiring less certainty than "beyond a reasonable doubt," but more certainty than "a preponderance of the evidence."

Beyond a reasonable doubt (criminal actions) In criminal actions the government must establish each element of the offense "beyond a reasonable doubt." This means the jury or judge must be fully satisfied or entirely convinced the individual committed the alleged crime. The N.D. Supreme Court has said: "Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs."



Good morning, Chairman Miller and members of the Senate Agriculture Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

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The Stockmen's Association is a member of the North Dakotans for Responsible Animal Care coalition, which initiated the bill draft before you. As you remember, we appeared before you during the last legislative session to discuss our initial work and our intentions to study the state's animal treatment laws and bring forth recommendations to strengthen and clarify them – for the good of animals and animal people.

Our group continued the work we had started and, in our estimation, achieved a comprehensive bill that addresses all animals and provides clear-cut definitions, appropriate exemptions, an array of penalties and clarity for law enforcement officers, vets and others who must respond in mistreatment cases. This is a complex subject, and it was a mammoth task, but one that was accomplished by having a diverse group of North Dakota stakeholders who truly care about animals iron out the details and ensure that the priorities and concerns of their respective disciplines were reflected in the language.

Back in 2008, when the work on this particular bill first began, state's attorneys indicated that our current statute was antiquated and confusing, lumping "cruelty,"

"torture," and "neglect" all in one definition. Our group agreed that acts of mistreatment should be better defined, and we concentrated a considerable amount of time refining definitions for adequate care, abuse, cruelty and abandonment and enumerating the appropriate exemptions for each act.

I will walk you through Sections 36-21.2-01, 02, 03 and 04 to give you a better understanding. Simply put, there are four criminal acts in this bill: neglect, or failing to provide an animal with adequate care; abuse; cruelty; and abandonment.

Adequate care is defined in Section 36-21.2-01. While it uses our current statute as its basis, it improves upon that definition by providing a flexible standard on page 2, line 4, to recognize the differing needs of animals based on their species, breed, age and physical condition. For example, the appropriate shelter for a small kitten would be entirely different than that for an adult cow, and the language provides for an appropriate differentiation.

On page 2, line 11, you will notice a list of exemptions that accompany the definition. This list was critically important to Stockmen's members, as we want to ensure that usual and customary practices in production agriculture – like branding, castrating or dehorning, for instance – are not inadvertently or inappropriately construed as an act of mistreatment and put legitimate, appropriately behaving livestock producers at risk. The list of exemptions also includes things like usual and customary practices in rodeo, racing, livestock exhibitions and animal damage, pest, predator and rodent control; lawful fishing, hunting and trapping; services provided by or under the direction of a veterinarian; and other actions that are specifically identified to ensure that they are not confused with or regarded as ill action.

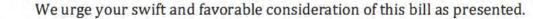
Abuse is defined in Section 36-21.2-2 and is different than the neglect, or lack of adequate care, piece in that it applies to affirmative actions against animals, as compared to omissive actions. This definition also includes an accompanying list of exemptions, comparable to those in the adequate care section, but also including the right of an individual to defend against an animal that is or is about to attack.

When a person fails to provide adequate care or abuses an animal, he or she is subject to a Class A misdemeanor for a first offense or a Class C felony for a second or subsequent offense within five years. The working group vetted the penalty structure at length, deciding that a tiered system would be the best way to match the punishment with the crime and to provide a deterrent for repeat offenses.

Cruelty is defined in Section 36-21.2-03. It applies to the most egregious acts against animals and is much more serious than abuse. Therefore, acts deemed as cruelty qualify for up to a Class C felony on the first offense. The cruelty definition, like the other acts of mistreatment, includes the full list of exemptions to protect and segregate appropriate, legitimate actions from acts of cruelty. Fourth is Section 36-21.2-04 and the definition of abandonment, which is relinquishing a person's custody or control with no intention of reclaiming it and without placing the animal in the custody and control of another to ensure that it is adequately cared for. As a livestock producer organization and administrator of the state's brand programs, it was important to us that the law continued to draw the distinction between abandoned animals and estrays, which are covered in another chapter.

The definition of abandonment, like the other actions, includes a list of exemptions to clarify intent and provides for a two-tiered penalty system, with the lower-level Class A misdemeanor on a first offense and a ramped-up Class C felony for repeat offenses occurring within five years.

The Stockmen's Association committed an inordinate amount of time to this bill and this issue because not only do we want to assure the proper care of animals, but we want to assure that any language adopted does not unintentionally harm those in agriculture who are everyday stewards of their livestock. We believe that that balance has been achieved in this bill and its passage will be a proactive step for our industry and our state, and one that assures that our animal treatment laws are shaped by North Dakota citizens who have the best interest of animals and the people who care for them in mind.



#2

COMMISSIONER DOUG GOEHRING



ndda@nd.gov www.nd.gov/ndda

NORTH DAKOTA DEPARTMENT OF AGRICULTURE STATE CAPITOL 600 E BOULEVARD AVE DEPT 602 BISMARCK ND 58505-0020

Testimony of Agriculture Commissioner Doug Goehring Senate Bill 2211 Senate Agriculture Committee Roosevelt Park Room 8:30am, January 24, 2013

Chairman Miller and members of the Senate Agriculture Committee, I am Doug Goehring, North Dakota Agriculture Commissioner. I am here in support of SB 2211, which will create North Dakota Century Code (NDCC) chapter 36-21.2 to amend North Dakota's animal treatment laws.



I witnessed first-hand the members of North Dakotans for Responsible Animal Care (NDRAC) work to find common ground on a very difficult subject. The diversity of the NDRAC members, local humane societies, agriculture organizations, veterinarians and a zoo, signify the importance of a comprehensive approach to amending North Dakota's humane treatment laws. Over the past two and half years, these organizations have devoted countless hours to this effort and I would be remiss not to thank all of the members at this time, so I sincerely thank you for your dedication.

The work of NDRAC is not finished until we pass Senate Bill 2211, a comprehensive approach to strengthen and clarify animal care laws in North Dakota. This legislation is well balanced, addressing the most common cases of inhumane treatment of animals to those willful actions that cause serious injury or illness or death to an animal. The bill includes an array of maximum penalties to fit the severity of the crime from an infraction to a Class C felony.

The bill clarifies and provides guidance to law enforcement officer when seizing an animal, which is in sections five through eight of the chapter. These sections also describe the notification to the animal owner, the costs of care for a seized animal, and the responsibilities of the court and veterinarians in determining the disposition of the seized animal.



Chairman Miller and committee members, I urge a "do pass" on SB 2211 because it is important that we strengthen and clarify our North Dakota humane treatment laws, and I would be happy to answer any questions you may have.

Thank you.

## SENATE BILL 2211 January 24, 2013 Senate Agricultural Committee - Senator Joe Miller, Chair

Chairman Miller and members of the Senate Agriculture Committee, my name is Dr. Del Rae Martin. I am a Past President of the North Dakota Veterinary Medical Association and have been their representative on humane treatment issues for several years.

I appear before you, in support of Senate Bill 2211. The North Dakota Veterinary Medical Association strongly supports the humane treatment of all animals. Our association and the American Veterinary Medical Association support the use of the legislative process, to establish policies whose end results benefit all animals, those in the animal use industries and meets public expectations. The NDVMA joined multiple North Dakota organizations to meet these goals, through the North Dakotans for Responsible Animal Care.

I would like to review with you the North Dakotans for Responsible Animal Care's rational starting on page 8, 36-21.2-10. Current statue states veterinarians may take custody of any animal unjustifiably exposed to cold or inclement weather or not properly fed and watered and for any animal found abandoned. Current statue does not allow veterinarians to intervene in cases where there is lack of adequate care, abuse or neglect. 36-21.2-10 allows veterinarians to retain custody in situations we are likely to encounter and directs veterinarians on how to proceed. For example, I examined a dog that had severe matting of the hair coat and overgrown nails, that resulted in a severe skin and nail bed infection. Even knowing I could not legally do so, I advised the client if they did not follow my medical treatment and bring the dog in for a weekly exam, I would keep the dog and contact appropriate authorities.

36-21.2-11. Caged animal-Public display. This section updates the language currently found in statute. An example of application of this statute would be an unlicensed petting zoo.

36-21.2-12. Unattended animal in motor vehicle. The language was changed to include all animals and consolidated wording from two different sections in current statue to one section.

36-21.2-13. Immunity from liability. This section was written by the legislative council to provide veterinarians protection from liability. A situation where this section may apply would be animals that are starved and presented for treatment, but the animal dies in spite of proper veterinary care. An example of where immunity would not apply, would be if instead of giving an IV injection of steroids for shock, euthanasia solution was given instead.

In addition to serving the NDVMA, I am a practicing partner at Heart River Animal Hospital in Mandan, North Dakota. I have been involved in providing veterinary services to local animal shelters in 2 different states for 27 years. For the past 12 years, Heart River Animal Hospital has been providing veterinary services for the Central Dakota Humane Society of Bismarck-Mandan. Veterinarians across North Dakota encounter cases where animals lack adequate care or are abandoned on a frequent basis. For example, in the last few years, veterinarians are examining dogs that are being used in breeding operations, that are not receiving adequate care. Heart River Animal Hospital has been involved in providing veterinary services for Central Dakota Humane Society in 4 breeding operation rescues, where the dogs' medical needs generated a little over 100 pages of medical records. Dogs had severe dental disease, eye and ear infections, skin infections on their bodies and feet, diarrhea from parasitism, poor condition due to poor nutrition and mammary tumors.

We do acknowledge the fact that extreme forms of animal cruelty have occasionally occurred in North Dakota and appropriate penalties should be assessed. However, in addition, situations such as lack of adequate care, neglect and abandonment are where the NDVMA feels we need to also strengthen the Humane Treatment of Animals Chapter.

This concludes my testimony. We thank you in advance, for your consideration of a do pass recommendation of SB 2211.

I would be happy to answer any questions you may have of me.



1101 1st Ave. N., Fargo, ND 58102 PO. Box2064, Fargo, ND 58107-2064 Phone: 701-298-2200 • 1-800-367-9688 • Fax: 701-298-2210

4023 State St., Bismarck, ND 58503 P.O. Box 2793, Bismarck, ND 58502-2793 Phone: 701-224-0330 • 1-800-932-8869 • Fax: 701-224-9485

Senate Agriculture Committee January 24, 2013 Testimony of North Dakota Farm Bureau on SB 2211 Presented by Doyle Johannes, president

Good morning Mr. Chairman and committee members. For the record my name is Doyle Johannes, I am the president of the North Dakota Farm Bureau. I am here today representing the members of North Dakota Farm Bureau and their policies.

North Dakota Farm Bureau is in support of most concepts contained within this bill. Caring for animals is central to what so many of our members do on a daily basis, whether on their farms and ranches, or in their homes. However, we must take great care not to confuse our obligation for the proper care of an animal's welfare with bestowing rights to animals that in my opinion are exclusive to the human species.

North Dakota Farm Bureau believes a strong animal agriculture sector is critical to the future of not only the industry of agriculture, but the entire economy of North Dakota. This is why any time we have identified a threat to animal agriculture Farm Bureau has stepped to the plate to defend this industry by whatever means possible. Whether it was taking on county zoning authority in the North Dakota Supreme Court on behalf of members trying to site a hog barn, (and by the way, winning) or arguing in front of the Foster County Commission allowing a dairy to be sited in the Carrington area, (and again winning) or mounting an effort to amend the North Dakota Constitution to protect modern agricultural practices through initiated measure (again winning in every county in the state). As a result of the hard work of our members, staff, and the citizens, North Dakota is the first state in the nation to place the unparrelled importance of agriculture in its constitution!

I am pointing these things out not to be boastful or arrogant; I am pointing them out to remind you the North Dakota Farm Bureau has a strong and successful record of defending agriculture. Supporting most of the concepts contained in this bill we are yet again supporting the best interest of agriculture, and our members. We support these concepts because;

- 1. We believe first and foremost that our members recognize the importance of proper animal care be it for production or pleasure.
- 2. We initiated measure 3 in response to what we see going on in other states with antiagriculture animal activists. Like those who fought so hard against measure 5 we believe

this bill could put into law a reasonable response to the animal activists that the citizens of North Dakota can support and appreciate.

# 5

- 3. We believe strongly North Dakotans and only North Dakotans should tell the citizens of this great state what to do and how to live.
- 4. North Dakota Farm Bureau strongly supports the good work our local shelters and rescues carry out every day in North Dakota. However, we will not support or condone the work of groups like the Humane Society of the United States and others who are nothing more than thinly veiled anti-agriculture activists!

As much as we support most of this bill and appreciate all the long hours and hard discussion it took to get to this point, we stand in firm opposition to some of the felony penalties in this bill. Mr. Chairman and committee members Farm Bureau can accept and does support the felony penalty contained in this bill under section 36-21.2-03 pertaining to animal cruelty. We believe egregious acts of cruelty against an animal should be dealt with swiftly and severely. Individuals that commit these unconscionable acts deserve to be, and should be punished to full extent of the law.

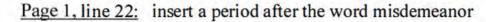
However, in the three other sections of this bill 36-21.2-01 adequate care, 36-21.2-02 animal abuse, and 36-21.2-04 animal abandonment we cannot accept the felony penalty associated with these sections of the bill. We can accept a penalty of a class A misdemeanor and would respectfully request the committee amend the felony penalty out of these sections of the bill. As we see it, extreme cases involving lack of adequate care, animal abuse, and abandonment could be construed as an act of animal cruelty and thus do not need to carry a felony penalty for each section.

Farm Bureau believes this bill or any bill speaking to these important issues should be about protecting animals, NOT punishing people. To that end Mr. Chairman and committee members Farm Bureau will stand by our statement.

Thank you, I would be glad to answer questions.

## Proposed amendments to Senate Bill 2211

#65



Page 1, line 22: delete, for a first offense and a class C felony for a second or

Page 1, line 23: delete, subsequent offense occurring within a five year period.

Page 2, line 26: insert a period after the word misdemeanor

Page 2, line 26: delete, for a first

<u>Page 2, line 27:</u> delete, offense and a class C felony for a second or subsequent offense occurring within five

Page 2, line 28: delete, years. Renumber page 2 accordingly

Page 4, line 13: insert a period after the word misdemeanor

Page 4, line 13: delete, for a

<u>Page 4, line 14</u>: delete, first offense and a class C felony for a second or subsequent offense occurring within

Page 4, line 15: delete, five years

Renumber page 4 accordingly





PO Box 2136 • 1415 12th Ave SE Jamestown, ND 58401 800-366-8331 • 701-252-2341 ndfu.org



SB 2211 - Humane Treatment of Animals Senate Agriculture Committee January 24, 2012

Good afternoon Mr. Chairman, members of the committee. My name is Kristi Schlosser Carlson. I am testifying on behalf of North Dakota Farmers Union and the policies adopted democratically by our grassroots membership. In that policy, we establish our foundational belief that family farmers and ranchers are the primary stewards of the land and animals.

Livestock production is essential to the prosperity of North Dakota. North Dakota Farmers Union actively supports livestock production as a vital component in a healthy agriculture sector through the promotion of research, leadership programs, and responsible livestock policy.

We believe responsible livestock policy favors the humane treatment of animals and encourages open dialogue with animal care groups. We urge caution, though, when passing animal treatment laws so that sound management practices are not adversely affected. SB 2211 does just that.

SB 2211 is a comprehensive review of the current animal humane treatment statute. It clarifies protection of those who care for animals and those whose livelihoods depend on animals; it also clarifies the definitions of wrongs and the pursuit of those who commit the wrongs; and it clarifies process for those who care for animals that are harmed intentionally. It also increases penalties for the most egregious acts: those acts of cruelty and those intentionally committed repeatedly.

The concepts in this bill were written by North Dakotans – even more notably, though, is that it was written by North Dakotans *across the spectrum* of animal caregivers. As a engaged member of this process, NDFU's goal was to ensure that we, as North Dakotans, protect and promote stewardship; it was not to expand the scope of criminalization beyond the bad actors. NDFU believes this bill accomplishes that goal. We urge support of SB 2211.





Prepared by the North Dakota L staff

January 2013

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anita Thomas

## 2013 SENATE BILL NO. 2211 HUMANE TREATMENT OF ANIMALS REPEALED SECTIONS

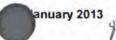
12.2	Sections Proposed for Repeal		Treatment in SB	2211
	I.1-01. Definitions. this chapter, unless the context otherwise requires:	This section contains SB 2211 or deemed		ave been incorporated in
1.		Subsection 1 Abandonment	Page 4	Line 16
	or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter.	Subsection 2 Adequate care	Page 2	Line 1
2.	"Adequate care" means normal and prudent attention to the needs of an animal, including wholesome food, clean water, shelter, and health care, as necessary to maintain good health in a specific species of	Subsection 3 Animal	N/A N/A	
	animal.	Subsection 4 Commissioner	NA	
3.	"Animal" includes every living animal except the human race.	Subsection 5	Page 3	Line 17
4.	"Commissioner" means the agriculture commissioner.	Cruelty or torture		
5.	"Cruelty" or "torture" means any act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. The term does not include:	Subsection 6 Investigator	N/A	
	a. Any activity that requires a license or permit under chapter 20.1-03;			
	b. Any activity that is usual and customary practice in production agriculture;			
	<ul> <li>Any scientific research conducted at a public or private facility or laboratory by or under the direction of a qualified researcher;</li> </ul>			
	d. Any show, fair, competition, performance, or parade;			
	e. A rodeo;			
	f. A wagon or buggy ride;			
	g. Trail or pleasure riding; or			
	h. Any activity that involves the training or teaching of animals.			
6.	"Investigator" means any person approved by the board to determine whether there has been a violation of this chapter.			
36-2 1.	1.1-02. Overworking, mistreating, or abandoning animals. No person may overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate,	This section contai incorporated in seve		ibited activities that are 2211.
2	or kill any animal, or cruelly work any animal when unfit for labor. No person may deprive any animal over which the person has charge or control of necessary food, water, or shelter.	Subsection 1 Torture/cruelty	Page 3	Line 17
3.	No person may keep any animal in any building, room, cage, or pen without adequate care.	Subsection 2 Deprivation	Page 1	Line 18
4.	No person may abandon any animal.	Subsection 3	Page 2	Line 7
5.	A person shall reclaim an animal within forty-eight hours of the agreed-upon time for termination of a	Caged animal		10/2
	boarding contract and pay all charges for boarding the animal.	Subsection 4-5 Abandonment	Page 4	Line 11











- No person may allow any maimed, sick, infirm, or disabled animal of which the person is the owner, or of which the person has custody, to lie in any street, road, or other public place for more than three hours after notice.
   No person may willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
   No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal. This subsection
- does not apply to the North Dakota state fair association, to agricultural fair associations, to any agricultural display of caged animals by any political subdivision, or to district, regional, or national educational livestock or poultry exhibitions. Zoos which have been approved by the health district or the governing body of the political subdivision which has jurisdiction over the zoos are exempt from this subsection.
   36-21.1-03. Cruelty in transportation.

No person may carry, or cause to be carried, any live animals upon any vehicle or otherwise, without providing suitable racks, cars, crates, or cages, or other proper carrying container, nor may a person carry an animal, or cause an animal to be carried, in any other cruel manner.

36-21.1-03.1. Unattended dog or cat in motor vehicle. No person may leave a dog or cat unattended in a stationary or parked motor vehicle in a manner that endangers the animal's health or safety. Any person who violates this section is guilty of an infraction.

#### 36-21.1-04. Poisoning animals.

No person may unjustifiably administer or expose any known poisonous substance or noxious drug, whether mixed with meat or other food or not, which may be eaten by any domestic animal.

#### 36-21.1-06. Exposure of animals - Authority of officers.

- Any sheriff, police officer, licensed veterinarian, or investigator may take custody of and care for any animal unjustifiably exposed to cold or inclement weather or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 36-21.1-03.1.
- 2. A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until it is redeemed by the owner or authorized agent of the owner and when necessary may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.
- 3. If the owner or the owner's agent is known, the individual must be immediately notified. If the owner or the owner's agent is unknown, notice must be given by publication in the manner prescribed by law. The notice must inform the owner or the owner's agent that the animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days from the date of the notice.
- 4. The sheriff, police officer, licensed veterinarian, investigator, or whoever has custody of the animal has a lien on the animal and that lien is superior to any other claim or lien, for the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after receipt of the notice, the person holding the claim may apply to the district court for an order to sell the animal and discharge the lien.

Upon order of the court, the animal may be sold at a public market to pay the charges for its keeping, and the title to the animal passes by the sale.

Medical attention	Page 2	Line 6
Subsection 7 Cruelty	Page 3	Line 17
Subsection 8 Caged animal	Page 8	Line 11
This section is gon	arally covered a	within the duty to provid
adequate care [Page	e 2, Line 9], the	prohibition against abuse on against cruelty [Page 3
This section is addres	ssed on Page 9,	Line 9.
[Page 3, Line 19].		
This section pertains care, and their ultima		f animals, their subsequen
		f animals, their subsequen
care, and their ultima Subsection 1 Seizure of animal	te disposition. Page 5 Page 6	
care, and their ultima Subsection 1	te disposition. Page 5	Line 8
care, and their ultima Subsection 1 Seizure of animal Subsection 2 Care of a seized	te disposition. Page 5 Page 6	Line 8 Line 27
care, and their ultima Subsection 1 Seizure of animal Subsection 2 Care of a seized animal Subsection 3	te disposition. Page 5 Page 6 Page 5	Line 8 Line 27 Line 20
care, and their ultima Subsection 1 Seizure of animal Subsection 2 Care of a seized animal Subsection 3 Notice Subsection 4	te disposition. Page 5 Page 6 Page 5 Page 5	Line 8 Line 27 Line 20 Line 23 Line 12 Line 19
care, and their ultima Subsection 1 Seizure of animal Subsection 2 Care of a seized animal Subsection 3 Notice Subsection 4 Lien Subsection 5	te disposition. Page 5 Page 6 Page 5 Page 5 Page 6	Line 8 Line 27 Line 20 Line 23 Line 12
care, and their ultima Subsection 1 Seizure of animal Subsection 2 Care of a seized animal Subsection 3 Notice Subsection 4 Lien Subsection 5 Satisfaction of lien Subsection 6	te disposition. Page 5 Page 5 Page 5 Page 5 Page 6 Page 6	Line 8 Line 27 Line 20 Line 23 Line 12 Line 19







13.5.	• • • • • • • • • • • • • • • • • • •			3nuary 2013
6.	The court may award costs and reasonable attorney's fees to the person bringing the action to enforce the lien, arrange for the adoption of the animal, or arrange for the destruction and disposal of the animal if no market exists for the animal or if the animal is a companion animal.	1		
7.	If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be paid over to the owner or the owner's agent, if known. If the owner or the owner's agent is not known, the remainder must be deposited in the county general fund. If no purchaser is found, the animal, at the discretion of the commissioner, may be offered for adoption or disposed of consistent with the law.			
8.	Before the animal is returned to its owner, the court shall determine whether the owner or the owner's agent can provide adequate care for the animal. The court has ten days within which to make this determination. The owner shall pay the cost of taking the animal into custody before the animal is released to the owner or the owner's agent.			
stat nati hun edu con may und cha	e board shall adopt rules to effectuate this chapter. The board by rule may restrict the importation into the te, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by ure which the board may have reason to believe may be a threat to the health and well-being of the nan or animal population of the state, or both, unless the importation or sale is for bona fide scientific or ucational purposes. The board shall establish reasonable qualifications for approved investigators and the nmissioner shall maintain a current listing of all approved investigators. Employees of the commissioner y be assigned as investigators. The commissioner may by injunctive procedure without bond or other dertaking proceed against any person or persons for a continuous violation of any provision of this apter. No liability may accrue to the board, the commissioner, or any authorized representative in ceeding against any person or persons pursuant to this section.	animals if the board to the health and w population. It has been placed in	believes that the vell-being of the Chapter 36-01, ealth via Section	ution of domestic or wild animal may pose a threat state's human or animal which pertains to the State 1 of SB 2211 [Page 1, en removed.
	.1-13. Abandoned animals - Assumption of custody. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of and care for any animal found abandoned. The individual taking custody shall take reasonable steps to determine the	This section pertains subsequent care, and		abandoned animals, their sposition.
2.	ownership of the abandoned animal. A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until the animal is redeemed by the owner or the owner's agent or may deliver the animal to another person or facility to	Subsection 1 Taking custody of an abandoned animal	Page 6	Line 27
3.	e sheltered, cared for, and furnished suitable food and drink. otice must be given by publication in the official newspaper of the jurisdiction. The notice must provide at the animal may be sold, placed for adoption, or otherwise disposed of if the animal is not redeemed which the device the adoption of the sold.	Subsection 2 Care of an abandoned animal	Page 7	Line 1
	within five days from the date of the notice. The person having custody of the animal has a lien on the animal for the animal's care and keeping, the	Subsection 3 Notice	Page 7	Line 3
4.		Subsection 4	Page 7	Line 18
4.	reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied	Lien		
4.	owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after publication of the notice, the person holding the claim may sell the animal and discharge the lien.	Lien Subsection 5 Satisfaction of lien	Page 7	Line 18
	owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after publication of the notice, the person holding the	Subsection 5	Page 7 Page 7	Line 18 Line 26



## 2013 Senate Bill No. 2211 Testimony before the Senate Agriculture Committee Presented by Cameo Skager, President, CDHS Board of Directors Central Dakota Humane Society January 24, 2013

Mr. Chairman, Members of the Committee:

My name is Cameo Skager. I am the President of the Board of Directors of Central Dakota Humane Society (CDHS) in Mandan. I am here to testify in support of Senate Bill 2211.

CDHS is an animal shelter located north of Mandan. We are not affiliated with the Humane Society of the United States, nor do we receive funding from that organization – just as we do not receive any federal, state or local funding. We serve central North Dakota and in times of great need, we help across the state and even in other areas of the United States. We housed animals at our shelter during the Missouri River flood, sent volunteers to help in Minot during their time of need, and have traveled as far as Alabama to volunteer during the aftermath of Hurricane Katrina and to Iowa to rescue animals in peril from their flood waters.

We are not a radical animal rights organization. Many of our employees and volunteers were raised on farms and ranches which provided the foundation for their love of animals. We've had hunters and sportsmen on our board of directors.

We are proud to say that our nonprofit organization is an asset to the community. CDHS's mission is to provide for, house, rehabilitate and relocate lost, strayed or homeless animals. These are animals that otherwise may have to be provided for by community impound facilities at taxpayer expense. We also advocate for spaying and neutering of pets, educate about pet owner responsibilities and provide an outlet for community volunteerism.



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CDHS has participated in several rescues from puppy mill breeding sites within our own state. We have witnessed on multiple occasions dogs living in deplorable conditions. We have seen dogs suffering from such afflictions as rotted teeth, skin infections, hair matted to the point of open wounds, eye injuries from wire pokes that resulted in removal of the eye and dogs that were emaciated, starving and without adequate water or shelter.

During my work with CDHS, I have learned of many examples of abuse and neglect of animals. These cases run a broad spectrum and certainly not all cases merit the same treatment. SB 2211 outlines a penalty structure which permits the penalty to reflect the seriousness of the act, providing a felony provision for outrageous acts. For example:

- Aubrey, a cat that was "cooked" in the microwave by her owner.
- Smiley, a dog with an open leg wound that was left by her owner to suffer for many weeks without any medical care.
- A puppy whose head was stepped on and smashed. A man killed the dog in front of his cousin's girlfriend.

We are pleased to stand before this committee today, after working diligently for more than two years with the working group who came together to draft language for this bill. We worked alongside the various farm organizations, veterinary groups, animal shelters and a zoo that participated in this working group. We arrived at the table with divergent interests – agreed, disagreed and compromised to come up with the bill before you today. We believe Senate Bill 2211 has the best interest of all animals at heart.

We urge a "do pass" on Senate Bill 2211.

This concludes my testimony. I'd be happy to answer any questions that you may have.



January 24, 2013

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To: Chairman, Senator Joe Miller & Vice Chairman, Senator Larry Luick State of North Dakota - Agriculture Committee From: Nukhet Hendricks, Executive Director; Fargo Moorhead Humane Society A member of ND Responsible Animal Care group Regarding: SB 2211

Position: Support

> The greatness of a nation and its moral progress can be judged by the way its animals are treated-Mohandas Gandhi

Humane Society

Senator Miller, Senator Luick and the members of the Agricultural Committee:

I am Nukhet Hendricks, Executive Director of the Fargo Moorhead Humane Society and a member of ND Responsible Animal Care group.

I am here today to testify in support of Senate Bill 2211 Humane Treatment of Animals; on behalf of the animals of the Fargo Moorhead Humane Society and the ND Responsible Animal Care group.

Every day in the United States and in our State, companion animals are beaten, neglected, or forced to struggle for survival. Left in unsanitary conditions with no food or water, they have little hope as they live out their days without the compassion they deserve. Or they are kept in cages and expected to birth puppies month after month; or starved; beaten, shot or drowned.

To grow as a State, we must re-consider the current lack of protection in the ND Century Code and extend protection for these animals that do not have a voice to speak for themselves.

Our shelter receives average of 3-4 calls every week about companion animals. These calls vary from animal neglect to animal cruelty; and the calls come from 5 neighboring counties to Cass County. Companion animal neglect and abuse is not as "uncommon" as one might think.

These concerned citizen calls are all directed to the local law enforcements; however, due to lack of stronger laws protecting companion animals, law enforcement is unable to process these cases. More often than not, these animals end up in our shelter through the local pounds with physical and mental wounds that need tending and healing.

Furthermore; part of our mission at the shelter is to educate the community in kind and compassionate treatment and the proper care of all animals. However, we cannot even begin to fulfill this mission because the existing laws carry few consequences for those who mistreat animals. Education of community to treat the animals with kindness and compassion and care for them properly is simply futile when the current laws don't entirely support such care.







Animal neglect, abuse and cruelty to animals are on the rise in our state. There are no statistics to prove this point because offenders are not prosecuted; therefore they are not on record. But I attest that they are on the rise based on the phone calls I personally have to respond to every week. It is on the rise in our state because animals are viewed as property and the existing laws do not provide *appropriate protection* to animals; and doesn't keep up with the growing urban population in our state in places like Fargo.

Deprived of strong legal protection, animals are defenseless against exploitation and abuse and it is up to all of us to protect them from abuse, cruelty and neglect.

According to the statistics by American Humane Association; there are more households with companion animals and children than there are households with children and Fathers in them is





Doug Goehring AGRICULTURE COMMISSIONER

> Dr. Susan Keller STATE VETERINARIAN



Dr. Beth Carlson UTY STATE VETERINARIAN

Dr. Jesse Vollmer ASSISTANT STATE VETERINARIAN

Melvin Leland, Sidney, MT PRESIDENT, REG. PUREBRED CATTLE

> Dr. W. P. Tidball, Beach SECRETARY, VETERINARIAN

> Dr. Charlie Stoltenow, Fargo CONSULTING VETERINARIAN



STATE BOARD OF ANIMAL HEALTH ND Department of Agriculture 600 E. Boulevard Ave. Dept. 602 Bismarck, ND 58505-0020 (701) 328-2655 1-800-242-7535 FAX (701) 328-4567 www.nd.gov/ndda/programs Equal Opportunity in Employment and Services

Testimony of Beth W. Carlson, DVM Deputy State Veterinarian Senate Bill 2211 Senate Agriculture Committee Roosevelt Park Room January 24, 2013

RB AL II

Dr. Morgan Daliman, Beulah VETERINARIAN

David Pearson, Hettinger SHEEP

Joel Olson, Almont COMMERCIAL BEEF CATTLE

> Daryl Dukart, Dunn Center SWINE

Kristi Doll, NewSalem DAIRY CATTLE

Dr. Kenneth Thraison, New Rockford BISON

Shawn Schafer, Turtle Lake NONTRADITIONAL LIVESTOCK



Senator Miller, and members of the Senate Agriculture Committee, I am Deputy State Veterinarian Beth Carlson. I am here today on behalf of the North Dakota Department of Agriculture and the State Board of Animal Health in support of Senate Bill 2211. Our office frequently assists local authorities in responding to and investigating suspected cases of inhumane treatment of animals.

Senate Bill 2211 has been in the works for several years. It is the result of a great deal of explanation, education, passionate discussion, and compromise by representatives of all sectors responsible for caring for animals in North Dakota. Week after week, all of the members of this group came together to focus their efforts on developing a solid legislative proposal. As a result, everyone had the opportunity to develop language and offer solutions to conflicts.

Watching this diverse group come together was a slightly scary, but overall amazing experience. There were many times when different members didn't agree, or didn't understand another member's point of view; however, through respectful discussion, compromises were reached. The end result is a bill that may not be perfect in everyone's eyes, but it is as close to perfect as I think we could get. Coming into the legislative session, the group was excited about the comfort





level that had been reached among all parties. This bill has many good pieces in it that all those who care for animals should support. It will protect the welfare of animals in North Dakota, while preserving the ability for farmers and ranchers to perform standard management practices on their livestock, and preserving the responsible use of animals by sportsmen, animal exhibitors, and rodeo enthusiasts.

Of specific interest to our office is the section on the seizure of animals which are not being properly cared for or which are being subject to abuse. Current law does not include a specific process for seizure. This often leads to confusion by local authorities in how to handle neglect and cruelty cases. This bill sets forth a detailed process for obtaining a court order, providing notice, and how to handle animals after they have been seized. This will enable local authorities to quickly respond to concerns, while ensuring that animals are not seized without just cause.

Specific care standards can be developed, if needed, through the administrative rule-making process. The Board of Animal Health and Department of Agriculture can initiate this process, which allows input from the public before rules would be adopted.

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Senator Miller and committee members, I am proud to say that I worked with the group in developing this bill, and I urge a do pass on Senate Bill 2211.

SOURIS VALLEY

## Board Members:

Larry Crawford President

Kris Warmoth Vice President

Lucy Templer Secretary

Lynda Bertsch Director

Susanne Hoskin Director

Director

LeAnn Tennyson Director

OPEN Director

OPEN Director

Russ Gohl Associate Director

Susan Wagers Shelter Director



Souris Valley Animal Shelter 1935 20 th Ave SE Minot ND 58701 701-852-6133 Fax 701-838-7622

To whom it may concern:

The Souris Valley Animal Shelter, its staff and supporters feel very strongly that there needs to be in place, stricter laws when it comes to animal neglect, abuse and cruelty. We believe those who do unspeakable things to animals, all animals, should be prosecuted to the highest extent of the law; to include felony charges.

We ourselves have witnessed and/or been involved with emergency housing of animals involved in domestic violence situations; we have assisted local law enforcement with seizure of animals in hoarding and neglect situations and have seen animals that have suffered neglect at the hands of irresponsible pet owners.

In 2011 a dog was removed from a resident of the Minot Air Force Base by Law Enforcement and brought into the Shelter and was extremely emaciated. We provided care for this dog for over 30 days, in which time he gained weight and became stronger. We also, several ago, took in a cat who had been doused in gasoline and as a result, suffered chemical burns to 90% of his body. While a challenge, the cat was given veterinary care and ultimately adopted. We took in 30 Pomeranian/Corgi mixes that had been left in a mobile home to fend for themselves ... since none were fixed, many of them came into the Shelter pregnant. Therefore, the number increased to close to 50 dogs from this one seizure.

As strongly as well feel that this bill goes through, we encourage you to consider all animals and their safety and well-being while you review Senate Bill No. 2211.

Kristine Seabolt SVAS Manager 701-839-6770

Sincerely,

23 Jan 2013

Rev. 5-14-17

# CHAPTER 36-21.1

## HUMANE TREATMENT OF ANIMALS

#### 36-21.1-01. Definitions.

In this chapter, unless the context otherwise requires:

- 1. "Abandoned animal<u>Animal abandonment</u>" means the willful desertion of an animal by its owner or by the person having charge or control of the animal.that is or reasonably appears to have been deserted by its owner or keeper. The term may include an animal that is running loose on property other than that of its owner or the owner's agent if the animal bears no identification indicating the owner or the owner's agent and the owner or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter. The term includes failing to reclaim an animal within forty-eight hours of the agreed upon end of a boarding contract, or similar agreement, and failure to reclaim in compliance with the terms of the boarding contract or other arrangement. This term does not include estrays defined under chapter 36-22-01.
- "Adequate care" means normal and prudent attention to the needs of an animal, including wholesome foodfeed, clean water, shelter, and health care, as necessary to maintain the animal's good-health and safety in a specific species of animal.

3. "Animal" includes every living animal except the human race.

<u>4.</u> <u>"Animal neglect" means to deprive an animal over which the person has charge or control of adequate feed. water, shelter, sanitation, ventilation, facilities, health care. or other necessities generally considered to be standard and accepted, consistent with the animal's species, breed, and physical condition.</u>

"Commissioner" means the agriculture commissioner.

 "<u>Animal Ccruelty</u>" or "torture" means any act, or omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. The term does not include:

a. Any activity that requires a license or permit under chapter 20.1-03;
b. Any activity that is usual and customary practice in production agriculture;

c. Any scientific research conducted at a public or private facility or laboratory by or under the direction of a qualified researcher;

Page | 1

d. Any show, fair, competition, performance, or parade;

e. A rodeo;

f. A wagon or buggy ride;

g. Trail or pleasure riding; or

- h. Any activity that involves the training or teaching of animals.
- 6. "Investigator" means any person approved by the beard to determine whether there has been a violation of this chapter.
- 6. "Board" means the board of animal health.
- 4.7. "Commissioner" means the agriculture commissioner.
- <u>"Domestic animal" means dog, cat, horse, mule, bovine animal, sheep, goat,</u> bison, farmed elk, llama, alpaca, or swine.
- 9. "Seize" means to take custody of or to assume control over an animal.

#### 36-21.1-01.2. Activities not prohibited.

This chapter does not prohibit the following, and nor does animal cruelty, animal neglect, and animal abandonment include the following:

- Humane destruction of an animal for just cause;
- <u>Commonly accepted agricultural, livestock, and animal husbandry practices;</u>
- <u>Commonly accepted rodeo and racetrack activities;</u>
- Livestock exhibitions or competitions;
- Lawful fishing, hunting, and trapping activities;
- Lawful wildlife management practices:
- Lawful research or educational activities that involve the use of animals;
- 8. Services provided by or under direction of a licensed veterinarian; and
- <u>Lawful control of rodents or predators and other lawful animal damage control</u> activities.

36-21.1-02. Overworking, mistreating, or abandoning animals Activities Prohibited.

- No person may overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor.
- No person may deprive any animal over which the person has charge or control of necessary food, water, or shelter.

## 36-21.1-03.1. Unattended dog or cat animal in motor vehicle.

- <u>No-A</u> person may not leave an dog-or-catanimal unattended in a stationary or parked motor vehicle in a manner that endangers the animal's health or safety. Any person who violates this section is guilty of an infraction.
- <u>A law enforcement officer may use reasonable means to enter a motor vehicle</u> and remove an animal left in the vehicle in violation of this section.

#### 36-21.1-06. Seizure of animals subject to cruelty or neglect.

- <u>A law enforcement officer may seize an animal if there is reasonable cause to</u> believe that the animal is being or has been subject to animal cruelty or animal neglect.
- <u>2.</u> <u>A licensed veterinarian may seize an animal if there is reasonable cause to</u> <u>believe that the animal is being or has been subject to animal cruelty or animal</u> <u>neglect, provided that the veterinarian obtains consent from a law enforcement</u> <u>officer, or the state veterinarian's office.</u>

#### 36-21.1-06.1. Seizure of animals - Court order.

- Although a court order is not necessary to seize an animal under section 36-21.1-06, if a court order is sought, the court shall issue an order authorizing the animal's seizure if there is reasonable cause to believe the animal is being or has been subject to animal cruelty or animal neglect. The court may act without notice to the animal's owner and may rely on either testimony or on affidavit.
- 2. If an animal is seized without a court order, the law enforcement officer or licensed veterinarian shall subsequently show the court reasonable cause for the seizure, and the court shall issue an order ratifying the seizure or, if reasonable cause is not shown, the court shall order the animal's return to its owner, or other appropriate remedy.
- The hearing required by this section is not required if:
  - a. It is waived by the animal's owner;
  - <u>b.</u> The animal is returned to its owner; or
  - c. The animal is destroyed under section 36-21.1-06.2.

### 36-21.1-06.2. Seizure of animals - Care for seized animal - Costs and lien.

- 1. <u>A law enforcement officer or licensed veterinarian seizing an animal under</u> section 36-21.1-06, may give the animal adequate care, or may deliver the animal to another person to be given adequate care.
- 2. If a licensed veterinarian determines that circumstances justify destroying the seized animal, then the animal may be humanely destroyed.
- 3. The owner of an animal seized under section 36-21.1-06 shall pay all reasonable costs, including attorney's fees, related to owner notification and to the animal's seizure, care, and disposition.
- <u>4.</u> A law enforcement agency or officer, licensed veterinarian, or whoever has incurred reasonable costs related to seizing an animal under section 36-21.1-06, has a lien on the animal for all those costs. The costs may include attorney's fees, costs incurred in enforcing the lien, owner notification costs, and costs in the animal's seizure, care, and disposition. This lien is superior to any other claim or lien.
- 5. If the lien is not satisfied by the animal's owner within five days after notice is given under the section 36-21.1-06.3, the person holding the lien may apply to the court for an order to enforce the lien. The court shall endeavor to make its decision within seven days after the hearing.
- 6. If a seized animal is sold, the lienholder is entitled to the sale proceeds to the extent of the lien. Any remaining proceeds must be paid as directed by the court to others who incurred reasonable costs related to the animal's seizure, care, and disposition, or to the owner. If the owner is unknown, or if the court does not otherwise direct, the remainder of the sale proceeds must be deposited in the county general fund.

<u>36-21.1-06.3. Seizure of animals – Notice to owner – Non-return to owner – Disposition of animal.</u>

<u>1.</u> If the owner of an animal seized under section 36-21.1-06 is known to the person making the seizure, the owner must be immediately notified. If the animal's owner is unknown to the person making the seizure, notice must be given by one publication in the official county newspaper. The notice must inform the owner

Page | 5

that the animal may be sold, destroyed, or otherwise disposed of if the owner does not redeem the animal within five days from the date of the notice.

- 2. If the person with custody of a seized animal refuses the owner's request to return the animal, the court must be petitioned to decide the animal's disposition, which may include sale, adoption, destruction, or return to the owner. Before a seized animal is returned to its owner, the court:
  - a. Shall determine whether the owner can and will provide adequate care for the animal:
  - b. May impose conditions on the owner if the owner is allowed to recover the animal:
  - c. May require that the owner pay all reasonable costs, including attorney fees, related to the animal's seizure, care, owner notification, and disposition; and
  - d. If a report by a licensed veterinarian has been submitted to the court, the court shall consider the report in deciding the animal's disposition. If the report is signed by the veterinarian who wrote it, the report is admissible evidence and is part of the court's record.
- 3. If the owner of an animal seized under section 36-21.1-06 does not request the animal's return, then the person seizing or having custody of the animal may decide its disposition, which may include sale, adoption, or destruction. The person making this decision may, but is not obligated to, petition the court to confirm the decision or to otherwise decide the animal's disposition.
- <u>4.</u> <u>A court hearing under this section may be combined with the reasonable cause</u> <u>hearing under subsection 2 of section 36-21.1-06.1.</u>
- 5. <u>The court shall endeavor to make its decision within seven days of the</u> <u>disposition hearing.</u>
- 6. If a seized animal is sold or adopted, title to the animal passes to the person taking control of the animal.

## 36-21.1-11. Penalty.

E Important !!

 Any person knowingly and willfully violating any rule adopted by the board <u>under</u> this chapter or violating any provision of this chapter for which a specific penalty is not provided is guilty of a class A misdemeanor. If a second (2<sup>nd</sup>) or

So a person does n't "Un know ingly" become a felon!! Page | 6

subsequent violation of section 36-21.1-02 occurs within five (5) years, the person is guilty of a class C felony.

- 2. If a violation of a board rule or provision of this chapter results in serious injury, serious illness, or death of the animal, the violator is guilty of a class C felony. "Serious injury" means any injury that creates a substantial risk of death, leaves an animal significantly disfigured, causes broken bones, or causes prolonged impairment of health. "Serious illness" means any illness that creates a substantial risk of death, leaves an animal significantly disfigured, causes and illness that creates a substantial risk of death, leaves an animal significantly disfigured, or causes prolonged impairment of health.
- 3. In addition to penalties described in subsection 1 and 2, the court may prohibit or limit the violator's ownership or control of animals during the term of the sentence and any period of probation, and may require the violator to immediately deliver all animals in the violator's possession to a public official or private entity for adoption or other disposition, or provide proof to the court that the violator no longer has possession, care, or control of animals.

#### 36-21.1-12. Duties of board - Authority and of commissioner and local attorneys.

The board shall adopt rules to effectuate this chapter. The board by rule may restrict the importation into the state, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the board may have reason to believe may be a threat to the health and well being of the human or animal population of the state, or both, unless the importation or sale is for bona fide scientific or educational purposes. The board shall establish reasonable qualifications for approved investigators and the commissioner shall maintain a current listing of all approved investigators. Employees of the commissioner may be assigned as investigators. The commissioner or a state's attorney with permission from the commissioner may by injunctive procedure without bond or other undertaking proceed against any person or persons for a continuous violating on of any board rule or provision of this chapter. No liability may accrue to the board, the commissioner, or any authorized representative in proceeding against any person or persons or persons pursuant to this section.

## 36-21.1-13. Abandoned animals Responding to Aanimal abandonment - Assumption of custody Seizure by authorities - Disposition of animal - Costs and expenses.

 Any sheriff, police<u>A law enforcement</u> officer, or licensed veterinarian, or investigator may take custody of and care for anyseize an animal-found

Page 7

abandoned if there is reasonable cause to believe that the animal is subject to animal abandonment. The individual taking custody shall take reasonable steps to determine the ownership of the abandoned animal.

- A sheriff, policelaw enforcement officer, or licensed veterinarian, or investigator may care for the seized animal until the animal is redeemed by the owner or the owner's agent or may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink to be given adequate care.
- 3. The individual taking custody shall take reasonable steps to determine the The individual Sector Sectors ownership of the seized animal. The person that seized the animal shall give at the Animal Shall try least one notice through reasonable communication means, which may include guine ship of S.A., and official county newspaper, posters, or electronic media. Notice must be given by shall do so by giving one publication in the official county newspaper of the jurisdiction. The notice at the seized the weath reason must provide that the seized animal may be sold, placed for adoption, or ble county means otherwise disposed destroyed of if the animalit is not redeemed within five days from the date of the notice.
- 4. The person having custody of the animal has a lien on the animal for the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after publication of the notice, the person holding the claim-lien may sell the animal and discharge the lien.
- 5. The court may award reasonable attorney's fees to the person bringing the action to enforce the lien and may award costs, which include the costs of arranging for the adoption of the animal or the costs of the destruction and disposal of the animal.
- If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder\_, if any, must be deposited in the county general fund.
- 7. If a seized animal is sold or adopted, title to the animal passes to the person taking control of the animal.

36-21.1-14. Assumption of custody -Immunity from liability.

- <u>1.</u> Any sheriff, police officer, licensed veterinarian, investigator, or <u>A</u> person or <u>entity who has that has or had</u> custody <u>or control</u> of an animal <u>seized</u> under this chapter and <del>who is acting in an official or professional capacity and making a <u>that</u> <u>acts in good-faith effort to comply with this chapter isis</u> immune from any civil or criminal liability for acts taken or omitted while attempting to comply with this <del>chapter</del>.</del>
- 2. No liability may accrue to the board, the state veterinarian, or any authorized representative in proceeding against any person or persons pursuant to this chapter. All law enforcement officers: licensed veterinarians: all persons who act under the direction of a law enforcement officer or licensed veterinarian; and all public entities, officials, and employees who act in good faith under this chapter are immune from any civil or criminal liability for acts taken or omitted.

#### 36-21.1-15. Applicability of chapter.

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This chapter does not apply to estrays covered under chapter 36-22.

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## CHAPTER 12.1-32 PENALTIES AND SENTENCING

### 12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

- Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
- Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
- 3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
- 4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
- 5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.
- 6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
- 7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

#### 12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

- 1. For a class A felony, a maximum fine of fifty thousand dollars.
- 2. For a class B felony, a maximum fine of thirty-five thousand dollars.
- 3. For a class C felony, a maximum fine of twenty-five thousand dollars.
- 4. For a class A misdemeanor, a maximum fine of fifteen thousand dollars.
- 5. For a class B misdemeanor, a maximum fine of ten thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

#### 12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

- Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.





- (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
- (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
- (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.

d. A fine.

- e. Restitution for damages resulting from the commission of the offense.
- f. Restoration of damaged property or other appropriate work detail.
- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
- h. Commitment to a sexual offender treatment program.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08.

- 2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for time spent in custody must be stated in the criminal judgment.
- A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
- 4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
- 5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
- All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
- If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
- Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
- 9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and a term of probation imposed as a part of the sentence. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.



- 10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
- Before sentencing a defendant on a felony charge under section 12.1-20-03, 11. 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

#### 12.1-32-02.1. Mandatory prison terms for armed offenders.

- 1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1, 2, or, except for the simple possession of marijuana, 7 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
  - a. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
  - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
- This section applies even when being armed is an element of the offense for which the offender is convicted.
- An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

12.1-32-02.2. Repayment of rewards paid by crimestoppers programs - Duties of attorney general - Qualified local programs - Disbursement of moneys collected.

- After a defendant has been convicted of a felony, the court may order the defendant to repay all or part of any reward paid by a qualified local program. In determining whether the defendant must repay the reward or part of the reward, the court shall consider:
  - a. The ability of the defendant to make the payments, including any financial hardship that payment may cause to the defendant's dependents.
  - b. Whether the information that was reported to the qualified local program substantially contributed to the defendant being charged with the offense. To the



extent allowed by law, the court shall respect the confidentiality of the records of the qualified local program.

- 2. "A qualified local program" means a program approved by the attorney general to receive repayment of rewards. The attorney general shall consider the organization, continuity, leadership, community support, and general conduct of the program to determine whether the repayments will be spent to further crime prevention purposes of the program. The attorney general also shall determine that the qualified local program provides rewards to persons who report information concerning criminal activity and whether that information substantially leads to defendants being charged with felonies.
- 3. If the court determines that a defendant is capable of repaying all or any part of a reward paid by a qualified local program, the judgment must include a statement of the amount owed, the identity of the qualified local program, and a schedule, if any, of payments to be made by the defendant. The clerk of court may establish an account within which to deposit repayments of rewards and at least quarterly shall pay over to each qualified local program the sums that have been collected for the benefit of that program.
- 4. A judgment that includes a repayment of reward, either alone or in conjunction with section 29-26-22, may be docketed and thereafter constitutes a lien upon the real estate of the defendant in the same manner as a judgment for money rendered in a civil action.

#### 12.1-32-03. Special sanction for organizations.

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

#### 12.1-32-03.1. Procedure for trial of infraction - Incidents.

- Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless the person may be subject to a sentence of imprisonment under subsection 7 of section 12.1-32-01.
- Except as provided in this title, all provisions of law and rules of criminal procedure relating to misdemeanors shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the jurisdiction of courts, the periods for commencing action and bringing a case to trial, and the burden of proof.
- Following conviction of an infraction, the offender may be sentenced in accordance with subsection 1 of section 12.1-32-02, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of section 12.1-32-05, or subsection 7 of section 12.1-32-01.
- If a statute provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

#### 12.1-32-04. Factors to be considered in sentencing decision.

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

- The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
- 2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
- 3. The defendant acted under strong provocation.

- 4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
- 5. The victim of the defendant's conduct induced or facilitated its commission.
- 6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
- The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
- 8. The defendant's conduct was the result of circumstances unlikely to recur.
- 9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
- 10. The defendant is particularly likely to respond affirmatively to probationary treatment.
- 11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
- 12. The defendant is elderly or in poor health.
- 13. The defendant did not abuse a public position of responsibility or trust.
- 14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

## 12.1-32-04.1. Gross sexual imposition - Deferred imposition of sentence.

A person who violates subdivision d of subsection 1 or subdivision a of subsection 2 of section 12.1-20-03 may not receive a deferred imposition of sentence unless that person proves at sentencing by clear and convincing evidence that that person reasonably believed the victim to be fifteen years of age or older.

## 12.1-32-05. Imposition of fine - Response to nonpayment.

- The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
  - a. The ability of the defendant to pay without undue hardship.
  - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
  - Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
  - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
- The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid.
- 3. If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following periods of imprisonment for failure to pay a fine:
  - If the defendant was convicted of a misdemeanor, to a period not to exceed thirty days.
  - b. If the defendant was convicted of a felony, to a period not to exceed six months.

#### 12.1-32-06. Incidents of probations.

Repealed by S.L. 1989, ch. 158, § 18.

# 12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred





imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:

- a. The order imposing probation;
- b. The defendant's release from incarceration; or
- c. Termination of the defendant's parole.
- 2. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
- 3. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 0.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose an additional period of probation not to exceed two years. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
- If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- 5. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
- The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

#### 12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

- When the court imposes probation upon conviction for a felony, the court shall place 1 the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, except for a violation of subdivision b of subsection 2 of section 12.1-17-01, the court may place the defendant under the supervision and management of the department of corrections andrehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
- 2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which



the probation remains subject to revocation. The court shall order supervision costs and fees of not less than forty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

- 3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program; or
  - i. Participation in the twenty-four seven sobriety program.
- 4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:
  - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
  - Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
  - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
  - d. Support the defendant's dependents and meet other family responsibilities.
  - e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
  - Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
  - g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.
  - Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.

- Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- Report to a probation officer at reasonable times as directed by the court or the probation officer.
- Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.
- q. Provide community service for the number of hours designated by the court.
- r. Refrain from any subscription to, access to, or use of the internet.
- 5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
- 6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
- 7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
- 8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.
- 9. Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.



#### 12.1-32-07.1. Release, discharge, or termination of probation.

- 1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of probation, the court shall cause to be issued to the person a final discharge from further supervision.
- Whenever a person has been placed on probation pursuant to subsection 4 of section 2. 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice as defined in section 39-01-01. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

#### 12.1-32-07.2. Records and filing of papers.

- 1. Whenever the court orders that a person convicted of a felony is to be placed on probation, the clerk of the court in which the order is entered immediately shall make full copies of the judgment or order of the court with the conditions of probation and shall certify the same to the director of parole and probation of the department of corrections and rehabilitation. Upon the disposition of any criminal case, the clerk of court shall transmit to the department of corrections and rehabilitation adopted by the department, regarding all defendants whether found guilty or discharged.
- 2. Whenever imposition of sentence is deferred and, pursuant to section 12.1-32-07.1, the plea of guilty is withdrawn by the defendant or the verdict of guilty is set aside by the court, the clerk of court shall file all papers, including the findings and final orders in proceedings under section 12.1-32-07.1, and shall note the date of filing on the papers. The records and papers are subject to examination by the clerk, a judge of the court, the juvenile commissioner, probation officers, the defendant or defendant's counsel, and the state's attorney. Others may examine the records and papers only upon the written order of a judge of the court.

#### 12.1-32-07.3. When probationer deemed escapee and fugitive from justice.

A probationer is considered an escapee and a fugitive from justice if the probationer leaves the jurisdiction before the expiration of the probationary period without permission of the court or the department of corrections and rehabilitation.

12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.

 Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the



court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:

- a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
- b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

- 2. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.
- The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
- 4. a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment following a revocation or other postjudgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as



determined by the commission on legal counsel for indigents, and of the right to a hearing on the reimbursement amount. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

- b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
- c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.
- 5. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences - Procedure.

- A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with this section upon a finding of any one or more of the following:
  - a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
  - b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
  - c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.
  - d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
  - e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it





may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

- 2. The extended sentence may be imposed in the following manner:
  - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
  - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
  - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
- Whenever an attorney charged with the prosecution of a defendant in a court of this 3. state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, the court may order the notice sealed and the notice is not subject to subpoena or public inspection during the pendency of the criminal matter, except on order of the court, but is subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.
- 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, in accordance with this subsection as follows:
  - a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.
  - b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.
- 5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion that might seriously disrupt a



program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2.

#### 12,1-32-09.1. Sentencing of violent offenders.

Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection 1 of section 12.1-32-01

#### 12.1-32-10. Mandatory parole components.

Repealed by S.L. 1989, ch. 51, § 5.

#### 12.1-32-11. Merger of sentences - Sentencing for multiple offenses.

- 1. Unless the court otherwise orders, when a person serving a term of commitment imposed by a court of this state is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. A court merging sentences under this subsection shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. A court which imposed a sentence with the effect of the merger.
- 2. Repealed by S.L. 1977, ch. 129, § 1.
- 3. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year, except that a defendant being sentenced for two or more class A misdemeanors may be subject to an aggregate maximum not exceeding that authorized by section 12.1-32-01 for a class C felony if each class A misdemeanor was committed as part of a different course of conduct or each involved a substantially different criminal objective.

# 12.1-32-12. Penalties, sentences, and parole for offenses unclassified and in other titles.

Where an offense is defined by a statute or by the constitution without specification of its classification pursuant to section 12.1-32-01, the offense is punishable as provided in the statute or constitutional provision defining it, or:

- If the offense is declared to be a felony, without further specification of punishment, it is punishable as if it were a class C felony.
- If the offense is declared to be a misdemeanor, without further specification of punishment, it is punishable as if it were a class A misdemeanor.

The sentencing alternatives available under section 12.1-32-02 are available to a court sentencing an offender for commission of an offense defined by a statute outside this title.

#### 12.1-32-13. Minor convicted of felony - Sentencing.

Whenever a minor is convicted of a felony, the sentencing court may commit the person to the North Dakota youth correctional center as provided in this title. Provided, however, that a minor over the age of sixteen who is convicted of a felony may be sentenced to a penal institution or detention facility.

#### 12.1-32-14. Restoration of property or other work to be required of certain offenders.

Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief is placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection 4 of section 12.1-32-07.

# 12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

- 1. As used in this section:
  - a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, labor trafficking in violation of chapter 12.1-40, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
  - b. "Department" means the department of corrections and rehabilitation.
  - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
  - d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
  - e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, sex trafficking in violation of chapter 12.1-40, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.

f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

- g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
- 2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:
  - a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
  - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
- If a court has not ordered an individual to register in this state, an individual who
  resides or is temporarily domiciled in this state shall register if the individual:
  - Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
  - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
  - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
- 4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the

victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.

- 5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.
- 6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
- 7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall inform in writing, within three days after the change, the law enforcement agency with which that individual last registered of the individual's new vehicle or computer online identity. If



an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with which that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section shall inform in writing within five days of the termination the law enforcement agency with which the individual last registered. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

- 8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
  - A period of fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
  - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
  - c. For the life of the individual, if that individual:
    - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
    - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
- (3) Is assigned a high risk by the attorney general as provided in subsection 12.
  9. An individual required to register under this section who violates this section is guilty of a class C felony. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.
- 10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked.
- 11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that

individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.

- 12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:
  - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
  - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
  - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
  - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
- 13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
  - a. Is required to register for a lifetime under subsection 8;
  - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
  - c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

- 14. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
- 15. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner



as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the juvenile attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.

- 16. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.
- 17. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.

#### 12.1-32-16. Restitution to be required of certain offenders - Penalty.

Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under section 14-09-25.

#### 13.0380.05001 Title.

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2211

Page 1, line 18, replace "Adequate care" with "Neglect"

Page 1, remove lines 19 and 20

- Page 1, line 21, replace "2." with "1."
- Page 1, line 21, replace "fails to meet the requirements of this section" with "engages in animal neglect"

Page 1, line 22, after "first" insert "or a second"

Page 1, line 22, replace "second" with "third"

Page 1, line 23, remove "occurring within five years"

Page 2, replace lines 1 through 10 with:

- "2. For purposes of this chapter, "neglect" means the failure to provide an animal with:
  - <u>a.</u> Food and water, as appropriate for the species, the breed, and the animal's age and physical condition;
  - <u>b.</u> 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."

Page 2, line 11, replace "4." with "3."

Page 2, line 14, after the second underscored comma insert "training,"

- Page 2, line 26, after "that" insert "willfully"
- Page 2, line 26, after "first" insert "or a second"
- Page 2, line 27, replace "second" with "third"
- Page 2, line 27, remove "occurring within five"
- Page 2, line 28, remove "years"
- Page 3, line 4, after the second underscored comma insert "training,"

- Page 3, line 18, after "that" insert "willfully"
- Page 3, line 20, remove "willful"
- Page 3, line 24, remove "willful"
- Page 3, line 29, after the second underscored comma insert "training,"
- Page 4, remove line 12
- Page 4, line 13, replace "2." with "1."
- Page 4, line 13, replace "abandons" with "engages in the abandonment of"
- Page 4, line 14, after "first" insert "or a second"
- Page 4, line 14, replace "second" with "third"
- Page 4, line 14, remove "occurring within"
- Page 4, line 15, remove "five years"
- Page 4, line 16, replace "3." with "2."
- Page 4, line 19, replace "adequately" insert "provide"
- Page 4, line 25, replace "4." with "3."
- Page 4, line 28, after the second underscored comma insert "training,"
- Page 5, after line 7, insert:
  - "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."
- Page 5, line 10, replace "denied adequate care" with "neglected"
- Page 5, line 21, after "provide" insert "care for"
- Page 5, line 21, remove "with adequate care"
- Page 5, line 22, after the underscored period insert "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."
- Page 6, line 14, remove "adequate"
- Page 7, line 1, after "Provide" insert "care for"
- Page 7, line 1, remove "with adequate care"
- Page 8, after line 2, insert:
  - "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."

Page 8, line 8, replace "denied adequate care" with "neglected"

Page 8, line 30, after the second underscored comma insert "training,"

Page 9, after line 21, insert:

....

### "36-21.2-15. Collectives - Status of offense.

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

Renumber accordingly

#### 13.0380.05001

Sixty-third Legislative Assembly of North Dakota

#### 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 <u>1.</u> 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
- 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.
- 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 <u>36-21.2-01. Adequate careNeglect Definition Exemptions Penalty.</u>
- 19 <u>1. A person having custody or control of an animal shall provide the animal with</u>
   20 adequate care.
- 21 2.1. Any person that willfully fails to meet the requirements of this section engages 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 second third or subsequent offense occurring within five years.

1	<u>3.</u>	<u>a.</u>	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		<u>b.</u>	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	e following do not constitute violations of this section:
25		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
26			of the livestock industry;
27		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
28			competition of animals;
29		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
30		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
31		<u>e.</u>	Lawful fishing, hunting, and trapping;

1		<u>f.</u>	Lawful wildlife management practices;
2		g.	Lawful research and educational activities involving the use of animals;
3		<u>h.</u>	Lawful control of pests, rodents, and predators;
4		<u>i.</u>	Lawful animal damage control activities;
5		Ŀ	Services provided by or under the direction of a licensed veterinarian; and
6		<u>k.</u>	The humane destruction of an animal for cause.
7	36-	21.2-	02. Animal abuse - Definition - Exemptions - Penalty.
8	<u>1.</u>	Any	y 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		offe	ense occurring within five 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		cru	elty, as set forth in section 36-21.2-03.
14	<u>3.</u>	The	e following do not constitute violations of this section:
15		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
16			of the livestock industry;
17		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
18			competition of animals;
19		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
20		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
21		<u>e.</u>	Lawful fishing, hunting, and trapping;
22		<u>f.</u>	Lawful wildlife management practices;
23		g.	Lawful research and educational activities involving the use of animals;
24		<u>h.</u>	Lawful control of pests, rodents, and predators;
25		<u>i.</u>	Lawful animal damage control activities;
26		Ŀ	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		<u>k.</u>	Services provided by or under the direction of a licensed veterinarian; and
29		Ŀ	The humane destruction of an animal for cause.
30	36-	21.2-	03. Animal cruelty - Definition - Exemptions - Penalty.
31	1.	Any	y person that willfully engages in animal cruelty is guilty of a class C felony.

1		For	a unacces of this chapter "animal equality" macro
	<u>2.</u>		purposes of this chapter, "animal cruelty" means:
2		<u>a.</u>	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		<u>b.</u>	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	<u>3.</u>	The	e following do not constitute violations of this section:
9		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
10			of the livestock industry;
11		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
12			competition of animals;
13		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
14		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
15		<u>e.</u>	Lawful fishing, hunting, and trapping;
16		<u>f.</u>	Lawful wildlife management practices;
17		<u>g.</u>	Lawful research and educational activities involving the use of animals;
18		<u>h.</u>	Lawful control of pests, rodents, and predators;
19		<u>i.</u>	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		<u>k.</u>	Services provided by or under the direction of a licensed veterinarian; and
23		<u>L</u>	The humane destruction of an animal for cause.
24	36-	21.2-	04. Animal abandonment - Definition - Exemptions - Penalty.
25	-1.	Ap	erson having custody or control of an animal may not willfully abandon the animal.
26	<del>2.</del> 1.	Any	y person that willfully abandonsengages in the abandonment of an animal is guilty
27		ofa	a class A misdemeanor for a first or a second offense and a class C felony for a
28		see	condthird or subsequent offense occurring within five years.
29	<del>3.</del> 2.	For	purposes of this chapter, "abandonment" means the relinquishment of a person's
30		cus	stody or control, with no intention of reclaiming that custody or control, and without
31		pla	cing the animal into the custody or control of another person that is able to
		100	

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	<u>1.</u>	A law enforcement officer may petition the court for an order directing the seizure of		
26		any animal believed to have been denied adequate careneglected, abused, treated		
27		cruelly, or subjected to any act or omission in violation of this chapter.		
28	<u>2.</u>	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	<u>3.</u>	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	36-2	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	<u>1.</u>	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	<u>3.</u>	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	<u>1.</u>	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	<u>2.</u>	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	<u>3.</u>	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	<u>5.</u>	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	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be
14		deposited in the county general fund.
15	<u>7.</u>	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	e title to any animal sold or adopted in accordance with this chapter passes to the
25	individu	al taking custody or control of the animal.
26	36-	21.2-10. Veterinarian.
27	<u>If u</u>	pon examining an animal a licensed veterinarian determines that there is reasonable
28	cause t	o believe an animal has been denied adequate careneglected, abused, treated cruelly,
29	or subje	ected to any act or omission in violation of this chapter, the veterinarian may retain
30	<u>custody</u>	of the animal and shall immediately notify law enforcement officials regarding the
31	determi	nation.

1	36-	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		aged animal on public d	splay shall ensure that:	
4		The size of the cage	allows the animal to stand up, lie down, and turn or move	
5		about; and		
6		The cage provides t	he animal with protection from the elements, as appropriate	
7		for the species, the	preed, and the animal's age and physical condition.	
8	<u>2.</u>	ny person that willfully f	ails to meet the requirements of this section is guilty of a	
9		ass A misdemeanor.		
10	<u>3.</u>	his section does not app	bly to:	
11		The North Dakota st	ate fair association;	
12		Agricultural fair asso	ciations;	
13		Livestock exhibitions	and competitions;	
14		Political subdivisions	<u>Si</u>	
15		Educational exhibition	ons; or	
16		Exhibitors licensed t	by the United States department of agriculture.	
17	<u>4.</u>	he following do not cons	stitute violations of this section:	
18		Any usual and custo	mary practice in production agriculture, including all aspects	
19		of the livestock indu	stry:	
20		Any usual and custo	mary practice in the breeding, raising, training, showing, and	
21		competition of anima	als:	
22		Any usual and custo	mary practice in the sport of rodeo and in animal racing;	
23		Any usual and custo	mary practice in livestock exhibitions and competitions;	
24		Lawful fishing, hunti	ng, and trapping;	
25		Lawful wildlife mana	gement practices;	
26		Lawful research and	educational activities involving the use of animals;	
27		Lawful control of pes	sts, rodents, and predators;	
28		Lawful animal dama	ge control activities; and	
29		Services provided b	y or under the direction of a licensed veterinarian.	

	Legislat	ive Assembly				
1	36-	21.2-12. Unattended animal in motor vehicle - Penalty.				
2	<u>1.</u>	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	<u>2.</u>	Any person that violates this section is guilty of an infraction.				
5	<u>3.</u>	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	<u>36-21.2-14. Estrays.</u>					
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	SE	CTION 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	repeale	d.				

Adopted by the Agriculture Committee

13.0380.05003 Title.06000

January 31, 2013

#### PROPOSED AMENDMENTS TO SENATE BILL NO. 2211

Page 1, line 18, replace "Adequate care" with "Neglect"

Page 1, remove lines 19 and 20

- Page 1, remove lines 19 and 20
- Page 1, line 21, replace "2." with "1."
- Page 1, line 21, replace "fails to meet the requirements of this section" with "engages in animal neglect"

Page 1, line 22, after "first" insert "or a second"

Page 1, line 22, replace the second "second" with "third"

Page 1, line 23, replace "five" with "ten"

Page 2, replace lines 1 through 10 with:

- "2. For purposes of this chapter, "neglect" means the failure to provide an animal with:
  - <u>a.</u> Food and water, as appropriate for the species, the breed, and the animal's age and physical condition;
  - <u>b.</u> 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."

Page 2, line 11, replace "4." with "3."

- Page 2, line 14, after the second underscored comma insert "training."
- Page 2, line 26, after "that" insert "willfully"

Page 2, line 26, after "first" insert "or a second"

Page 2, line 27, replace "second" with "third"

Page 2, line 27, replace "five" with "ten"

Page 3, line 4, after the second underscored comma insert "training,"

Page 3, line 18, after "that" insert "willfully"

Page 3, line 20, remove "willful"

Page 3, line 24, remove "willful"

Page 3, line 29, after the second underscored comma insert "training,"

Page 4, line 12, overstrike "y abandon the animal.", remove "<u>1.</u>" and remove "<u>A person having</u> custody or control of an animal may not willfully abandon the animal."

Page 4, remove line 12

Page 4, line 13, replace "2." with "1."

Page 4, line 13, replace "abandons" with "engages in the abandonment of"

Page 4, line 14, after "first" insert "or a second"

Page 4, line 14, replace the second "second" with "third"

Page 4, line 15, replace "five" with "ten"

Page 4, line 16, replace "3." with "2."

Page 4, line 19, replace "adequately" with "provide"

Page 4, line 25, replace "4." with "3."

Page 4, line 28, after the second underscored comma insert "training,"

Page 5, after line 7, insert:

"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."

Page 5, line 10, replace "denied adequate care" with "neglected"

Page 5, line 21, after "provide" insert "care for"

Page 5, line 21, remove "with adequate care"

Page 5, line 22, after the underscored period insert "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."

Page 6, line 14, remove "adequate"

Page 7, line 1, after "Provide" insert "care for"

Page 7, line 1, remove "with adequate care"

Page 8, after line 2, insert:

"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."

Page 8, line 8, replace "denied adequate care" with "neglected"

Page 8, line 30, after the second underscored comma insert "training,"

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#### "36-21.2-15. Collectives - Status of offense.

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

Renumber accordingly

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13.0380.05003

Sixty-third Legislative Assembly of North Dakota

### 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:

- SECTION 1. A new section to chapter 36-01 of the North Dakota Century Code is created
  and enacted as follows:
- 9 Restriction on importation of certain animals Exception.
- 10 <u>1.</u> 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 <u>36-21.2-01. Adequate careNeglect Definition Exemptions Penalty.</u>
- 19 <u>1. A person having custody or control of an animal shall provide the animal with</u>
   20 adequate care.
- 21 2.1. Any person that willfully fails to meet the requirements of this section engages 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 second third or subsequent offense occurring within fiveten years.

1	3.	<u>a.</u>	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		<u>b.</u>	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	1		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	e following do not constitute violations of this section:	
25		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects	
26			of the livestock industry:	
27		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and	
28			competition of animals:	
29		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing:	
30		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;	
31		<u>e.</u>	Lawful fishing, hunting, and trapping;	

Sixty-third Legislative Assembly

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		i. 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		I. 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		<u>a.</u>	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		<u>b.</u>	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	e following do not constitute violations of this section:			
9		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects			
10			of the livestock industry:			
11		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and			
12			competition of animals;			
13		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing:			
14		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;			
15		<u>e.</u>	Lawful fishing, hunting, and trapping:			
16		<u>f.</u>	Lawful wildlife management practices:	1		
17		g.	Lawful research and educational activities involving the use of animals;			
18		<u>h.</u>	Lawful control of pests, rodents, and predators;			
19		L	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		<u>k.</u>	Services provided by or under the direction of a licensed veterinarian; and			
23		Ŀ	The humane destruction of an animal for cause.			
24	36-	21.2-	04. Animal abandonment - Definition - Exemptions - Penalty.			
25	-1.	Ap	erson having custody or control of an animal may not willfully abandon the animal.			
26	<u>2.1.</u>	Any	Any person that willfully abandonsengages in the abandonment of an animal is guilty			
27		ofa	a class A misdemeanor for a first or a second offense and a class C felony for a			
28		see	condthird or subsequent offense occurring within fiveten years.			
29	3.2.	For	purposes of this chapter, "abandonment" means the relinquishment of a person's			
30		CUS	tody or control, with no intention of reclaiming that custody or control, and without			
31		pla	placing the animal into the custody or control of another person that is able to			

		ive Assembly
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 careneglected, 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		COS	sts, an	nd any	costs incurred in providing the animal with adequate care or in
2		pro	viding	for its	s destruction in accordance with section 36-21.2-06.
3	2.	<u>a.</u>	The	law e	nforcement agency that seized the animal has a lien upon the animal
4			for	all cos	ts incurred as a result of the seizure. The lien is superior to any other
5			clai	m or li	en.
6		<u>b.</u>	If th	e lien	is not satisfied by the animal's owner, the law enforcement agency may
7			app	ly to th	ne court for an order enforcing the lien.
8	3.	<u>If a</u>	seize	d anin	nal is sold, the proceeds must be used first to satisfy the lienholder to
9		the	exter	nt of th	e lien and second to satisfy any other claims involving the animal. Any
10		ren	nainin	g proc	eeds must be returned to the owner, as directed by the court. If the
11		ow	ner is	unkno	wn, any proceeds otherwise payable to the owner must be deposited in
12		the	gene	ral fun	nd of the county.
13	36-	21.2-	08. A	bando	oned animal - Law enforcement officer - Duties.
14	1.	Ala	aw en	forcen	nent officer may take custody of an animal if the officer has reasonable
15		cau	ise to	believ	e that the animal has been abandoned in violation of this chapter.
16	2.	<u>a.</u>	Upo	on taki	ng custody of an animal in accordance with this section, the law
17			enfe	orcem	ent officer shall:
18			(1)	Prov	ide care for the animal with adequate care, either directly or through a
19				cont	ractual arrangement with another person: and
20			(2)	<u>(a)</u>	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		<u>b.</u>	For	purpo	ses of this subdivision, notice may be provided by:
27			(1)	Publ	ication in the official newspaper of the county if the newspaper is
28				publ	ished daily or in a daily newspaper serving the county:
29			(2)	Any	electronic means: or
30			(3)	Post	ing 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	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be
14		deposited in the county general fund.
15	<u>7.</u>	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	individu	al taking custody or control of the animal.
26	36-	21.2-10. Veterinarian.
27	If up	oon examining an animal a licensed veterinarian determines that there is reasonable
28	cause to	<u>p believe an animal has been denied adequate careneglected, abused, treated cruelly.</u>
29	or subje	cted 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	determi	nation.

1	36-	21.2-	11. Caged animals - Public display - Exemptions - Penalty.
2	1	<u>In a</u>	addition to any other requirements set forth in this chapter, a person placing a
3		cag	ed animal on public display shall ensure that:
4		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move
5			about: and
6		<u>b.</u>	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		clas	ss A misdemeanor.
10	3.	This	s section does not apply to:
11		<u>a.</u>	The North Dakota state fair association;
12		<u>b.</u>	Agricultural fair associations:
13		<u>C.</u>	Livestock exhibitions and competitions:
14		<u>d.</u>	Political subdivisions:
15		<u>e.</u>	Educational exhibitions: or
16		<u>f.</u>	Exhibitors licensed by the United States department of agriculture.
17	4.	The	e following do not constitute violations of this section:
18		<u>a.</u>	Any usual and customary practice in production agriculture including all aspects.
19			of the livestock industry:
20		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
21			competition of animals:
22		<u>c.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
23		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
24		<u>e.</u>	Lawful fishing, hunting, and trapping:
25		£	Lawful wildlife management practices:
26		g.	Lawful research and educational activities involving the use of animals;
27		<u>h.</u>	Lawful control of pests, rodents, and predators;
28		Ŀ	Lawful animal damage control activities: and
29		Ĺ	Services provided by or under the direction of a licensed veterinarian.

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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	<u>3.</u>	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	veterina	rian's own initiative or at the request of a law enforcement officer or other governmental		
10	entity, re	enders emergency treatment to a sick or injured animal under this chapter. Immunity		
11	under th	nis section does not apply in the case of negligence.		
12	36-	21.2-14. Estrays.		
13	This	s 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	SE	CTION 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	repeale	d.		



## SB 2211

#1a 3/1/12

# Senator Tim Flakoll - January 22, 2013

Chairman Johnson, Vice-chairman Wall and members of the House Agriculture committee. For the record I am Senator Tim Flakoll of District 44 of Fargo. I am pleased to sponsor this humane treatment of animals' bill. It represents countless hours of dialog and decision making from a diverse group who were driven by a sense of unified purpose over nearly a two-year period.

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My support comes from a broad spectrum of experiences and interests. I grew up on a farm that included 350 cow/calf pairs and a 1,000 head feedlot. I taught Animal Science classes and conducted animal nutrition and reproductive physiology research at NDSU and served as Chair of the Senate Agriculture Committee for 10 years. I currently serve at the Co-Chairman of the Agriculture and Natural Resources committee for the CSG Midwest. I have owed horses, cattle, swine, sheep, dogs and cats. I have served on many boards including the ND Winter Show Livestock committee. I was President of the ND Shorthorn Cattle Association and served as Editor of a modest sized national beef publication.

Unfortunately we know that many people do bad things to animals for a variety of reasons, even though these are rare occurrences.





The bill you have before you is a very solid bill. SB2211 provides protection for animals <u>and</u> their owners. It provides a comprehensive and lasting resolution to the issue of the humane treatment of animals. The language of the bill is largely the result of the North Dakotans for Responsible Animal Care group. This group is comprised of representatives more than 10 animal related groups and related agency experts.

The group's dogged determination and desire to protect animals and their owners is commendable and I hope their efforts are rightly rewarded with the passage of this bill.



SB 2211 provides graduated levels of sanctions against "bad actors" who improperly treat animals. While we know that there is nothing that will fully prevent improper actions by individuals, SB 2211 provides the proper law enforcement and legal remedies. At its highest level, a person can receive a felony conviction in those most egregious cases.

I have a supplemental sheet (goldenrod colored) which provide a quick reference for the type of violation and the penalty associate with it.

For some, the bill might not be perfect - they would like it much stricter for others they would like it looser. So that likely means we have it in a pretty good shape. It is important that we not push aside an excellent bill in search of perfect. Because perfect can be migratory and elusive 8

and we know that what was perfect 50 years ago very well might not be perfect today.

Mr. Chairman, I served in the Animal Science Department at NDSU for 11 years and yet I have little knowledge as to how well an animal can reason or how they communicate, but I do know that they can suffer, be it physical pain or the pain of loss that a momma cow has when their calf dies or the depression a dog feels when their owner dies.

While civilized society cannot prevent all of life's pains for humans ....or their animals there is certainly an expectation of a standard of quality of life that we must support.



SB 2211 deals with those "bad actors" who intentionally inflict cruelties on defenseless creatures or are a party to such acts of abuse or neglect.

While North Dakota is not fraught with violations, I feel the need to provide the proper framework to address those who violate the natural laws of goodness and we need to provide sanctions against the violators. The bill also ensures the proper care of, or if necessary, the dignified end to the animals God has given us.



I fully admit that I voted against Measure 5 and encouraged others to do the same. Not because I don't want animals protected, but rather I wanted to have legislation in place that would properly address a broad spectrum of issues. This bill, SB2211, does that and it is our last - best - option. It addresses the type of issues,



which even though rare, are more likely to occur in our state than some obscure occurrence.

SB 2211 is a wonderfully crafted bill that is thoughtful and logical in its approach.

There are many animal industry stakeholders who are here to testify this morning – a testament to the broadbased support for this bill. You will hear testimony in support of the bill this morning from individuals representing more than 40 agriculture groups across the state plus more than 10 people who served on the working group who support the bill. Members of the working group have opted to speak to the bill in a sectionby-section fashion to give you a clear understanding of the bill and what it means from their industry perspective.

Their testimony will help clear up a number of missinterpretations or misrepresentations that are floating around.

Chairman Johnson and committee members, today is a big day. You have before you the humane treatment of animals bill for your consideration. It is a bill whose time has come.

You have before you a wonderful bill that is the result of countless hours of work by <u>many</u> people. People who have invested every ounce of their being into providing for you and the public with our very best and it something that we hope you will like.





The bill passed both the Senate Agriculture committee and the full Senate with a unanimous vote.

Chairman Johnson that completes my testimony and I would be happy to answer questions.

# ### End ###

#16 Senator Flakoll

### Penalties by Classification of Offense

12.1-32-01. Classification of offenses - Penalties. Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

- Class AA felony maximum life imprisonment without parole The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole.
- Class A felony maximum 20 years, a fine of \$10,000, or both.
- Class B felony maximum 10 years, a fine of \$10,000, or both.
- Class C felony maximum 5 years, a fine of \$5,000, or both.
- 5. Class A misdemeanor maximum 1 year, a fine of \$2,000, or both.
- 6. Class B misdemeanor maximum 30 days, a fine of \$1,000 or both.
- 7. Infraction maximum \$500 fine.

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13.0380.07004 Title. Prepared by the Legislative Council staff for Senator Flakoll March 6, 2013 AC,

# PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 3, line 23, replace "<u>and</u>" with "<u>or</u>" Page 6, line 15, replace "<u>The</u>" with "<u>If found guilty, the</u>" Page 6, line 20, after "<u>seizure</u>" insert "<u>and conviction</u>" Page 9, line 26, replace "<u>Status</u>" with "<u>Enhancement</u>" Page 9, line 27, replace "<u>any</u>" with "<u>a</u>" Page 9, line 28, replace "<u>incident</u>" with "<u>offense</u>" Page 9, line 28, after "<u>for</u>" insert "<u>enhancement</u>" Page 9, line 28, remove "<u>of</u>" Page 9, line 29, remove "<u>determining the status of the offense</u>" Renumber accordingly



Testimony of L. Anita Thomas for SB 2211 Attorney, ND Legislative Council March 7, 2013

I am here at the request of the Chairman, for the purpose of providing information regarding the repealed sections.

The sections to be repealed are not printed out in Engrossed SB 2211, but referenced in the bill only by number. This is a standard bill drafting procedure. Nevertheless, the bill's sponsor asked that you be provided with a copy of the repealed sections.

On the left side of the document you will find the repealed sections in their entirety, as they exist in current law and on the right side, there is a chart indicating generally where those concepts are placed in the new bill. Sometimes, when we draft bills, we find that the old language would require so much amending - so many overstrikes and underscores -- that it would be hard to read and even harder to comprehend. Added to that is the fact that when we are working with existing language, we can't move sections around -- We can't reorder them so that they are part of a more logical progression.

As an example, if you look at the first repealed section - The <u>definitions</u> -- You will see that they are found in Engrossed SB 2211 on page 4, page 1, and page 3, in that order.

The provisions of the next section - the *overworking, mistreating, or abandoning of animals* can now be found in the sections pertaining to cruelty, the duty to prohibition against neglect, animal abandonment, and the public display of caged animals. Again, we moved the concepts around quite a bit.

The third repealed section, <u>cruelty in transportation</u> was omitted as a separate section. The concept, however, was carried forward within the new sections pertaining to neglect, abuse, and cruelty.

The unattended dog or cat in a motor vehicle is paralleled on page 9 of the bill.

Similarly, the section dealing with the *poisoning of animals* is incorporated in Engrossed SB 2211 as an act of abuse or cruelty.

The section entitled *Exposure of animals - Authority of Officers*, under current law addresses the seizure of animals exposed to the cold or inclement weather, as well as those not properly fed and watered.

Engrossed SB 2211 provides for the seizure of animals if they have been neglected, abused, treated cruelly, or subjected to any other act or omission that is in violation of the chapter. Like current law, the proposed language in Engrossed SB 2211 addresses care of the seized animal, the issuance of notice, liens, costs, the distribution of any proceeds, and the imposition of conditions by the court if the animal is to be returned to the owner.



**Duties of the board and commissioner** - This section allows the state board of animal health to restrict the importation and sale or distribution of domestic or wild animals if there is a threat to the human or animal population. It belongs in the chapter dealing with the board of animal health, not with the humane treatment of animals. So, it was moved. It is actually section 1 of the bill - and presented as a new section to chapter 36-01.

The final repealed section, <u>Abandoned animals - Assumption of custody</u> is now addressed on pages 6 and 7 of SB 2211.

L. Anita Thomas, J.D., LL.M. (701) 328-2916 main office (701) 328-4235 direct line (701) 226-3143 cell phone



# ENGROSSED SENATE BILL NO. 2211 - PLACEMENT OF CONTENT FROM REPEALED SECTIONS

#### 36-21.1-01. Definitions.

In this chapter, unless the context otherwise requires:

- "Abandoned animal" means an animal that is or reasonably appears to have been deserted by its owner or keeper. The term may include an animal that is running loose on property other than that of its owner or the owner's agent if the animal bears no identification indicating the owner or the owner's agent and the owner or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter.
- "Adequate care" means normal and prudent attention to the needs of an animal, including wholesome food, clean water, shelter, and health,care, as necessary to maintain good health in a specific species of animal.
- 3. "Animal" includes every living animal except the human race.
- 4. "Commissioner" means the agriculture commissioner.
- "Cruelty" or "torture" means any act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. The term does not include:
  - Any activity that requires a license or permit under chapter 20.1-03;
  - Any activity that is usual and customary practice in production agriculture;
  - c. Any scientific research conducted at a public or private facility or laboratory by or under the direction of a qualified researcher;
  - d. Any show, fair, competition, performance, or parade;
  - e. A rodeo;
  - f. A wagon or buggy ride;
  - g. Trail or pleasure riding; or
  - h. Any activity that involves the training or teaching of animals.
- "Investigator" means any person approved by the board to determine whether there has been a violation of this chapter.

Subsection 1 Abandonment	Page 4	Line 15
Subsection 2 Adequate care	Page 1	Line 22 <sup>1</sup>
Subsection 3 Animal	N/A	
Subsection 4 Commissioner	N/A	
Subsection 5 Cruelty or torture	Page 3	Line 19
Subsection 6 Investigator	N/A	a feit

<sup>1</sup>Rather than requiring "adequate care," the Senate opted to define "neglect" as the failure to provide various listed necessities.

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This section contains a list of prohibited activities that are incorporated in several 36-21.1-02. Overworking, mistreating, or abandoning animals. 1. No person may overdrive, overload, torture, cruelly beat, neglect, or sections of Engrossed Senate Bill No. 2211. unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any Line 19 Subsection 1 Page 3 animal when unfit for labor. Torture/cruelty 2. No person may deprive any animal over which the person has charge or Subsection 2 Page 1 Line 22 control of necessary food, water, or shelter. Deprivation 3. No person may keep any animal in any building, room, cage, or pen Subsection 3 Page 2 Line 4 without adequate care. Caged animal Subsections 4 and 5 Page 4 Line 11 No person may abandon any animal. Abandonment 5. A person shall reclaim an animal within forty-eight hours of the agreed-Subsection 6 Page 2 Line 3 upon time for termination of a boarding contract and pay all charges for Medical attention boarding the animal. Subsection 7 Line 17 Page 3 6. No person may allow any maimed, sick, infirm, or disabled animal of Cruelty which the person is the owner, or of which the person has custody, to lie Page 8 Subsection 8 Line 15 in any street, road, or other public place for more than three hours after Caged animal notice. 7. No person may willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty. 8. No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal. This subsection does not apply to the North Dakota state fair association, to agricultural fair associations, to any agricultural display of caged animals by any political subdivision, or to district, regional, or national educational livestock or poultry exhibitions. Zoos which have been approved by the health district or the governing body of the political subdivision which has jurisdiction over the zoos are exempt from this subsection. 36-21.1-03. Cruelty in transportation. This section is generally covered within the duty to provide an environment that No person may carry, or cause to be carried, any live animals upon any is free of conditions likely to cause injury or death [Page 2, Line 9]; the vehicle or otherwise, without providing suitable racks, cars, crates, or cages, prohibition against abuse [Page 2, Line 26]; and the prohibition against cruelty or other proper carrying container, nor may a person car y an animal, or [Page 3, Line 18]. cause an animal to be carried, in any other cruel manner. 36-21.1-03.1. Unattended dog or cat in motor vehicle. This section is addressed on Page 9, Line 13. No person may leave a dog or cat unattended in a stationary or parked motor vehicle in a manner that endangers the animal's health or safety. Any person who violates this section is guilty of an infraction. 36-21.1-04. Poisoning animals. This section is generally covered within the prohibition against abuse [Page 2, Line 25]; and the prohibition against cruelty [Page 3, Line 17]. No person may unjustifiably administer or expose any known poisonous substance or noxious drug, whether mixed with meat or other food or not, N P MAR which may be eaten by any domestic animal

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- Any sheriff, police officer, licensed veterinarian, or investigator may take custody of and care for any animal unjustifiably exposed to cold or inclement weather or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 36-21.1-03.1.
   Line disposition.
   Subsection 1 Subsection 1 Subsection 2 Gre of a seized an
- A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until it is redeemed by the owner or authorized agent of the owner and when necessary may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.
- 3. If the owner or the owner's agent is known, the individual must be immediately notified. If the owner or the owner's agent is unknown, notice must be given by publication in the manner prescribed by law. The notice must inform the owner or the owner's agent that the animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days from the date of the notice.
- 4. The sheriff, police officer, licensed veterinarian, investigator, or whoever has custody of the animal has a lien on the animal and that lien is superior to any other claim or lien, for the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after receipt of the notice, the person holding the claim may apply to the district court for an order to sell the animal and discharge the lien.
- Upon order of the court, the animal may be sold at a public market to pay the charges for its keeping, and the title to the animal passes by the sale.
- 6. The court may award costs and reasonable attorney's fees to the person bringing the action to enforce the lien, arrange for the adoption of the animal, or arrange for the destruction and disposal of the animal if no market exists for the animal or if the animal is a companion animal.
- 7. If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be paid over to the owner or the owner's agent, if known. If the owner or the owner's agent is not known, the remainder must be deposited in the county general fund. If no purchaser is found, the animal, at the discretion of the commissioner, may be offered for adoption or disposed of consistent with the law.
- 8. Before the animal is returned to its owner, the court shall determine whether the owner or the owner's agent can provide adequate care for the animal. The court has ten days within which to make this determination. The owner shall pay the cost of taking the animal into custody before the animal is released to the owner or the owner's agent.

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This section pertains to the seizure of animals, their subsequent care, and their ultimate disposition.

Subsection 1 Seizure of animal	Page 5 Page 6	Line 10 Line 29
Subsection 2 Gre of a seized animal	Page 5	Line 22
Subsection 3 Notice	Page 5	Line 27
Subsection 4 Lien	Page 6	Line 14
Subsection 5 Satisfaction of lien	Page 6	Line 22
Subsection 6 Costs	Page 6	Line 15
Subsection 7 Distribution of proceeds	Page 6	Line 24
Subsection 8 Return to owner	Page 6	Line 11

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Trave b b ir b t t ir o v t t a	<b>1.1-12. Duties of board and commissioner.</b> The board shall adopt rules to effectuate this chapter. The board by rule may estrict the importation into the state, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the oard may have reason to believe may be a threat to the health and well eeing of the human or animal population of the state, or both, unless the mportation or sale is for bona fide scientific or educational purposes. The oard shall establish reasonable qualifications for approved investigators and the commissioner shall maintain a current listing of all approved investigators. Employees of the commissioner may be assigned as investigators. The commissioner may by injunctive procedure without bond or other undertaking proceed against any person or persons for a continuous iolation of any provision of this chapter. No liability may accrue to the board, the commissioner, or any authorized representative in proceeding against any person or persons pursuant to this section.	and sale or distribution of animal may pose a threa animal population. It has been placed in Nort to the State Board of Ar No. 2211 [Page 1, Line 9] The reference to investiga	domestic or wild animals t to the health and well-be th Dakota Century Code C himal Health via Section tors has been removed.	Ith to restrict the importation if the board believes that the eing of the state's human or hapter 36-01, which pertains 1 of Engrossed Senate Bill
36-21.1-13. Abandoned animals - Assumption of custody.		This section pertains to the taking of abandoned animals, their subsequent care, and their ultimate disposition.		
	custody of and care for any animal found abandoned. The individual taking custody shall take reasonable steps to determine the ownership of the abandoned animal	Subsection 1 Taking custody of an abandoned animal	Page 6	Line 29
2.	A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until the animal is redeemed by the owner or the owner's agent or may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.	Subsection 2 Care of an abandoned animal	Page 7	Line 1
3.		Subsection 3 Notice	Page 7	Line 5
	jurisdiction. The notice must provide that the animal may be sold, placed for adoption, or otherwise disposed of if the animal is not redeemed within five days from the date of the notice.	Subsection 4 Lien	Page 7	Line 20
4.		Subsection 5 Satisfaction of lien	Page 7	Line 20
4.	animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after publication of the notice, the person holding the claim may sell the animal and discharge the lien.		Page 7	Line 28
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5.	The court may award reasonable attorney's fees to the person bringing the action to enforce the lien and may award costs, which include the costs of arranging for the adoption of the animal or the costs of the destruction and disposal of the animal.			a factor
6.	If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be deposited in the county general fund.	- 1		
	and the second sec	1 - (x - (y - x))	$= \frac{1}{k!} \frac{1}{k!}$	ne hise

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# Testimony concerning SB 2211 by Jeff Ubben Assistant Burleigh County State's Attorney

Good morning Chairman Johnson and members of the House Agriculture Committee. My name is Jeff Ubben, I am an Assistant Burleigh County State's Attorney here in Bismarck. My job duties include prosecuting criminal offenses committed in Burleigh County, including cases of animal cruelty, abandonment, and neglect.

The language contained at page 9, lines 26-29, entitled "Collectives – Status of Offense" has created confusion amongst prosecutors. Namely, this language could be interpreted to say that only one count could be charged for an entire herd of animals, no matter if there are one hundred (100) dead or neglected animals present in the herd or simply a single dead or neglected animal present in the herd. Recently, Morton County had a case of approximately one hundred (100) animals that were starved to death all within the same herd. It is my understanding that the drafters of this bill did not intend to limit the number of counts that could be charged in massive cruelty or neglect cases like the ones we've seen in Morton and Burleigh counties recently. That is why I am offering these amendments today, to clear up the confusion that would result if this language is not clarified.

I have spoken with a Morton County prosecutor who handles animal cruelty, abandonment, and neglect cases and he believes the language currently in the bill limits prosecutors to one charge for an entire herd. I, on the other hand, read the language differently, as I believe it allows for multiple charges for the same herd, if warranted, and that the language simply attempts to clarify that prosecutors can only use previous misdemeanor convictions from previous incidents to elevate a new offense to a felony level offense. In other words, if an individual has no prior convictions for this offense, a prosecutor cannot elevate or enhance to a felony charge by using charges arising from the same incident.

In summation, I am hoping this committee will adopt these amendments to clarify this section of the bill. I fear that if this language is not clarified, it will lead to confusion amongst prosecutors which will in turn lead to different charging methods in neighboring counties and in counties across this state. I am also concerned that at some point in the not too distant future, a criminal defendant will appeal a conviction under this section to the North Dakota Supreme Court, and we will have the five Supreme Court justices telling us what this section of the law means.

Ultimately, I do not take a hard position on whether prosecutors should be allowed to charge multiple counts for animal cruelty, abandonment, or neglect occurring within a single herd. There would appear to be cases where such action is warranted, such as the massive horse neglect case referred to earlier. However, my main concern is that a felony charge be allowed for in cases of animal cruelty, which this bill does without adopting my amendments. I simply wanted to bring prosecutors' views before this committee as ultimately, we, along with law enforcement, are going to be the ones charged with enforcing this legislation if it is passed and making sure it is enforced consistent with the intent of those that pass this legislation into law. I would stand for any questions the committee may have.

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Good morning, Chairman Johnson and members of the House Agriculture Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association is a member of the North Dakotans for Responsible Animal Care coalition, which initiated the bill draft before you. As you remember, we appeared before you during the last legislative session to discuss our initial work and our intentions to study the state's animal treatment laws and bring forth recommendations to strengthen and clarify them – for the good of animals and animal stewards.

Our group continued the work we had started and, in our estimation, achieved a comprehensive bill that addresses all animals and provides clear definitions, appropriate exemptions, an array of penalties and clarity for law enforcement officers, vets and others who must respond in mistreatment cases. This is a complex subject, and it was a mammoth task, but one that was accomplished by having a diverse group of North Dakota stakeholders who truly care about animals iron out the details and ensure that the priorities and concerns of their respective disciplines were reflected in the language.

Back in 2008, when the work on this particular bill first began, state's attorneys indicated that our current statute was antiquated and confusing, lumping "cruelty," "torture," and "neglect" all in one definition. Our group agreed that acts of mistreatment should be better defined, and we concentrated a considerable amount of time refining definitions for neglect, abuse, cruelty and abandonment and enumerating the appropriate exemptions for each act. I will walk you through Sections 36-21.2-01, 02, 03 and 04 to give you a better

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understanding. Simply put, there are four criminal acts in this bill: neglect; abuse; cruelty; and abandonment.

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Neglect is defined in Section 36-21.2-01. While it uses our current statute as its basis, it improves upon that definition by providing a flexible standard on page 2, to recognize the differing needs of animals based on their species, breed, age and physical condition. For example, the appropriate feed for a small kitten would be entirely different than that for an adult cow, and the language provides for an appropriate differentiation.

On page 2, line 11, you will notice a list of exemptions that accompany the definition. This list was critically important to Stockmen's members, as we want to ensure that usual and customary practices in production agriculture – like branding, castrating or dehorning, for instance – are not inadvertently or inappropriately construed as an act of mistreatment and put legitimate, appropriately behaving livestock producers at risk. The list of exemptions also includes things like usual and

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customary practices in rodeo, racing, livestock exhibitions and animal damage, pest, predator and rodent control; lawful fishing, hunting and trapping; services provided by or under the direction of a veterinarian; and other actions that are specifically identified to ensure that they are not confused with or regarded as ill action.

> Abuse is defined in Section 36-21.2-02 and is different than the neglect piece in that it applies to affirmative actions against animals, as compared to omissive actions. This definition also includes an accompanying list of exemptions, comparable to those in the neglect section, but also including the right of an individual to defend against an animal that is or is about to attack.

When a person neglects or abuses an animal, he or she is subject to a Class A misdemeanor for a first or second offense or a Class C felony for a third or subsequent offense within 10 years. The working group vetted the penalty structure at length, deciding that a tiered system would be the best way to match the punishment with the crime and to provide a deterrent for repeat offenses.

Cruelty is defined in Section 36-21.2-03. It applies to the most egregious acts against animals and is much more serious than abuse. Therefore, acts deemed as cruelty qualify for up to a Class C felony on the first offense. The cruelty definition, like the other acts of mistreatment, includes the full list of exemptions to protect and segregate appropriate, legitimate actions from acts of cruelty.

Fourth is Section 36-21.2-04 and the definition of abandonment, which is relinguishing a person's custody or control with no intention of reclaiming it and second and second and second ensure without placing the animal in the custody and control of another to ensure that it is a decentration of a adequately cared for. As a livestock organization, it was important to us that the law Red of the second continued to draw the distinction between abandoned animals and estrays, which which we consider the No was sare covered in another chapter, a stabilized to all the stability of the second stability of the stability of the second stability of the seco The definition of abandonment, like the other actions, includes a list of exemptions to clarify intent and provides for a three-tiered graduated penalty system, with the and the state of the second lower-level Class A misdemeanor on a first and second offense and a ramped-up Class C felony for repeat offenses occurring within 10 years.

> The Stockmen's Association committed an inordinate amount of time to this bill and this issue because not only do we want to assure the proper care of animals, but we want to assure that any language adopted does not unintentionally harm those in agriculture who are everyday stewards of their livestock. We believe that that balance has been achieved in this bill and its passage will be a proactive step for our industry and our state, and one that assures that our animal treatment laws are shaped by North Dakota citizens who have the best interest of animals and the people who care for them in mind.



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We urge your favorable consideration of this bill.

ndda@nd.gov www.nd.gov/ndda

COMMISSIONER DOUG GOEHRING



NORTH DAKOTA DE PARTMENT OF AGRICULTURE STATE CAPITOL 600 E BOULEVARD AVE DEPT 602 BISMARCK ND 58505-0020

Testimony of Agriculture Commissioner Doug Goehring Senate Bill 2211 House Agriculture Committee Brynhild Haugland Room 9:00am, March 6, 2013

Chairman Johnson and members of the House Agriculture Committee, I am Doug Goehring, North Dakota Agriculture Commissioner. I am here in support of SB 2211, which will create North Dakota Century Code (NDCC) chapter 36-21.2 to amend North Dakota's animal treatment laws.

I witnessed first-hand the members of North Dakotans for Responsible Animal Care (NDRAC) work to find common ground on a very difficult subject. The diversity of the NDRAC members, local humane societies, agriculture organizations, veterinarians and a zoo, signify the importance of a comprehensive approach to amending North Dakota's humane treatment laws. Over the past two and half years, these organizations have devoted countless hours to this effort and I would be remiss not to thank all of the members at this time, so I sincerely thank you for your dedication.

The work of NDRAC is not finished until we pass Senate Bill 2211, a comprehensive approach to strengthen and clarify animal care laws in North Dakota. This legislation is well balanced, addressing the most common cases of inhumane treatment of animals to those willful actions that cause serious injury, illness or death to an animal. The bill includes an array of maximum penalties to fit the severity of the crime from an infraction to a Class C felony.

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The bill clarifies and provides guidance to law enforcement officers when seizing an animal, which is in sections five through eight of the chapter. These sections also describe the

Equal Opportunity in Employment and Services



notification to the animal owner, the costs of care for a seized animal, and the responsibilities of the court and veterinarians in determining the disposition of the seized animal.

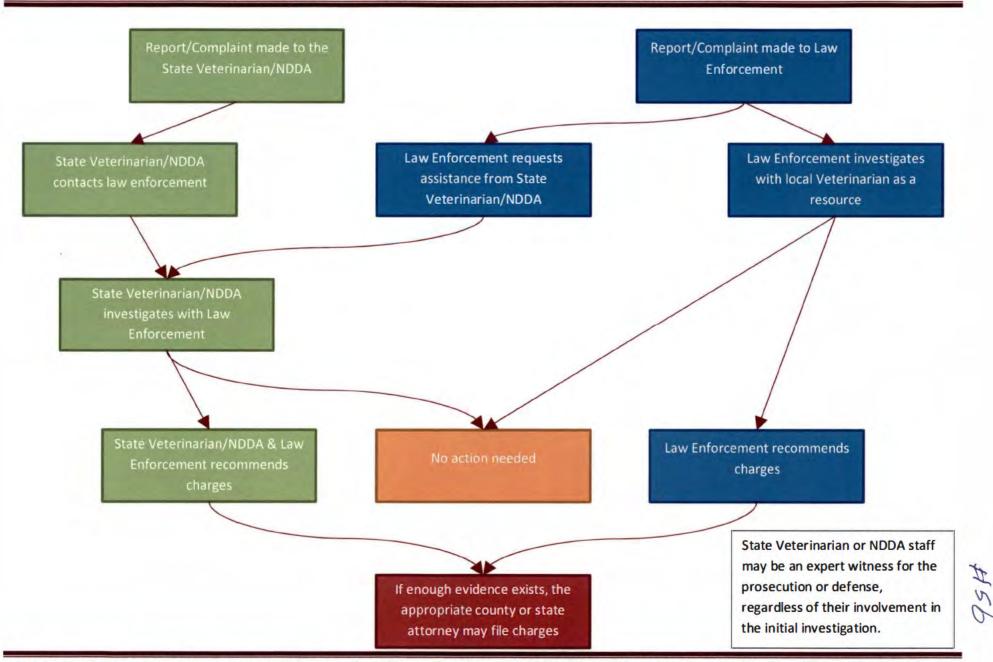
Concerns have been raised that this bill removes the rule-making authority for the board of animal health and the agriculture commissioner, which is not the case. NDCC § 28-32-02 grants blanket rule-making authority to any agency who enforces a particular chapter. Since the board of animal health and the agriculture commissioner administer this chapter, the ability to promulgate rules remains.

Chairman Johnson and committee members, I urge a "do pass" on SB 2211 because it is important that we strengthen and clarify our North Dakota humane treatment laws, and I would be happy to answer any questions you may have.

Thank you.



Flow Chart for Cases of Inhumane Treatment of Animals



NDCC 36-01-08, "Any matter relating to the health and welfare of domestic animal and nontraditional livestock and not specifically assigned by statue to another entity is deemed to be within the authority of the board."

# Senate Bill 2211 **House Agriculture Committee** March 7, 2013

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Chairman Johnson and members of the House Agriculture Committee, my name is Dr. Del Rae Martin. Jam a Past President of the North Dakota Veterinary Medical

Association and have been their representative on humane treatment issues for several years. elte weine autoriste

1 J appear before you in support of Senate Bill 2211. The North Dakota Veterinary Metheal should be a senate bill 2211. Association strongly supports the humane treatment of all animals. Our association and the American Veterinary Medical Association support the use of the legislative process, for community al Vision establish policies whose end results benefit all animals, those in the animal use industries and meets public expectations: The NDVMA joined multiple North Dakota organizations to meet Company distributions of the Sector Control De these goals; through the North Dakotans for Responsible Animal Care.

I would like to review with you the North Dakotans for Responsible Animal Care's rational starting on page 8, 36-21.2-10 Veterinarian. Current statue states veterinarians may take custody of any animal unjustifiably exposed to cold or inclement weather or not properly fed and watered and for any animal found abandoned. Current statue does not provide for veterinarians to intervene in cases where there is lack of adequate care, neglect or abuse. 36-21.2-10 would allow veterinarians to retain custody in situations we encounter and directs veterinarians on how to proceed. For example, I examined a dog that had severe matting of the hair coat and overgrown nails, which resulted in a severe skin and nail bed infection. Even knowing I did not have statutory authority, I advised the client if they did not follow my medical treatment and bring the dog in for a weekly exam I would keep the dog and contact ed with the terms appropriate authorities.

36-21.2-11. Caged animal-Public display, updates the language currently found in statute. An example of application of this statute would be an unlicensed petting zoo. 36-21.2-12. Unattended animal in motor vehicle. The language was changed to include all animals and consolidated wording from two different sections in current statue to one section.

36-21.2-13. Immunity from liability. This section was written by the legislative council to provide veterinarians protection from liability. A situation where this section may apply would be animals that are starved and presented for treatment, but the animal dies in spite of a proper veterinary care. An example of where immunity would not apply would be if instead of giving an IV injection of steroids for shock, euthanasia solution was mistakenly given instead.

In addition to serving the NDVMA, I am a practicing partner at Heart River Animal Hospitales, in which in Mandan, North Dakota. I have been involved in providing veterinary services to local, the skear is animal shelters in 2 different states for 27 years. Veterinarians across North Dakota encounter diderent states cases where animals lack adequate care or are abandoned on a frequent basis. For example, veterinarians are examining dogs that are being used in breeding operations that are not receiving adequate care. For the past 12 years, Heart River Animal Hospital has been providing veterinary services for the Central Dakota Humane Society of Bismarck-Mandan and has been involved in 4 breeding operation rescues. The dogs' medical needs generated over 100 pages of medical records in our practice. Dogs had severe dental disease requiring multiple extractions, eye and ear infections, skin infections on their bodies and open sores on their feet, diarrhea from parasitism, poor condition due to poor nutrition and mammary tumors are a few of the conditions we treated.

The North Dakota Veterinary Medical Association does acknowledge the fact that extreme forms of animal cruelty have occurred in North Dakota and appropriate penalties should be assessed. The NDVMA supports the Class C felony penalty for animal cruelty as defined in 36-21.2-03. In addition, situations of neglect, abuse and abandonment are where the NDVMA feels the tiered penalty provision in Senate Bill 2211 will strengthen the current Humane Treatment of Animals Chapter.

This concludes my testimony. The North Dakota Veterinary Medical Association thanks you in advance, for your consideration of a do pass recommendation of Senate Bill 2211.

I would be happy to answer any questions you may have for me.

Senate Bill No. 2211 Testimony before the House Agriculture Committee Presented by Cameo Skager, President, CDHS Board of Directors Central Dakota Humane Society March 7, 2013

Mr. Chairman, Members of the Committee:

My name is Cameo Skager. I am the President of the Board of Directors of Central Dakota Humane Society (CDHS) in Mandan. I am here to testify in support of Senate Bill 2211.

CDHS is an animal shelter located north of Mandan. We are not affiliated with the Humane Society of the United States, nor do we receive funding from that organization – just as we do not receive any federal, state or local funding. We serve central North Dakota and in times of great need, we help across the state and even in other areas of the United States. We housed animals at our shelter during the Missouri River flood, sent volunteers to help in Minot during their time of need, and have traveled as far as Alabama to volunteer during the aftermath of Hurricane Katrina and to Iowa to rescue animals in peril from their flood waters.

We are not a radical animal rights organization. Many of our employees and volunteers were raised on farms and ranches which provided the foundation for their love of animals. We've had hunters and sportsmen on our board of directors.

We are proud to say that our nonprofit organization is an asset to the community. CDHS's mission is to provide for, house, rehabilitate and relocate lost, strayed or homeless animals. These are animals that otherwise may have to be provided for by community impound facilities at taxpayer expense. We also advocate for spaying and neutering of pets, educate about pet owner responsibilities and provide an outlet for community volunteerism. During my work with CDHS, I have learned of many examples of abuse and neglect of animals. These cases run a broad spectrum and certainly not all cases merit the same treatment. SB 2211 outlines a penalty structure which permits the penalty to reflect the seriousness of the act, providing a felony provision for outrageous acts. For example:

- Aubrey, a cat that was "cooked" in the microwave by her owner.
- Smiley, a dog with an obvious open leg wound that was left by her owner to suffer for many weeks without any medical care.
- A puppy whose head was stepped on and smashed. A man killed the dog in front of his cousin's girlfriend.

CDHS has participated in several rescues from puppy mill breeding sites within our own state. Yes, there are puppy mills in North Dakota, where dozens and even hundreds of dogs are languishing, kept in abysmal conditions and used only for the purpose of breeding and breeding and breeding.

We've seen dogs stacked in wire pens where the feces and urine runs down onto the dogs below. We've seen dogs standing in feces for so long that the bacteria from their feet transfers to their mouth when they try to clean themselves, causing infections; and hair matted to such an extreme that the skin is tearing open. We've seen dogs left without wholesome food or water and without shelter, or with shelter but with no fresh air. These animals are **suffering** from rotted teeth, oral infections, skin infections, eye injuries from wire pokes, infected bite wounds, ear mites so severe as to cause permanent deafness, hernias, tumors and broken bones – all left without medical attention.

The breeders of these dogs are often willfully apathetic to the dogs' health, choosing to let them suffer rather than tending to their medical needs. Nothing we see in these extreme conditions is part of a usual and customary breeding scenario.

We are pleased to stand before this committee today, after working for more than two years with the core working group who came together to draft language for this bill – to provide a law we think is reasonable and acceptable to all North Dakotans. We worked alongside the various farm, ranch and livestock organizations, veterinary groups, animal shelters and a zoo that participated in this working group. We arrived at the table with divergent interests and came away with an acceptable consensus. We understand that there is some give and take in any process and we've tried to be diligent in our efforts to stand up for what we believe, while accepting that some compromise is necessary to achieve our goal of providing a stronger and more effective animal cruelty law for North Dakota.

We believe Senate Bill 2211 has the best interest of all animals at heart. We urge a "do pass" on Senate Bill 2211 as it is written.

This concludes my testimony. I'd be happy to answer any questions that you may have.



# March 7, 2013

То:	Chairman, Representative Johnson, Vice Chairman, Representative Wall and
	The members of the State of North Dakota House Agriculture Committee
From:	Nukhet Hendricks, Executive Director; Humane Society Fargo Moorhead A member of ND Responsible Animal Care group
Regarding:	SB 2211
Position:	Support

The greatness of a nation and its moral progress can be judged by the way its animals are treated - Mohandas Gandhi

Representative Miller, Representative Wall and the members of the Agricultural Committee:

I am Nukhet Hendricks, Executive Director of the Humane Society Fargo-Moorhead. This is my testimony in support of Senate Bill 2211-Humane Treatment of Animals; on behalf of the animals of the Humane Society Fargo-Moorhead and the North Dakotans for Responsible Animal Care group.

Every day in the United States and in our State, companion animals are beaten, neglected, or forced to struggle for survival. Left in unsanitary conditions with no food or water, they have little hope as they live out their days without the compassion they deserve. Some are kept in cages and expected to birth puppies month after month. Or starved, beaten, shot or drowned.

To grow as a State, we must re-consider the current lack of protection in the ND Century Code and extend protection for these animals that do not have a voice to speak for themselves.

Our shelter receives an average of 3-4 calls every week about companion animals. These calls vary from animal neglect to animal cruelty; these calls come from 5 neighboring counties to Cass County. Companion animal neglect and abuse is not as "uncommon" as one might think.

These concerned citizen calls are all directed to the local law enforcements; however, due to lack of stronger laws protecting companion animals, law enforcement is unable to process these cases. More often than not, these animals end up in our shelter through the local pounds with physical and mental wounds that need tending and healing.

Furthermore, part of our mission at the shelter is to educate the community in kind and compassionate treatment and the proper care of all animals. However, we cannot even begin

1201 28<sup>th</sup> Ave North Fargo, ND 58102 Phone: 701.239.0077 www.humanesocietyfargomoorhead.org to fulfill this mission because the existing laws carry few consequences for those who mistreat animals. Education for the community to treat the animals with kindness and compassion and to care for them properly is simply futile when the current laws don't entirely support such care.

Animal neglect, abuse and cruelty to animals are on the rise in our state. There are no statistics to prove this point because offenders are not prosecuted; therefore they are not on record. But I attest that they are on the rise based on the phone calls I personally have to respond to every week. It is on the rise in our state because animals are viewed as property and the existing laws do not provide *appropriate protection* to animals; and doesn't keep up with the growing urban population in our state in places like Fargo.

Here are just a few of the animal abuse cases that we see in our shelter:

- We were asked to provide shelter for a female dog. The mother dog and her nine new born puppies were left outside in a dog house that did not have adequate protection. All nine of the puppies were frozen to death. The only reason the mother dog was saved from the same fate was because a good Samaritan called the law enforcement. Although the mother dog was removed from their care, and the owners were ordered not to have another dog for "one" year, they had a puppy in their home within 2 months. They had no further consequences for causing the death of 9 puppies.
- Ripley came to us with scar on his neck indicating that his collar was too tight and was slowly choking him to death; his face was full of scars from cigarette burns.
- We partner with YWCA and Rape and Abuse Crises Center in Fargo and provide shelter for the animals of women who are experiencing domestic abuse so that they can leave the abusive situation with their animals. Because they know the abuser will turn their abuse to the animals if left behind. For this reason, 77% of the women who are abused do not leave the abuser if they cannot take their animals with them. We have provided temporary shelter to 30 companion animals since 2010. This is only the tip of the iceberg.

In North Dakota, deprived of strong legal protection, companion animals are defenseless against exploitation and abuse and it is up to all of us to protect them from abuse, cruelty and neglect.

According to the statistics by American Humane Association, there are more households with companion animals and children than there are households with children and fathers in them. So as the number of companion animals rise, so does that of animal neglect and abuse.

Animal abuse, neglect and cruelty are also a people problem. Cruelty to animals, particularly from young people, often precedes cruelty to humans. Strong laws to investigate and prosecute animal cruelty will give the society an opportunity to look into the human side of the problem as well.

1201 28<sup>th</sup> Ave North Fargo, ND 58102 Phone: 701.239.0077 www.humanesocietyfargomoorhead.org Representative Johnson, Representative Wall and the members of the committee, I stand in front of you today to ask your support for SB 2211 as proposed by North Dakotans for Responsible Animal Care. Companion animals are the fabric of our lives. Growing up with a dog or a cat as a companion; as a beloved friend; is as American as apple pie.

I bet each and every one of you grew up with an animal that stole your heart totally and unconditionally. I know you hear me with your heart when I say it is up to all of us to provide the most basic protection for them from abuse and cruelty.

The key to preventing abuse is stronger anti-cruelty laws. SB2211 addresses these issues and proposes long over due protection for the animals. Furthermore, clarifying and addressing the various types of animal mistreatment and appropriate penalties allows law enforcement officers to better respond when animals are neglected and abused and stop the incidents from being repeated by the offenders.

SB2211 as proposed - is the product of the North Dakotans for Responsible Animal Care and it enforces the fact that companion animals deserve to have the basic protection under the law; such as food, a protective shelter and adequate health care and it declares that cruelty to animals will no longer be tolerated in our state. SB2211 clarifies the current humane treatment of animals law and ensures penalties for bad actors and repeat offenders.

I stand before you today and speak on their behalf and ask you to protect the integrity of the bill and please "do pass" SB2211 as it is proposed by the North Dakotans for Responsible Animal Care. Together, let's please extend the protection of the law to our animals for kinder and more compassionate communities.

Thank you!

PO Box 2136 • 1415 12th Ave SE Jamestown, ND 58401 800-366-8331 • 701-252-2341 ndfu.org

3/7/13

SB 2211 - Humane Treatment of Animals House Agriculture Committee May 7, 2013

Good morning Mr. Chairman, members of the committee. My name is Kristi Schlosser Carlson. I am testifying on behalf of North Dakota Farmers Union and the policies adopted democratically by our grassroots membership. In that policy, we establish our foundational belief that family farmers and ranchers are the primary stewards of the land and animals.

Livestock production is essential to the prosperity of North Dakota. North Dakota Farmers Union actively supports livestock production as a vital component in a healthy agriculture sector through the promotion of research, leadership programs, and responsible livestock policy.

We believe responsible livestock policy favors the humane treatment of animals and encourages open dialogue with animal care groups. We urge caution, though, when passing animal treatment laws so that sound management practices are not adversely affected. SB 2211 does just that. We worked hard to make sure that responsible animal agriculturists – those good stewards – are protected, while bad actors are held accountable.

SB 2211 is a comprehensive review of the current animal humane treatment statute. It *clarifies* protection of those who care for animals and those whose livelihoods depend on animals; it also *clarifies* the definitions of wrongs and the pursuit of those who commit the wrongs; and it *clarifies* the process for those who care for animals that are harmed intentionally. It also increases penalties for the most egregious acts: those acts of cruelty and those intentionally commit harms repeatedly.

The concepts in this bill were written by North Dakotans – even more notably, though, is that it was written by North Dakotans *across the spectrum* of animal caregivers. As an engaged member of this process, NDFU's goal was to ensure that we, as North Dakotans, protect and promote stewardship; it was not to expand the scope of criminalization beyond the bad actors. NDFU believes this bill accomplishes that goal. We urge support of SB 2211.



Doug Goehring AGRICULTURE COMMISSIONER

> Dr. Susan Keller STATE VETERINARIAN

Dr. Beth Carlson UTY STATE VETERINARIAN

Dr. Jesse Volimer ASSISTANT STATE VETERINARIAN

Melvin Leland, Sidney, MT PRESIDENT, REG. PUREBRED CATTLE

> Dr. W. P. Tidball, Beach SECRETARY, VETERINARIAN

Dr. Charlie Stoltenow, Fargo CONSULTING VETERINARIAN



STATE BOARD OF ANIMAL HEALTH

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Testimony of Beth W. Carlson, DVM Deputy State Veterinarian Senate Bill 2211 House Agriculture Committee Brynhild Haugland Room March 7, 2013

Dr. Morgan Dailman, Beulah VETERINARIAN

David Pearson, Heltinger SHEEP

Joel Olson, Almont COMMERCIAL BEEF CATTLE

> Daryl Dukart, Dunn Center SWINE

Kristi Doll, NewSalem DAIRY CATTLE

Dr. Kenneth Thraison, New Rockford BISON

Shawn Schafer, Turtle Lake NONTRADITIONAL LIVESTOCK



Representative Johnson, and members of the House Agriculture Committee, I am Deputy State Veterinarian Beth Carlson. I am here today on behalf of the North Dakota Department of Agriculture and the State Board of Animal Health in support of Senate Bill 2211. Our office frequently assists local authorities in responding to and investigating suspected cases of inhumane treatment of animals.

Senate Bill 2211 has been in the works for several years. It is the result of a great deal of explanation, education, passionate discussion, and compromise by representatives of all sectors responsible for caring for animals in North Dakota. Week after week, all of the members of this group came together to focus their efforts on developing a solid legislative proposal. As a result, everyone had the opportunity to develop language and offer solutions to conflicts.

There were many times when different members didn't agree, or didn't understand another member's point of view; however, through respectful discussion, compromises were reached. The end result is a bill that may not be perfect in everyone's eyes, but it is as close to perfect as I think we could get. Coming into the legislative session, the group was excited about the comfort





level that had been reached among all parties. This bill has many good pieces in it that all those who care for animals should support. It will protect the welfare of animals in North Dakota, while preserving the ability for farmers and ranchers to perform standard management practices on their livestock, and preserving the responsible use of animals by sportsmen, animal exhibitors, and rodeo enthusiasts.

Attached to my testimony is an outline of how our office investigates complaints... what we look for, and what happens after the fact. Although it is a brief outline, the process can vary considerably, depending upon the circumstances.

Also of specific interest to our office is the section on the seizure of animals which are not being properly cared for or which are being subject to abuse. Current law does not include a specific process for seizure. This often leads to confusion by local authorities in how to handle neglect and cruelty cases. This bill sets forth a detailed process for obtaining a court order, providing notice, and how to handle animals after they have been seized. This will enable local authorities to quickly respond to concerns, while ensuring that animals are not seized without just cause.

Specific care standards can be developed, if needed, through the administrative rule-making process. The Board of Animal Health and Department of Agriculture can initiate this process, which allows input from the public before rules would be adopted.

Representative Johnson and committee members, I am proud to say that I worked with the group in developing this bill, and I urge a do pass on Senate Bill 2211.





ND Board of Animal Health Inhumane Complaint Investigation Process

- Complaints are investigated while accompanied by law enforcement
- Number and type of animals is documented
- Photos of animals and conditions are taken
- Condition of the animals is evaluated---general appearance, body condition, age, species, etc.
- Presence/absence and quality and accessibility of feed and water is noted
- Quality of shelter for the type of animal is noted
- Other factors are considered depending upon the circumstances
- A report is written and provided to the owner and law enforcement
- If no improvements are needed, the case is closed
- If improvements are needed, specific recommendations are made by a veterinarian
  - Follow-up visits may be done in cooperation with local law enforcement
- If conditions are severe, legal action may be recommended



#1/a 2/2/13



# North Dakotans to Stop Animal Cruelty

Hello, my name is Kristie Skunberg, I'm a North Dakota native and chairwoman for North Dakotans to Stop Animal Cruelty. Thank you for the opportunity to speak to you today.

Anyone who is still in doubt about whether animal cruelty exists in North Dakota should know that already this year, more than 250 horses were allegedly neglected in Morton and Burleigh counties, and that a Williams County woman who admitted to beating her dog to death with a hammer on Christmas Day has been ordered only to pay a \$200 fine for her heinous actions—a fine that is considered appropriate punishment for a pet's death under current law. We applaud legislators for taking action now to reform North Dakota's animal cruelty code.

Our coalition encourages you to strengthen and pass SB 2211. While the bill provides firstoffense felony penalties for the most horrific forms of animal cruelty, it also creates new exemptions for those who claim to be breeding or training animals to avoid prosecution for abuse and neglect. This loophole is troublesome because it could leave neglected, abused or cruelly treated animals in puppy mills or hoarding situations unprotected.

Exemptions for agriculture production, rodeos, and animal racing are already in the current law and protect those operations in their customary practices. We believe these exemptions have proven to be more than sufficient over the years in protecting North Dakotans from wrongful prosecution. Additional exemptions are unnecessary and will drastically undermine the impact of the proposed legislation.

Why should a law abiding citizen that owns three or four dogs be held accountable under SB 2211, yet someone who claims to be breeding or training dogs be exempt? We urge you to remove these new exemptions and we support the passage of SB 2211 to protect all North Dakota pets. Thank you.

# 11.6 3/2/13 Good morning Agricultural committee thank you for allowing me to give testimony this morning. My name /s Alison Larson- Smith and I live in Mandan, North Dakota. I am the founder of the Triple H

Miniature Horse Rescue, I have asked to read my testimony this morning as I cannot be here today in person. I am thrilled that we have before us SB 2211. It has been written by a great group of people who have my support and have done a great job of coming up with a very straightforward, no nonsense, comprehensive plan that protects all animals and I commend them for that and fully support it if it will pass as originally proposed. There are two amendments that have been added by the Farm Bureau that I staunchly disagree with. 1. I disagree with allowing an animal abuser and or neglector two misdemeanor charges before they reach a felony charge. I don't know when North Dakota is going to stand on it's own 2 feet, take the bull by the horns and stop enabling animal abusers. If we have to settle for such a poorly written amendment, then I ask you to consider removing any time limitations or constraints and have no time limit on this amendment. No abuser should be able to start abusing anew after 10 years and start all over with a misdemeanor. Again.... enabling. Everybody wants to pass the buck and blame the next guy why we have such bad laws in North Dakota. Lately it seems everybody wants to blame the states attorney for not bringing charges against animal abusers. After recently working on the Bill Kiefer Horse case and my rescue taking in over hundred 119 horses, and spending thousands of hours and thousands of dollars all so that Mr. Bill Kiefer can be charged with a few misdemeanors, I fully understand why law-enforcement and states attorneys sometimes are not very thrilled about these cases and are not wanting to press charges. It has been exhausting and expensive for very little satisfaction and a few misdemeanor charges. If we would give law-enforcement and states attorneys a better foundation and a better law to work with, I think we would see more charges against abusers and more cases being brought to trial. This amendment must be removed and the original bill needs to go into effect. 2. The amendment protecting breeders and trainers also needs to be removed. Breeders and trainers should not have special rules laws or privileges that only apply to them and not to others. They should have to treat their animals the same way that the rest of us treat our animals regardless of how many they have or what they're doing with them. There's also a lot of gray area as to what constitutes a trainer or a breeder. Am I a trainer If my neighbor pays me \$50 to potty train their dog because they're too busy? Am I a breeder if my registered dog gets out of my yard and is bred by the neighbors registered dog and I decide to sell the puppies for \$50 apiece? Am I now considered a breeder and do I have a different set of rules than everybody else? North Dakota has many good breeders, high quality breeders of cats, dogs, horses, snakes whatever the case may be, those breeders are good and treat their animals as they should be. North Dakota also has puppy mills and bad breeding practices. Without clear definition of what usual and customary practices are, these abusers could conceivably fall through the cracks or find a loophole with this poorly written amendment. We all need to treat our animals the same way and this amendment is unnecessary and useless in my opinion. Both of these amendments need to be removed so that we can get back to the original bill that was promised to the people and animals of North Dakota and bring North Dakota's animal cruelty laws up to par where they should be. Thank you for listening to me today and taking what I have shared under consideration.

Sincerely Alison Larson Smith



#12



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#### MEMBERS

AmeriFlax **BNSF Railway Company** Garrison Diversion Conservancy District Independent Beef Association of ND Landowners Association of ND Milk Producers Association of ND Minn-Dak Farmers Cooperative ND Ag Aviation Association ND Ag Consultants ND Agricultural Association ND Agri Women ND Association of Agricultural Educators ND Association of Soil **Conservation Districts** ND Barley Council ND Beef Commission ND Corn Growers Association D Corn Utilization Council D Crop Improvement and Seed Association ND Dairy Coalition ND Department of Agriculture ND Dry Bean Council ND Dry Edible Bean Seed Growers ND Elk Growers ND Ethanol Council ND Farm Bureau ND Farm Credit Council ND Farmers Union ND Grain Dealers Association ND Grain Growers Association ND Irrigation Association ND Lamb and Wool Producers ND Oilseed Council ND Pork Producers ND Soybean Council ND Soybean Growers Association ND State Seed Commission ND Stockmen's Association ND Wheat Commission NDSU Agricultural Affairs Northern Canola Growers Association Northern Food Grade Soybean Association orthern Plains Potato Growers sociation Northern Pulse Growers Association **Red River Valley Sugarbeet** 

Growers

Testimony of Jessie Bateman Administrator, North Dakota Ag Coalition In Support of SB 2211 March 7, 2013

Chairman Johnson and members of the House Agriculture Committee:

My name is Jessie Baterran, and I am here today as the administrator of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of SB 2211.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for over 30 years. Today, we represent more than 40 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues, brought to us by our members, that have significant impact on North Dakota's agriculture industry.

The North Dakota Ag Coalition is supporting SB 2211 as it is the result of a collaborative effort to provide protection for all animals and increase the punishment for those who willfully chose to perform the most severe forms of animal cruelty. This bill also seeks to protect the interests of those whose living depends on animal agriculture, and maintain the farming, ranching and hunting heritage so highly valued here in the state of North Dakota.

We appreciate your past support of North Dakota's agriculture industry and encourage your favorable consideration of SB 2211.



1101 1st Ave. N., Fargo, ND 58102 P.O. Box2064, Fargo, ND 58107-2064 Phone: 701-298-2200 • 1-800-367-9668 • Fax: 701-298-2210

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House Agriculture Committee March 7, 2013 Testimony of North Dakota Farm Bureau on SB 2211 Presented by Tom Bodine, Director of public policy

Good morning Mr. Chairman and committee members. For the record my name is Tom Bodine, and I am here representing the members of North Dakota Farm Bureau. North Dakota Farm Bureau stands in opposition to Senate Bill 2211.

Caring for animals is central to what so many of our members do on a daily basis, whether on their farms and ranches, or in their homes. Regardless if the animals are for profit or pleasure our members feel strongly that we have a duty of care to the animals that we possess. Do not construe our opposition to this piece of legislation as a disregard for our duty of animal care.

North Dakota Farm Bureau is opposing Senate Bill 2211 for several reasons. The overriding reason we are opposing SB 2211 is simply because we see this as very dangerous to the industry. Who better than farmers and ranchers could decide what is neglect or abuse? Farmers and ranchers have not only a duty of care to the animals they raise but they have an economic incentive to provide proper care to the animals in their possession. In other words if we don't care for animals properly we are out of business. With that said, we must take great care not to confuse our obligation for the proper care of an animal's welfare with bestowing rights to animals that in my opinion are exclusive to the human species.

North Dakota Farm Bureau believes a strong animal agriculture sector is critical to the future of not only the industry of agriculture, but the entire economy of North Dakota. This is why any time we have identified a threat to animal agriculture Farm Bureau has stepped to the plate to defend this industry by whatever means possible. Whether it was taking on county zoning authority in the North Dakota Supreme Court on behalf of members trying to site a hog barn, (and by the way, winning) or arguing in front of the Foster County Commission allowing a dairy to be sited in the Carrington area, (and again winning) or mounting an effort to amend the North Dakota Constitution to protect modern agricultural practices through initiated measure (again winning in every county in the state). As a result of the hard work of our members, staff, and the citizens, North Dakota is the first state in the nation to place the unpatrolled importance of agriculture in its constitution!

I am pointing these things out not to be boastful or arrogant; I am pointing them out to remind you the North Dakota Farm Bureau has a strong and successful record of defending agriculture. Through our opposition to this bill we are yet again supporting the best interest of agriculture, and our members.

1. We believe first and foremost that our members recognize the importance of proper animal care be it for production or pleasure.

- 2. We initiated measure 3 in response to what we see going on in other states with anti-agriculture animal activists. We believe this bill could put into law principles that could forever destroy the animal agriculture industry in North Dakota.
- We believe strongly North Dakotans and only North Dakotans should tell the citizens of this great state what to do and how to live.
- 4. North Dakota Farm Bureau strongly supports the good work our local shelters and rescues carry out every day in North Dakota. However, we will not support or condone the work of groups like the Humane Society of the United States and others who are nothing more than thinly veiled antiagriculture activists!

Mr. Chairman and committee members, Farm Bureau can accept the felony penalty contained in this bill under section 36-21.2-03 pertaining to animal cruelty. We believe egregious acts of cruelty against an animal should be dealt with. Individuals that commit these unconscionable acts deserve to be, and should be punished to full extent of the law. However, the definition of cruelty contained in this bill is completely and totally subjective and could be and likely would be interrupted by activists to the detriment of agriculture. Farm Bureau cannot accept the subjective definition of cruelty contained in this bill and ask that you consider amendments that clearly and objectively define acts of cruelty so it is not left to the whim of the interpreter.

The other three sections of this bill 36-21.2-01 adequate care, 36-21.2-02 animal abuse, and 36-21.2-04 animal abandonment we cannot accept any felony penalty associated with these sections of the bill. We can accept a penalty of a class A misdemeanor and would respectfully request the committee amend the felony penalty out of these sections of the bill. As we see it, extreme cases involving lack of adequate care, animal abuse, and abandonment could be construed as an act of animal cruelty and thus do not need to carry a felony penalty for each section.

Farm Bureau also believes an individual who is accused of a violation under this chapter should not be considered guilty until proven innocent. In other words if animals are confiscated the accused should only bear the cost of seizure and proceedings if found guilty. Furthermore, we believe an accused acquitted of the charges against them should be entitled to legal remedy against the confiscation of their animals and their wrongful accuser.

Farm Bureau believes this bill or any bill speaking to these important issues should be about protecting animals, NOT punishing people. We believe SB 2211 must be extensively amended or North Dakota Farm Bureau will use all of our resources to kill the bill. To that end Mr. Chairman and committee members Farm Bureau will stand by our statement.

Thank you, I would be glad to answer questions.





# **Tom Bodine**

m: t: To: Cc: Subject:

John T. Shockley <JShockley@OhnstadLaw.com> Friday, March 01, 2013 2:09 PM Tom Bodine Eric Aasmundstad RE: SB2211

# Good afternoon,

I had a chance to review the proposed bill and your suggested edits. I will first note my substantive observations/comments and then address specifics. (Finally, I read SB 2211 and made comments before seeing your proposed changes. The proposed changes that you identified largely addressed my concerns.)

## Substantive legal comments regarding SB 2211:

The proposed bill does not contain any glaring substantive legal problems that I could really attack. I disagree with the policy advanced by the proposed bill, but the legal issues I have identified could be remedied with amendments and thus I am not sure if I could provide the type of legal attack on the bill that would really change legislators positions.

## Specific problems regarding SB 2211 :

Section 36-21.2-01 (1). The section includes a sliding scale for the potential penalty. The section ends with "occurring in 10 years." It is poorly drafted and should probably include the phrase, "occurring within <u>a</u> 10 year <u>period</u>." This is anguage that is used in the DUI statutes. <u>See N.D.C.C. § 39-08-01</u>.

Section 36-21.2 (2 (a). The term "neglect" allows for a very subjective review of whether the food and water provided to the animal is appropriate. It appears very broad and may even be subject to challenge by a defense attorney.

Section 36-21.2-01 (d). I have the same concerns for the term environment as noted above.

 However, it would appear that a conviction under this section would require the prosecutor to prove factors, a, b, c and d. This is because subsection c uses the word "and" instead of "or." Also the section contains a lot of very subjective exclusions for customary practices.

Section 36-21.2-02. The section includes a sliding scale for the potential penalty. The section ends with "occurring within 10 years." It is poorly drafted and should probably include the phrase, "occurring within <u>a</u> 10 year <u>period</u>." This is the language that is used in the DUI statutes. <u>See N.D.C.C.</u> § 39-08-01. Also this section does not really give a good definition of animal abuse. It should probably define the term animal abuse.

Section 36-21.2-03 (2) (a) and (b). This section is very broad in the definition of animal cruelty. This section should probably be narrowed down to exclude disfiguration, broken bones or impair of health.

Section 36-21.2-04. The section includes a sliding scale for the potential penalty. The section ends with "occurring within 10 years." It is poorly drafted and should probably include the phrase, "occurring within <u>a</u> 10 year <u>period</u>." This is the language that is used in the DUI statutes. <u>See N.D.C.C. § 39-08-01</u>. The statute equates animal abandonment with ect and abuse, by giving abandonment the same penalties. If I were a judge, I would have difficulty, giving someone hy conviction for abandoning their dog at a kennel by not picking it up. Often times people of less means get rid of their pets that way.

Section 36-21.2-12. This section is very subjective. If a NDFB member leaves cows or pigs in a trailer on a hot day for a couple of hours, will they be subjected to a claim that they endangered the animal's health by not providing water. When my father had cows it was common to leave them in the trailer without water while traveling to the sales barn. Often times we would stop for lunch and did not water the cows.

Section 36-21.2-15. This section prevents a prosecutor from citing multiple violations from the same herd, however, if an owner had both cows and pigs, he/she could be cited twice because the animals are of a different species.

## Proposed amendment:

## Substantive response:

I think that you did a nice job of addressing the problems with SB 2211.

## Specific comments:

Section 36-21.2-01. The proposed changes get rid of the felony penalty. As written it would be much easier to prove a violation of animal neglect. It keeps the definition simple and removes the subjective language. I would note that as written, it would be harder to prove neglect under SB 2211 because it appears that the prosecutor would have to prove all four factors.

Section 36-21.2-02. This removes the felony provision.

Definition of cruelty. – I really like the definition that you have drafted. It's more descriptive and gives people notice of what constitutes cruelty.

tion 36-21.2-04. You have removed the felony provision and the language regarding boarding contracts.

Section 36-21.2-07. The additional requirement of conviction on an infraction really helps to narrow this section and probably applies it as it should be to situations that rise to the level of actual violations.

Section 36-21.2-15. This section is deleted in its entirety.

#### **Overall** comments:

Overall, I disagree with the policy advanced by SB 2211, but from a purely legal standpoint it does not have any really offensive sections that I could attack. At best I could offer support for your proposed amendments, but an argument making an outright attack on SB 2211 would be difficult to make and maintain credibility. Finally, having grown up in agriculture and having parents that had a large animal operation (poultry) I find it very difficult to impose a felony conviction for animal cruelty.

# Hope this helps

John T. Shockley Attorney at Law Ohnstad Twichell, P.C. 901 - 13th Avenue East O. Box 458 St Fargo, ND 58078-0458 L (701) 282-3249 FAX (701) 282-0825



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From: Tom Bodine [mailto:tbodine@ndfb.org] Sent: Friday, March 01, 2013 10:03 AM To: John T. Shockley Cc: Eric Aasmundstad Subject: SB2211

Jon...attached is SB2211 with suggested amendments...please review and call or email us your thoughts...thanks



Tom Bodine Director of Public Policy 4023 State St. Bismarck, ND 58503 Ph: 701.224.0330

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#14

# acie Thompson

m: ∠nt: To: Subject: Gabe Thompson <gsthomp@srt.com> Tuesday, March 05, 2013 9:47 PM tlthompson@srt.com melvins comments

# 36-21.1-12. Duties of board and commissioner.

The board shall adopt rules to effectuate this chapter. The board by rule may restrict the importation into the state, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the board may have reason to believe may be a threat to the health and well-being of the human or animal population of the state, or both, unless the importation or sale is for bona fide scientific or educational purposes. The board shall establish reasonable qualifications for approved investigators such as the State Veterinarian Field Investigator. The board shall require the State Field Investigator who is approved by the board to determine whether there is reliable evidence that a violation of this chapter has occurred prior to allowing felony or misdemeanor penalty to be charged.

com: Leland Red Angus [mailto:lelandra@restel.net]
 t: Saturday, March 02, 2013 11:29 PM
 Gabe Thompson
 Subject: Re: SB2211 concerns and amendment final draft

## Gabe,

Sorry I haven't had a chance to reply sooner—Been testing bulls and working with issues preparing for our sale and was too tired to even concentrate last night.

I do not have an explanation for why this reasonable qualifications standard have been omitted and fully understand where you're concern is. I do know some changes were made early on when a person who writes these bills in a proper form was involve but I can't remember the details at this time. I am inclined to think it was just some word smithing to clean up the language and possibly that may be where the omission occurred.

As for your proposed amendment, I think it is reasonable to think it has merit. I would change the wording in the last sentence for clarification to read (The board shall require the State Field Investigator who is approved by the board to determine whether there is reliable evidence that a violation of this chapter has occurred prior to allowing felony or misdemeanor penalty to be charged.) I think its important that misdemeanor be included because it goes on as a matter of record in case of subsequent offenses. Also some may interpret the Investigator as having more judicial authority than he really has if he is the man determining if it becomes a charge and to some degree this is what is needed to protect your concern.

in not anxious to be the person or board charged with the task of writing the species standards for imal welfare.

I read more of your comments, I agree that adding #6 to the definitions would be proper. his the issue that Trent Loos has with the bill? I sent him an e-mail to define his objections to SB2211 and in his reply he didn't explain other than he thought it was flawed. I'm curious to know what response you got from your district representatives. Thanks, Mel

rom: <u>Gabe Thompson</u> Sent: Friday, March 01, 2013 4:13 PM To: <u>lelandra@restel.net</u> Subject: FW: SB2211 concerns and amendment final draft

Melvin this is what I will be presenting to our districts representatives tomorrow at our townhall meeting. I would like to have someone explain to me the logic behind omitting the protective language in current law that required people involved in determining if a violation of these sections of the livestock chapter has occurred in that they no longer need to have "reasonable qualifications" regarding the understanding of the standards or exemptions held in these statutes. As I state below, I believe it is critical that there are protections against wrongful prosecution written into these laws particularly when we are increasing the penalties substantially and I am having a hard time understanding why orgs. that represent livestock producers are not fighting to ensure they are. Especially the NDSA that created the field investigators position with the State Vets office. I would also believe the Board of Animal Health would want language at LEAST as strong as current law written into the bill to protect against wrongful prosecutions against wrongful prosecutions against wrongful prosecutions against wrongful protect against wron

If you can explain to me why what is being repealed and omitted that I have shared below is something that helps this new bill become good law, please do, no one else has.

And if you believe the amendment offered at the end has merit or have suggestions please let me know.

Thanks Gabe

# abe Thompson

m	Gabe Thompson <gsthomp@srt.com></gsthomp@srt.com>
Jent:	Friday, March 01, 2013 7:57 PM
To:	tlthompson@srt.com
Subject:	SB 2211

## Concerns over SB 2211 Humane Treatment of Animals

A BILL for an Act to create and enact a new section 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; and to provide a penalty..

This is the wording in our current century code Livestock Section 36 regarding the duties of the Board of Animal health that will be repealed by the new bill.

## 36-21.1-12. Duties of board and commissioner.

The board shall adopt rules to effectuate this chapter. The board by rule may restrict the importation into the state, and restrict the sale or other distribution within the state, of all domestic animals or animals wild by nature which the board may have reason to believe may be threat to the health and well-being of the human or animal population of the state, or both,

'ess the importation or sale is for bona fide scientific or educational purposes. The board shall

# \_\_\_\_ablish reasonable qualifications for approved investigators and the commissioner shall

<u>maintain a current listing of all approved investigators.</u> Employees of the commissioner may be assigned as investigators. The commissioner may by injunctive procedure without bond or other undertaking proceed against any person or persons for a continuous violation of any provision of this chapter. No liability may accrue to the board, the commissioner, or any authorized representative in proceeding against any person or persons pursuant to this section.

This is what the stricken language above is being replaced with the following in the new bill.

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 ealth and well-being of this state's human or animal population.

The board may exempt, from any restriction imposed under subsection 1, the portation or sale of animals for bona fide scientific or educational purposes.

Note the failure to include the entire emboldened language from current law requiring the board to "establish reasonable qualifications for approved investigators" ect.... As stated in the new bill, this inguage will be repealed from section 36 of the Century Code as it claims right in the start of the new oill, section 36-21.1-12 will be repealed and there will be no mention of an "investigator" position or the need for anyone to have "reasonable qualifications" in carrying out the related duties of this section of the Century Code. Would this not be an important part of ensuring wrongful prosecution does NOT occur because of a lack of "reasonable qualifications" to understand neglect, abuse and cruelty standards as well as exemption standards of "Any usual and customary practice in production agriculture, including all aspects of the livestock industry" as well as the other exemption standards and that only the actual violations of this chapter will be prosecuted? ?

Also repealed from the current law language and omitted from the current bill wording is the following section 36-21.1-01. Note the emboldened underline number 6 language.

# 36-21.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Abandoned animal" means an animal that is or reasonably appears to have been deserted by its owner or keeper. The term may include an animal that is running loose on property other than that of its owner or the owner's agent if the animal bears no identification indicating the owner or the owner's agent and the owner or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter.

. "Adequate care" means normal and prudent attention to the needs of an animal, hcluding wholesome food, clean water, shelter, and health care, as necessary to

maintain good health in a specific species of animal.

3. "Animal" includes every living animal except the human race.

4. "Commissioner" means the agriculture commissioner.

5. "Cruelty" or "torture" means any act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. The term does not include:

a. Any activity that requires a license or permit under chapter 20.1-03;

b. Any activity that is usual and customary practice in production agriculture;

c. Any scientific research conducted at a public or private facility or laboratory by or under the direction of a qualified researcher;

d. Any show, fair, competition, performance, or parade;

e. A rodeo;

f. A wagon or buggy ride;

g. Trail or pleasure riding; or

h. Any activity that involves the training or teaching of animals.

# 6. "Investigator" means any person approved by the board to determine whether there

# has been a violation of this chapter.

It would appear that under current law the field investigator position created by the NDSA and funded by the tax payer two sessions ago that was meant to be used to determine whether a violation had occurred to possibly aid in the prevention of a **wrongful prosecution** as a protective measure for livestock producers will no longer even be mentioned in the new bill language. One must ask HY???

Jw can the NDSA support this omission given they created the position for the very purpose stated in current law to have a person with "reasonable qualifications" "determine whether there has been a violation of this chapter" in these cases????

Now if one combines this with the wording that is left in another section of the Livestock Code that will not be repealed after passage of this new bill it gives rise to the very real concern this protection against wrongful prosecution will not be in place.

# 36-01-08. Duties - Rules - Fees - Continuing appropriation.

The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, by rule, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any

imal found to be in violation of any rule or prohibition. Any matter relating to the health d

# welfare of domestic animals and nontraditional livestock and not <u>specifically</u> assigned by statute

to another entity is deemed to be within the authority of the board. The board may make rules to

carry into effect the purposes of this chapter and other duties prescribed in this title. The commissioner shall collect fees for the actual direct cost of providing each brucellosis tag, each identification tag, and each health book the commissioner distributes. The fees collected by the commissioner must be deposited in the agriculture commissioner's operating fund and are appropriated on a continuing basis to the state board of animal health to be used to enforce this chapter.

Now it would appear the repeated references to the "law enforcement officer" in the new bill would seem to fall under "specifically assigned by statute to another entity", the right to start proceedings based on their "belief". This starts to raise even more concern. Particularly when there is no longer be the requirement of "reasonable qualifications for approved investigators" or even the requirement of a maintained listing of those that are written in this new bill!!!!!

" the **current** law under the Humane Treatment section this new bill will replace, there is repeated ation of the "board's investigator" who is to be involved in these cases. In the new bill this is specifically missing and "Law enforcement officer" is specifically mentioned. So my question is what exactly of any substance will this field investigators position the NDSA fought to have created largely to have someone with "reasonable qualifications" involved in these cases that the tax payer funds, now hold??? It appears to have been written out of even an acknowledgement of existance let alone prolvement in these cases by omission in the new bill.

It appears in the writing of this bill by omission we now do not feel there exists the need to require ANY people with "reasonable qualifications" to be involved in the investigation of infractions of the standards required in the livestock chapter of the NDCC. As a rancher this is of great concern to me!

Combine this with an apparent possible decision by the State Vets office not to proceed to write the standards of neglect, abuse or cruelty for **every** "species, the breed, and the animal's age and physical condition" as required to be considered in the writing in the new bill to be used by those making the determination as to whether an infraction has occurred, and how can we then expect a law enforcement officer or states attorney that does not have those "reasonable qualifications" to be familiar with these as of yet unwritten care standards for every species, breed, age and condition of animal OR the exemption standards including "a. Any usual and customary practice in production agriculture, including all aspects of the livestock industry" not starting what ends up being a wrongful prosecution???

Or worse yet, an "activist states attorney" such as exists here in ND as was stated by past NDSA president Jason Schmidt in his radio conversation with Trent Loos of Loos Tales recently regarding this bill.

If the legislative body decides increased penalties to the felony level for crimes against animals are varranted (even though multiple offenses of simple assault against ones wife or child older than 11 or her persons do not, SEE FOOT NOTE), then there exists an increased responsibility to ensure the consequences of wrongful prosecution whereby someone may be charged with a felony, pay a significant amount to retain council, lose the ownership of his animals, have them sold, only to be acquitted once the case goes thru court do NOT happen by writing good law.

It is my opinion every effort should be made in writing law to uphold the long held premise one is innocent until proven guilty. This bill as written does not. It allows officers of the court that will no longer be required to have "reasonable understanding" of the standards of neglect or abuse or cruelty or the exemption standards to start legal proceedings against someone before an authority that in fact DOES have "reasonable understanding" of these standards becomes involved resulting in possible wrongful prosecution. I cannot believe anyone would be opposed to strengthening protections against this possibility. Particularly when the requirement of involvement of an investigator with "reasonable qualifications" would help ensure the prosecution of those actually in violation.

It is also my opinion that a law should be enforced equitably across the entire state. Without a single entity such as the State Vet field investigator position as approved by the State Board of Animal Health as mentioned in current law, who one would believe has "reasonable qualifications" **required** to be involved BEFORE substantial felony charges are filed, how can the citizens of this state be assured a state's attorney in Cass or Grand Forks county will have the same interpretation of standards and exemptions as one say in Bowman or McKenzie county in cases of reported violations when occeeding with charges.

Therefore to address the concerns and considerations set forth above, I would strongly encourage an amendment to the language of the bill to include wording to the following effect.

## <sup>3</sup>6-21.1-12. Duties of board and commissioner.

be board shall adopt rules to effectuate this chapter. The board by rule may restrict the portation into the state, and restrict the sale or other distribution within the state, of all nestic animals or animals wild by nature which the board may have reason to believe may be a threat to the health and well-being of the human or animal population of the state, or both, unless the importation or sale is for bona fide scientific or educational purposes. The board shall establish reasonable qualifications for approved investigators such as the State Veterinarian Field Investigator. The board shall require the State Veterinarian Field Investigator position who is approved by the board to determine whether there has been a violation of this chapter in cases allowing the felony penalty prior to charges being filed.

As I know you are busy with other legislative actions, I thank you for your consideration of these concerns as you proceed with writing good law that will stand the test of time for not just those of us here now, but for future generations as well and the challenges from activist groups such as those behind Measure 5 they will continue to face in animal agriculture.

Sincerely, Gabe Thompson Jr. Antler ND.

ember NDSA, NDFB, NDFU

NDCC standards and penalties for Simple assault and assault against people.

http://www.legis.nd.gov/cencode/t12-1c17.pdf?20130228030550

# Tracie Thompson

rom:
Sent:
To:
Subject:

Gabe Thompson <gsthomp@srt.com> Thursday, February 28, 2013 8:57 AM tlthompson@srt.com assault

# CHAPTER 12.1-17 ASSAULTS - THREATS - COERCION - HARASSMENT 12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:

# a. Willfully causes bodily injury to another human being; or

b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is

# likely to cause death or serious bodily injury.

2. The offense is:

a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a

idicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.

b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.

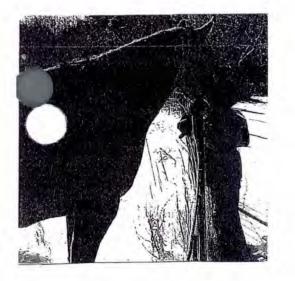
c. A class B misdemeanor except as provided in subdivision a or b.

# 12.1-17-01.1. Assault.

<u>A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve</u> years in which case the offense is a class C felony, if that person:

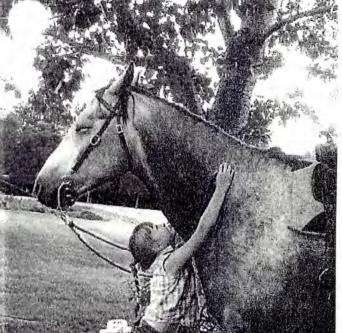
1. Willfully causes substantial bodily injury to another human being; or

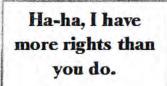
2. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

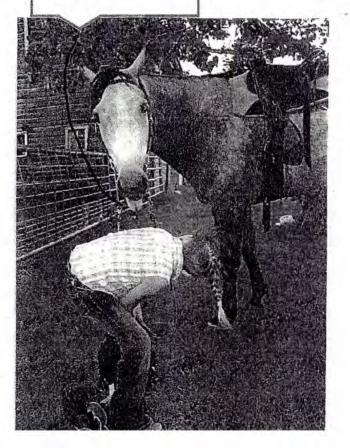












415

Testimony of Bruce Strinden, Morton County Commissioner Senate Bill 2211 House Agriculture Committee March 7, 2013

Chairman Johnson and members of the committee, my name is Bruce Strinden, and I serve as chairman of the Morton County Commission. Morton County has recently suffered the most shameful case of animal neglect that I have ever heard of in my lifetime.

This horrendous case of mass starvation of horses and mules made national news. People from all around the country were repulsed and sick at heart. The expression, "You had to be there" comes to mind. Words and photos can't describe the ghastly scene we discovered on Kiefer's property. Of the 215 horses and mules in Mr. Keifer's care, we ultimately buried 103 of those animals in a mass grave. They died a slow and extremely painful death of starvation. Those that managed to hold on until authorities intervened suffered not only the physical pain of starvation, but the emotional trauma of witnessing the death of 103 of their herd mates. Being at the scene literally made grown men cry.

To make matters worse, rather than call for help when horses and mules began to die of starvation, the person responsible for their welfare methodically moved their carcasses to locations out of the sight of neighbors and law enforcement, further delaying intervention. By the time a search warrant was obtained 96 of the horses and mules were dead.

This despicable case is certainly one of willful neglect, but would deliberate starvation also be considered an act of cruelty in this bill's provisions? I believe SB2211 should be amended to include a class C felony on a first offense in cases of gross neglect or gross abuse unless the Animal Cruelty provision found in chapter 36-21.2-03 of the bill could be legally made to apply in instances similar to what we just experienced in Morton County. Chapter 36-21.2-15 of this bill would actually decrease the penalty in a similar situation from five misdemeanor violation counts in current law, to only one. SB2211 actually takes a step backwards. Mr. Chairman, and members of the committee, we encourage you to amend this bill to give prosecutors at least the option of stiffer penalties in extreme cases of both animal neglect and abuse.

416



N. Washington Street • Grand Forks, ND 58203

Phone: 701-775-3732

ND 2013 Legislative Session House Agriculture Committee Thursday, March 7, 2013 9:00 am

Good Morning,

My name is Arlette Moen. I am the executive director of the Circle of Friends Humane Society in Grand Forks North Dakota.

This testimony is in response to SB2211. We have an opportunity with this bill to add North Dakota to an important list, the list of states that have felony level penalties for animal cruelty. We are not breaking new ground here but have, in fact, fallen behind the progress that all other states have made in basic animal protection. All other states, that is, except two, North Dakota and South Dakota.

I have been asked by the media and others, "Do we really need a felony penalty for animal cruelty in North Dakota?" The question absolutely astounds me. You don't have to care about animals to know what is right or wrong.

Examples from our area:

- An owner kicked his elderly dog down a staircase and continued beating it because it had urinated on the floor.
- A boyfriend assaulted and threatened to kill a woman, then strangled the family dog in front of her two children until the dog passed out. He told them he could do this to anyone and routinely abused the dog as a form of control over them.
- A boyfriend dragged, kicked, hit and strangled the family dog. Threw the dog into kennel, filled it with snow, set the kennel on top of the landing and kicked it down the stairs. He routinely beat the dog with a belt. He would hold a screwdriver under the dog's throat as a threat to his girlfriend. He threatened to kill the dog if police were called and that the dog would be dead long before the police arrived, then he would go after the girlfriend.,
- A husband used the family dog and cat to control his family. He made the children bring him the cat, then strangled the cat in front of them until it started to bleed, then threw it against the wall.
- Individual witnesses a cat being poked with a stick, hit with a 2x4, shot with a BB gun to try to get
  it out from under a vehicle. When asked what they were going to do with the cat when they got it
  out, they said they were going to hang it. Not far from this location was the body of another cat
  that had been hanged.
- An estranged father killed a family dog and sent it to his kids for dinner.
- Owner kept his dog in a closet until it died of starvation.
- Individuals tied a puppy up, hung it from a tree and began hitting it with sticks. Said they wanted to see how long it took to die.
- Animals are often brought to shelters and vet clinics with any number of injuries including gunshot wounds such as the dog found at the landfill with his jaw shattered from a gunshot wound. He survived and was adopted after jaw reconstruction surgery. Or the dog found in a ditch with a massive buckshot wound to his neck. He survived and was adopted following extensive surgery.
- A small dog was kicked to death in the commission of a burglary.

There is no testimony more compelling than actual instances of animal abuse. Every one who testifies here will likely have similar stories. So to say it doesn't exist or doesn't happen often enough to justify a felony penalty is absurd. Regardless of the crime, whether against people or animals, or it's frequency, it is the severity of the crime that should determine the penalty.

There are many more instances of this level of abuse that are not reported. I've been told by eyewitnesses that it does no good to report even the most severe abuse because perpetrators are not deterred by the misdemeanor citations or sentences currently in place.

SB2211 represents vital revisions to humane treatment in the state of North Dakota. This bill has already been weakened from it's original form by compromise. Please do not consider amendments that would further weaken it's effectiveness. And please attach a DO PASS to this bill.

Thank you.

Arlette Moen Executive Director Circle of Friends Humane Society



## Johnson, Dennis E.

#17

From: ent: 10: Subject: James P. Wang <jamespwang@gondtc.com> Thursday, March 07, 2013 9:33 AM Johnson, Dennis E.; Hofstad, Curt L.; Devlin, Bill R.; Vigesaa, Donald W. SB 2211 DO NOT PASS

Representative Johnson

I appeal to you as a prosecutor in a rural agrarian County. The above bill in my opinion is unnecessary. In 20+ years of prosecuting I have had several occasions to prosecute animal issues. At the end of the day the MOST I ever got for a sentence was One day in jail. My conclusion is Making Bad activity a felony is NOT going to reduce the behavior.

What is of more concern to the Court and indeed the public is the immediate welfare of the animal being mistreated or worse. Of big concern and a goal is to insure the Defendant Never be given the opportunity to "re-offend" With this I agree. Some (few) re-offend.

I note the Senate must have taken Great strides to re-draft the Bill to exclude those events or things which are usual or customary to agriculture and or animal husbandry. This is supposedly to defray the fear that PETA (or similar extremists) are being given some "teeth" to carry out their mission. I applaud the efforts to keep these groups at bay. But... anything which "someone or group" finds objectionable in raising animals will simply be touted as NOT being the usual or customary practice. See Draft 36-21.2-03. WHO is going to determine what or when animal cruelty is present? Answer: anyone will be able to assert cruelity and will be allowed to show, say or prove it is not the usual or customary practice of animal husbandry or farming.

My fear is (while a good effort was made to protect ag related animals), the effort as drafted opens the door for a whole bunch of miserable fact finding and Media frenzy! Can you not envision all the lawyering in "causes the animal unjustifiable pain". I am soory but I think the meddling/rewrite of the current law is a Ruse (and a darn well orchestrated one) to erode away at All animal production.

I do not fait the drafters efforts. All normal people will naturally say yes "shame one those who are mean to animals" I agree also. But...the extremists are going to use this proposed law change to make Felons out good animal producers. This is my fear.

AS for the prosecution: really a true shit head defendant Does Not care whether it is a misdemeanor or a felony! But good farmers hounded and made examples by the extreme media will care whether it is a felony or not. I can envision Plea deals where good Farmers, rode hard by the Media and extremists will sell off their herd to avoid felony prosecution. To some good people a Felony threat or conviction still carries significant implications.

I strongly suggest using the OLD law and put some Mandatory sentencing in it. This would/should appease the extreme groups and as a prosecutor I think the defendant will "shape up".

Conclusion: **Reject SB 2211**. it Will not change anything for the good. We Do Not begin to use the Sentencing potential of the current misdemeanor law why must we make it a felony? Some will feel good about our tough stance but in reality it will not result in more prosecution nor convictions (as a prosecutor I promise you that much). Passage of SB2211 will allow for the inroads of the extreme groups to be paved. These groups will force good legitimate operators over the edge (not withstanding the good efforts to draft protection language).

Thanks for your time on this matter please feel free to share it with Committee members. I wanted to be their in person but I just can't squeeze it in today. Sorry

James P. Wang Attorney at Law PO Box 211 Minnewaukan, ND 58351 (701) 473-5338

\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*

ND Farm Buren Tom Bodine #1 3/14/13

#### Amendments to Engrossed Senate Bill 2211

Page 1, line 19; insert a period (.) after the word misdemeanor

Page 1, line 20; delete all of line 20 and 21

Page 1, line 23; after the word water, insert and shelter. Delete remainder of line 23

Page 1, line 24; delete line 24 and renumber page one accordingly

Page 2, line 26; insert a period (.) after the word misdemeanor

Page 2, Delete lines 1-10 and lines 27 and 28 renumber page 2 accordingly

Page3, Delete lines 20-25, insert on new line 20, willfully or maliciously crushing, suffocating, blinding, beating to death, dragging to death, or starving to death an animal.

Page 4, line 13; insert a period (.) after the word misdemeanor, Delete remainder of line 13 and line 14

Page 4 line 18; Delete The

Page 4; Delete lines 19 23, renumber page 4 accordingly

Page 5 line 7; insert a period (.) after the word shelter Delete remaining line 7 and lines 8 and 9 renumber page 5 accordingly

Page 6, line 18; Delete period at end of line 18 and insert , if found guilty of an infraction.

Page 6, line 20; Delete period (.) after seizure and insert and conviction.

Page 9; Delete lines 26-29

Feld Entertainment Barnum & Bailey Circus 3/14/13 #2

## Suggested Revisions to SB 2211

## Suggested revision to SECTION 1 of the legislation in bold/red:

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.

- 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 wellbeing of this state's human or animal population.
- The board may exempt, from any restriction imposed under subsection 1, the importation or sale of animals for bona fide scientific, educational, or temporary exhibition purposes.

#### Suggested revision to SECTION 2 of the legislation in bold/red:

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

- The following do not constitute violations of this section:
  - a. Any usual and customary practice in production agriculture, including all aspects of the livestock industry;
  - b. Any usual and customary practice in the breeding, raising, showing, and sanctioned competition of animals;
  - c. Any usual and customary practice in the sport of rodeo and in animal racing;
  - Any usual and customary practice in livestock exhibitions and competitions;
  - e. Any usual and customary practice in the exhibition of domestic and exotic animals by federally licensed exhibitors;
  - f. Lawful fishing, hunting, and trapping;
  - g. Lawful wildlife management practices;
  - h. Lawful research and educational activities involving the use of animals;
  - Lawful control of pests, rodents, and predators;
  - j. Lawful animal damage control activities; and
  - Services provided by or under the direction of a licensed veterinarian.
  - I. The humane destruction of an animal for cause.

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

- The following do not constitute violations of this section:
  - a. Any usual and customary practice in production agriculture, including all aspects of the livestock industry;
  - b. Any usual and customary practice in the breeding, raising, showing, and sanctioned competition of animals;
  - c. Any usual and customary practice in the sport of rodeo and in animal racing;
  - Any usual and customary practice in livestock exhibitions and competitions;
  - e. Any usual and customary practice in the exhibition of domestic and exotic animals by federally licensed exhibitors;







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

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

- 3. The following do not constitute violations of this section:
  - Any usual and customary practice in production agriculture, including all aspects of the livestock industry;
  - Any usual and customary practice in the breeding, raising, showing, and sanctioned competition of animals;
  - c. Any usual and customary practice in the sport of rodeo and in animal racing;
  - d. Any usual and customary practice in livestock exhibitions and competitions;
  - Any usual and customary practice in the exhibition of domestic and exotic animals by federally licensed exhibitors;
  - f. Lawful fishing, hunting, and trapping;
  - g. Lawful wildlife management practices;
  - h. Lawful research and educational activities involving the use of animals;
  - i. Lawful control of pests, rodents, and predators;
  - j. Lawful animal damage control activities; and
  - k. Services provided by or under the direction of a licensed veterinarian.
  - I. The humane destruction of an animal for cause.

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

- 3. The following do not constitute violations of this section:
  - Any usual and customary practice in production agriculture, including all aspects of the livestock industry;
  - Any usual and customary practice in the breeding, raising, showing, and sanctioned competition of animals;
  - c. Any usual and customary practice in the sport of rodeo and in a nimal racing;
  - d. Any usual and customary practice in livestock exhibitions and competitions;
  - e. Any usual and customary practice in the exhibition of domestic and exotic animals by federally licensed exhibitors;
  - f. Lawful fishing, hunting, and trapping;
  - g. Lawful wildlife management practices;
  - h. Lawful research and educational activities involving the use of animals;
  - i. Lawful control of pests, rodents, and predators;
  - j. Lawful animal damage control activities; and
  - k. Services provided by or under the direction of a licensed veterinarian.
  - I. The humane destruction of an animal for cause.





13.0380.07005 Title.

## PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

- Page 1, line 1, replace "a" with "two "
- Page 1, line 1, replace "section" with "sections"
- Page 1, line 15, replace the second "or" with "purposes,"
- Page 1, line 15, after "purposes" insert ", or temporary exhibitions"
- Page 1, after line 15, insert:

"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 state board of animal health 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."

- Page 2, line 12, remove "production agriculture, including all aspects"
- Page 2, line 13, replace "<u>of the livestock industry</u>" with "<u>the production of any plant, animal, or</u> <u>animal product, that is used for food, feed, fiber, or ornament, and which is distributed</u> <u>commercially</u>"

Page 2. line 14, after "the" insert "boarding."

- Page 2, line 14, after "breeding" insert ". feedina"
- Page 2, line 18, after "e." insert:"<u>Any usual and customary practice in the use of animals by</u> exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;
  - f. Any usual and customary practice in the culinary arts;

g.

- Page 2, after line 18, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained in accordance with this subdivision"
- Page 2, line 19, replace "f." with "h."
- Page 2, line 20, replace "g." with "i."
- Page 2, line 21, replace "h." with "j."
- Page 2, line 21, after "predators" insert ", and the disposition or destruction of any that enter personal property"
- Page 2, line 22, replace "i." with "k."
- Page 2, line 23, replace "j." with "I."
- Page 2, line 24, replace "k." with "m."



Page 3, line 2, remove "production agriculture, including all aspects"

Page 3, line 3, replace "of the livestock industry" with "the production of any plant, animal, or animal product, that is used for food, feed, fiber, or ornament, and which is distributed commercially"

Page 3, line 4, after "the" insert "boarding,"

Page 3, line 4, after "breeding," insert "feeding,"

Page 3, line 8, after "e." insert: "Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;

f. Any usual and customary practice in the culinary arts;

g. "

- Page 3, line 8, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"
- Page 3, line 9, replace "f." with "h."

Page 3, line 10, replace "g." with "i."

- Page 3, line 11, replace "h." with "j."
- Page 3, line 11, after "predators" insert ", and the disposition or destruction of any that enter personal property"

Page 3, line 12, replace "i." with "k."

Page 3, line 13, replace "j\_" with "L"

Page 3, line 15, replace "k." with "m."

Page 3, line 16, replace "I." with "n."

Page 3, line 23, replace "and" with "or"

Page 3, line 27, remove "production agriculture, including all aspects"

Page 3, line 28, replace "of the livestock industry" with "the production of any plant, animal, or animal product that is used for food, feed, fiber, or ornament, and which is distributed commercially"

Page 3, line 29, after "the" insert "boarding,"

Page 3, line 29, after "breeding," insert "feeding,"

Page 4, line 2, after "e." insert: "Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;

f. Any usual and customary practice in the culinary arts;

g.

Page 4, line 2, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"

Page 4, line 3, replace "f." with "h."



Page 4, line 4, replace "g." with "i."

Page 4, line 5, replace "h." with "j."

- Page 4, line 5, after "predators" insert ", and the disposition or destruction of any that enter personal property"
- Page 4, line 6, replace "i." with "k."
- Page 4, line 7, replace "j." with "I."
- Page 4, line 9, replace "k." with "m."
- Page 4, line 10, replace "I." with "n."
- Page 4, line 25, remove "production agriculture, including all aspects"
- Page 4, line 26, replace "<u>of the livestock industry</u>" with "<u>the production of any plant, animal, or</u> <u>animal product, that is used for food, feed, fiber, or ornament, and which is distributed</u> <u>commercially</u>"
- Page 4, line 27, after "the" insert "boarding,"
- Page 4, line 27, after "breeding," insert "feeding,"
- Page 4, line 31, after "<u>e.</u>" insert: "<u>Any usual and customary practice in the use of animals by</u> <u>exhibitors licensed under the Animal Welfare Act. 7 U.S.C. 2131, et</u> <u>seq:</u>
  - f. Any usual and customary practice in the culinary arts;
  - g.
- Page 4, line 31, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"
- Page 5, line 1, replace "f." with "h."
- Page 5, line 2, replace "g." with "i."
- Page 5, line 3, replace "h." with "j."
- Page 5, line 3, after "predators" insert ", and the disposition or destruction of any that enter personal property"
- Page 5, line 4, replace "i." with "k."
- Page 5, line 5, replace "j." with "L"
- Page 5, line 6, replace "k." with "m."
- Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"
- Page 6, line 20, after "seizure" insert "and conviction"
- Page 8, line 30, replace "by the United States department of agriculture" with "under the Animal Welfare Act. 7 U.S.C. 2131, et seq"
- Page 9, line 1, remove "production agriculture, including all aspects"



- Page 9, line 2, replace "of the livestock industry" with "the production of any plant, animal, or animal product that is used for food, feed, fiber, or ornament, and which is distributed commercially"
- Page 9, line 3, after "the" insert "boarding."

f.

Page 9, line 3, after "breeding," insert "feeding,"

Page 9, line 7, after "e." insert: "Any usual and customary practice in the culinary arts;

Page 9, line 7, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"

Page 9, line 8, replace "f." with "g."

Page 9, line 9, replace "g." with "h."

Page 9, line 10, replace "h." with "i."

Page 9, line 10, after "predators" insert ", and the disposition or destruction of any that enter personal property"

Page 9, line 11, replace "i." with "j."

Page 9, line 12, replace "j." with "k."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person" with "An individual"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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"

Renumber accordingly



### 13.0380.07001 Title.

# PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

- Page 1, line 19, after "misdemeanor" insert an underscored period
- Page 1, remove lines 20 and 21
- Page 1, line 22, replace the underscored colon with "food, water, and shelter."
- Page 1, remove lines 23 and 24
- Page 2, remove lines 1 through 10
- Page 2, line 26, after "misdemeanor" insert an underscored period
- Page 2, remove lines 27 and 28
- Page 3, replace lines 20 through 25 with:
  - "a. Beating an animal to its death;
  - b. Blinding an animal;
  - c. Burning an animal;
  - d. Crushing an animal;
  - e. Disemboweling an animal while it is alive;
  - f. Dragging an animal to its death;
  - g. Drowning an animal;
  - h. Impaling an animal;
  - i. Poisoning an animal;
  - j. Skinning an animal while it is alive;
  - k. Starving an animal to its death; or
  - I. Suffocating an animal."

Page 4, line 13, replace "for a first or a second offense and a class C felony for a third or" with an underscored period

Page 4, remove line 14

Page 4, line 18, replace "care" with "food, water, and shelter"

Page 4, line 18, remove "The"

Page 4, remove lines 19 through 23

Page 5, remove lines 7 through 9

- Page 5, line 23, replace "care" with "food, water, and shelter"
- Page 5, line 24, remove "For purposes of this subsection, "care" means food,"





Page 5, remove lines 25 and 26

Page 6, line 15, replace "The" with "If found guilty of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 4, after "means" insert "the provision of"

Page 8, line 4, replace "from the elements," with an underscored period

Page 8, remove lines 5 and 6

Page 8, line 20, replace "protection from the elements, as appropriate" with "shelter."

Page 8, remove line 21

Page 9, remove lines 26 through 29

Renumber accordingly









# State Animal Cruelty Chart

Forty-eight states, the District of Columbia, Puerto Rico and the Virgin Islands have laws making certain types of animal cruelty a felony offense.

State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin B	Future Ownership	Year Felony Enacte d	221
AL	\$§ 13A- 11-241; 13A-11- 14; 13A- 11-245	Class C Felony (1 <sup>st</sup> offense)	Felony: dog or cat Misd: all animals	\$15,000	10 years	Class B misdemeanor	May reimburse (dogs/cats only)			2000	
АК	§ 11.61.140	Class C felony (1 <sup>st</sup> offense)	Felony: vertebrates, except fish Misd: vertebrates, except fish	\$50,000	5 years	Class A misdemeanor Class C felony (subsequent offense within 10 years)	May reimburse		May ban ownership for up to 10 years	2008	Inde
AZ	§§ 13- 2910; 11-1029	Class 6 felony (1 <sup>st</sup> offense)	Felony: all animals except fish Misd: all animals except fish	\$150,000	1½ years	Class 1 misdemeanor Class 6 felony (intentionally/knowingl y and results in serious physical injury to animal)	Shall reimburse			1999	115 1
AR	§§ 5-62- 103; 5-62- 104; 5-62-106	Class D felony (1 <sup>st</sup> offense) Class C felony (subsequent offense)	Felony: dogs, cats, horses Misd: all animals	\$10,000	10 years	Unclassified misd Class D Felony (4 <sup>th</sup> or more within 5 years of previous offense)	Shall bond	Mandator y evaluation , may order treatment		2009	1 4

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State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin B	Future Ownership	Year Felony Enacte d
CA	Cal. Penal Code § 597; § 11199	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$20,000	3 years	Felony or misdemeanor	Shall reimburse	Mandator Y	May ban ownership as a condition of probation	1988
CO	§§ 18-9- 202; 18-9- 202.5	Class 6 felony (1 <sup>st</sup> offense) Class 5 felony (subsequent offense)	Felony: all animals Misid: all animals	\$500,000	3 years	Class 1 misdemeanor Class 6 felony (subsequent offense)	Shall bond	1 <sup>st</sup> offense: May order 2 <sup>nd</sup> offense: Mandator Y		2002
CI	§§ 53-247; 22-329a; 53a-30	Class D felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$5,000	5 years	Unclassified misdemeanor	Shall bond	May order		1996
DE	11 Del. C. § 1325; 3 Del. C. § 7905	Class F felony (1 <sup>st</sup> offense)	Felony: all animals, except fish, crustaceans and mollusks Misd: all animals, except fish, crustaceans and mollusks	Court determine d	3 years	Class A misdemeanor	Shall reimburse		Shall ban future ownership for 5 years for misdemeanor; 15 years for felony	1994
FL	§§ 828.12; 828.073	3 <sup>rd</sup> degree felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$10,000	5 years	Misd of 1 <sup>st</sup> degree	May reimburse	Mandator y for torture	May ban future ownership	1989
GA	§ 16-12-4	Felony (1 <sup>st</sup> offense)	Felony: all animals, except fish and "pests" Misd: all	\$100,000	5 years	Misdemeanor Misd of a high and aggravated nature (subsequent offense thatresult s in death of	Lien on animal for costs	May order evaluation		2000

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State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
			animals, except fish and "pests"			animal)				
HI	§§ 711- 1108.5; 711-1109; 711- 1109.2	Class C felony (1 <sup>st</sup> offense)	Felony: pet animals and horses Misd: all animals	\$10,000	5 years	Misdemeanor	May bond			2007
ID	§ 25-3504	Felony (3 <sup>rd</sup> offense)	Any animal		1 year	Misdemeanor (3 <sup>rd</sup> or subsequent violation within 15 years of the 1 <sup>st</sup> conviction)	Shall bond		May ban future ownership	N/A
	510 ILCS §§ 70/3.01, 3.02, 3.03, 3.04, 3.05	Class 3 felony (1 <sup>st</sup> offense)	Felony torture: all animals Felony aggravated cruelty: companion animals Misd: all animals	\$25,000	5 years	Class A Misdemeanor Class 4 Felony (subsequent offense)	May bond (companion animals only)	Mandator y for juveniles, torture and hoarders; may order for other crimes	May ban future ownership	1999
IN	§§ 35-46- 3-12; 35- 46-3-6; 35-46-3-7	Class D felony (1 <sup>st</sup> offense)	Felony: vertebrate animal Misd: vertebrate animals	\$10,000	3 years	Class A misdemeanor Class D felony (with prior unrelated conviction under chapter that is not for the harboring of a non- immunized dog)	May bond	May order		1998
ΙΑ	§§ 7178.3A, 7178.1, 7178.2, 7178.3, 7178.4	Class D felony (2 <sup>nd</sup> offense)	Felony: vertebrates other than livestock, game, furbearer	\$7,500	5 years	Simple misdemeanor Serious misdemeanor (intentionally and results in serious injury of death of animal)	Shall bond	Mandator y for torture		2000

State	Citation -	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
			fish, reptile, amphibian or nuisance wildlife Misd: vertebrates other than livestock, game, furbearer, fish, reptile, amphibian or nuisance wildlife							
KS	§§ 21- 4310; 23- 4311; 23-4313; 23-4317; 21-6412	Non-person felony (1 <sup>st</sup> offense)	Felony: all vertebrates Misd: all vertebrates	\$5,000	1 year	Class A non-person misdemeanor Non-person felony (subsequent offense)	Shall bond Shall reimburse	Mandator Y evaluation	Illegal to possess animals for 5 years after cruelty conviction	2006
KY	\$§ 525.135, 525.130	Class D felony (1 <sup>st</sup> offense)	Felony: dog and cat Misd: any animal	\$10,000	5 years	Class A misdemeanor			Connectors	2003
LA	§§ 14:102.1; 14:102.2	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$25,000	10 years	Misdemeanor Felony (subsequent offense; or 1 <sup>st</sup> offense intentionally/with criminal negligence)	Shall bond	May order evaluation for cruelty; mandator y for felony cruelty		1995
ME	§§ 17-	Class C crime	Felony: all	\$10,000	5 years	Class D crime	May bond	May order	May ban	2001

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ALL	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte
	1031; 17- 1027; 7-4011	(1 <sup>st</sup> offense)	animals Misd: all animals		T	Class C crime (3 <sup>rd</sup> offense)			future ownership	d
	Criminal Law, §§ 10-606; 10-604; 10-615	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$5,000	3 years	Misdemeanor		May order	May ban future ownership	2001
	272 § 77, §104; 266 § 112	Felony level <sup>2</sup> (1 <sup>st</sup> offense)	Felony: all animals	\$2,500	5 years	Felony	May bond			1804
	§§ 750.50; 750.50b	Felony (1 <sup>st</sup> offense)	Felony: all vertebrates Misd: all vertebrates	\$20,000	4 years	Misdemeanor Felony (4 or more animals; or subsequent offense)	May bond May reimburse	May order	May ban for probationary period; permanently on second offense	1931
	§§ 343.21; 343.235	Felony (1 <sup>st</sup> offense)	Felony: pets or companion animals Misd: all animals	\$10,000	4 years	Misdemeanor Gross misdemeanor (subsequent offense within 5 years of previous violation)	May bond	May order	May ban future ownership	2001
「日本のない」であるというで	\$\$ 97-41- 2; 97-41- 15; 97-41-16 (97-41- 1)**	Felony (2 <sup>nd</sup> offense)	Felony: dogs and cats	\$5,000	5 years	Misdemeanor (dogs and cats)	Shall bond		May ban future ownership	2011
	\$§ 578.012;	Class D felony	Felony: all vertebrates	\$5,000	4 years	Class A misdemeanor Class D felony	May bond			1994

2 years Misdemeanor

(subsequent offense)

Shall reimburse

May ban

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578.018

§§ 45-8-

felony (1<sup>st</sup> offense)

Felony

vertebrates

\$2,500

Felony: all

Misd: all

State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
	211; 45-8-217; 27-1-434	(1 <sup>st</sup> offense)	animals Misd: all animals			Felony (subsequent offense)	May bond		future ownership for term of sentence	
NE	\$\$ 28- 1009; 28- 1011; 28-1012; 28-1019	Class IV felony (1 <sup>st</sup> offense)	Felony: all vertebrates except uncaptured wild animals Misd: all vertebrates except uncaptured wild animals	\$10,000	5 years	Class I misdemeanor Class IV felony (result in serious injury or illness or death of. animal)	May reimburse Lien on animal for costs		For felonies, shall ban future ownership for 5-15 years; for misdemeanors , may ban future ownership for up to 5 years	2002
NV	\$ 206.150; 574.100; 574.055; 62E.680	Category D felony (1st offense) Category C felony (3 <sup>rd</sup> offense)	Felony: animals belonging to another Misd (3 <sup>rd</sup> offense felony): all animals	\$10,000	5 years	Misdemeanor (1 <sup>st</sup> or 2 <sup>nd</sup> o fense in preceding 7 years) Category C felony (3 <sup>rd</sup> or more within the immediately preceding 7 years)	Shall reimburse Lien on animal for costs	Mandator y for juveniles		1999
NH	§ 644:8	Class B felony (1 <sup>st</sup> offense)	Felony: domestic animals, household pets or wild animals in captivity Misd: domestic animals, household pets or wild animals in	\$4,000	7 years	Misdemeanor (1 <sup>st</sup> offense) Class B felony (subsequent offense)	Shall reimburse May bond on appeal		May ban future ownership	1994

State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
	The second second		captivity		The Article		Hard States		Provide States of the state of the	
VJ	§4:22-17	Crime of the 3 <sup>rd</sup> degree <sup>2</sup> (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$15,000	5 years	Disorderly persons offense	May reimburse	Mandator y for juveniles		2001
NM	§§ 30-18- 1; 30-18-1.2	4 <sup>th</sup> degree felony (1 <sup>st</sup> offense)	Felony: all animals except reptiles Misd: all animals except reptiles	\$5,000	18 month s	Misdemeanor 4 <sup>th</sup> degree felony (4 <sup>th</sup> offense)	May bond Shall reimburse	Mandator y for juveniles May order for adults		1999
NY	Ag & Markets Law, §§ 353, 353- a, 373, 374	Class E felony (1 <sup>st</sup> offense)	Felony: companion animals Misd: all animals	\$5,000	2 years	Class A misdemeanor	May bond		May ban future ownership	1999
NC	§ 14-360	Class I felony (1 <sup>st</sup> offense)	Felony: all vertebrates Misd: all vertebrates	Court determine d	1 year	Class 1 misdemeanor Class H felony (intentional deprivation leading to death of animal; or maliciously and results in death of animal)				1998
ND	§ 36-21.1- 02; 36- 21.1-11	Class A misdemeano r	Misd: all animals	\$2,000	1 year	Class A misdemeanor				N/A
OH	\$\$ 959.02; 959.13; 959.131; 959.132; 959.99	5 <sup>th</sup> degree felony (2 <sup>nd</sup> offense)	Felony: companion animals Misd: all animals	\$2,000	1 year	Misd of the 2 <sup>nd</sup> degree (non-companion animal) Misd of the 2 <sup>nd</sup> degree (1 <sup>st</sup> offense to companion animal)	May bond (companion animals only) May reimburse	May order	May ban future ownership	2002

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State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin B	Future Ownership	Year Felony Enacte d
						Misd of the 1 <sup>st</sup> degree (subsequent offense to companion animal)				
OK	21 Okl.St.Ann . §§ 1685; 1681; 1680.4	Felony (1 <sup>st</sup> offense)	Felony: all animals	\$5,000	5 years	Felony	May bond			1887
OR	§§ 167.315; 167.320; 167.322; 167.332; 167.334; 167.347; 167.350	Class C felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$125,000	5 years	Class B misd Class A misd (results in serious physical injury or death of animal)	May bond May reimburse	May order	Illegal to possess domestic animals for 5 years for misdemeanor; 15 years for felony	1995
ΡΑ	18 Pa. § 5511	3 <sup>rd</sup> degree felony (2 <sup>nd</sup> offense)	Felony: dogs and cats Misd: domestic animal or domestic fowl Summary offense: all animals	\$15,000	7 years	Summary offense Misd of 3 <sup>rd</sup> degree (subsequent offense and offenses were towards dog/cat and dog/cat was seriously injured, suffered severe physical distress or was placed at imminent risk of serious physical harm)	Shall reimburse Lien on animals for cost	May order evaluation	May ban for term of the sentence	1995
RI	§§ 4-1-2, 4-1-3, 4-1- 5, 4-1-36	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$1,000	2 years	Misdemeanor	Shall reimburse Lien on animals for cost	May order		1896
SC	§§ 47-1- 40; 47-1- 70; 47-1-140;	Felony (1 <sup>st</sup> offense)	Felony: vertebrates, except fowl Misd:	\$5,000	5 years	Misdemeanor	Shall reimburse Lien on animals for cost			2000

State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
	47-1-150		vertebrates, except fowl							
5D	§§ 40-1-5; 40-1-5.1; 40-1-20; 40-1-21; 40-1-27	Class 1 misdemeano r	Misd: all animals	\$2,000	1 year	Class 1 misdemeanor	Lien on animal for costs			N/A
TN	\$\$ 39-14- 202; 39-14- 210; 39- 14-212	Class E felony (1 <sup>st</sup> offense)	Felony: companion animal Misd: domestic animal or wild animal in captivity	\$3,000	6 years	Class A misdemeanor Class E felony (subsequent conviction)	May bond	May order	May ban future ownership	2001
TX	Penal Code, § 42.092; Health & Safety Code, § 821.023; Family Code, § 54.0407	State jail felony (1 <sup>st</sup> & 2 <sup>nd</sup> offense) 3 <sup>rd</sup> degree felony (3 <sup>rd</sup> offense)	Felony: domesticate d animal, stray/feral dogs or cats, wild animals in captivity Misd: domesticate d animal, stray/feral dogs or cats, wild animals in captivity	\$10,000	10 years	Class A misdemeanor State jail felony (3 <sup>rd</sup> offense)	Shall reimburse	Mandator y for juveniles		1997
UT	§ 76-9-301	3 <sup>rd</sup> degree felony (1 <sup>st</sup> offense)	Felony: dog or cat Misd: all vertebrates, except zoo animals,	\$5,000	5 years	Class B misd (if intentionally/knowingly ; on subsequent offense becomes Class A misd) Class C misd (if	May reimburse	May order	May ban future ownership	2008

State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
			animals kept to train hunting dogs or raptors, and animals temporarily in the state with a USDA licensed exhibitor			recklessly/with criminal negligence; on subsequent offense becomes Class B misd)				
VT	13 V.S.A. §§ 352; 352a; 353; 354	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$7,500	5 years	Civil citation (if not previously adjudicated in violation of chapter) Misd (otherwise)	Shall reimburse Lien on animal for costs	May order	May ban future ownership	1998
VA	§ 3.1- 796.122; § 3.2-6569	Felony (1 <sup>st</sup> offense)	1 <sup>st</sup> offense felony: dog or cat 2 <sup>nd</sup> offense felony: all vertebrates except fish Misd: all vertebrates except fish	\$2,500	5 years	Class 1 misdemeanor Class 6 felony (maliciously and has been convicted for cruelty to animals within 5 years if any current or previous violation resulted in death or necessary euthanasia or animal)	May bond Shall reimburse	May order	May ban future ownership	1999
WA	§§ 16.52.205; 16.52.207; 16.52.200	Class C felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$10,000	5 years	Class C felony (with criminal negligence and resultantly causes substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering or death to animal)	Shall reimburse	May order	Shall ban future ownership if animal dies or on 2 <sup>nd</sup> offense; may ban for others. If ban is ordered, court shall ban for 2 years for	1994





State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
						Gross misd (under circumstances not amounting to above first degree animal cruelty and the animal suffers unnecessary or unjustifiable physical pain as a result)			misdemeanor and permanently for felonies or subsequent misdemeanors	
WV	§ 61-8-19; § 7-10-4	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$5,000	5 years	Misdemeanor	Shall bond Shall reimburse	Shall order evaluation (prior to probation)	Shall ban future ownership for 5 years for misdemeanor; 15 years for felony	2003
WI	§951.18; § 951.02; § 173.23	Class I felony (1 <sup>st</sup> offense)	Felony: mammals, reptiles and amphibians Misd: mammals, reptiles and amphibians	\$10,000	3 ½ years	Class C forfeiture Class A forfeiture (violation within 3 years after a humane officer issues abatement order) Class A misdemeanor (intentionally or negligently)	May bond Shall reimburse		May ban future ownership for up to 5 years	1986
WY	§ 6-3-203; § 11-29- 114	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$5,000	2 years	Misdemeanor High misd (subsequent offense)	Shall bond May reimburse		May ban future ownership	2003
DC	§§ 22- 1001; 22- 1004	Felony (1 <sup>st</sup> offense)	Felony: all animals Misd: all animals	\$25,000	5 years	Petty misdemeanor	May reimburse Lien on animal for costs	May order	May ban future ownership	2001
Guam	9 G.C.A. §§ 70.10; 80.12	Petty misdemeano r	Misd: all animals	\$500	60 days	Misdemeanor 3 <sup>rd</sup> degree felony (if result in serious		May order		N/A

12.11

State	Citation	Max Penalty	Applies to	Max Fine <sup>1</sup>	Max Jail Time <sup>1</sup>	Neglect penalty	Bonding or Reimbursemen t of Costs	Counselin g	Future Ownership	Year Felony Enacte d
						physical injury or death to animal)				
Puert o Rico	5 L.P.R.A. §§ 1652; 1653; 1659	2 <sup>nd</sup> degree felony (1 <sup>st</sup> offense)	Felony: domestic animals, birds or other animals kept in captivity Misd: domestic animals, birds or other animals kept in captivity	\$10,000	15 years	Misdemeanor (with negligence) 4 <sup>th</sup> degree felony (if serious disregard for the life and safety of animal and with intention of causing serious bodily harm)				2004
Virgin Island S	14 V.I.C. §§ 181- 185; 187	Felony	Felony: mammals, birds, reptiles and amphibians, but not pests	\$5,000	2 years	Misdemeanor	Shall reimburse	Shall order (prior to probation)	Shall ban future ownership for 5-20 years	2005

<sup>1</sup> In some states, these maximum penalties apply only on a second or subsequent offense. Penalties for a first offense may be lower. <sup>2</sup> These states do not classify offenses as felonies, but have felony level penalties.

#### 13.0380.07006 Title.

Prepared by the Legislative Council staff for Representative Belter March 22, 2013

> )SBZZ11 SWS.

3-27-7177

## PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

- Page 1, line 1, replace "a" with "two"
- Page 1, line 1, replace "section" with "sections"
- Page 1, line 15, replace the second "or" with "purposes,"
- Page 1, line 15, after "purposes" insert ", or temporary exhibitions"
- Page 1, after line 15, insert:

"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 state board of animal health 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."

- Page 2, line 12, remove "production agriculture, including all aspects"
- Page 2, line 13, replace "of the livestock industry" with "the production of any plant, animal, or animal product, that is used for food, feed, fiber, or ornament, and which is distributed commercially"
- Page 2, line 14, after "the" insert "boarding,"
- Page 2, line 14, after "breeding" insert ", feeding"
- Page 2, line 18, after "<u>e.</u>" insert "<u>Any usual and customary practice in the use of animals by</u> exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;
  - f. Any usual and customary practice in the slaughtering of animals;
  - g. Any usual and customary practice in the culinary arts;
  - h."
- Page 2, line 18, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained in accordance with this subdivision"
- Page 2, line 19, replace "f." with "i."
- Page 2, line 20, replace "g." with "j."
- Page 2, line 21, replace "h." with "k."
- Page 2, line 21, after "predators" insert ", and the disposition or destruction of any that enter personal property"
- Page 2, line 22, replace "i." with "L"
- Page 2, line 23, replace "i," with "m."



Page 2, line 24, replace "k." with "n."

Page 3, line 2, remove "production agriculture, including all aspects"

- Page 3, line 3, replace "of the livestock industry" with "the production of any plant, animal, or animal product, that is used for food, feed, fiber, or ornament, and which is distributed commercially"
- Page 3, line 4, after "the" insert "boarding,"
- Page 3, line 4, after the second underscored comma insert "feeding,"
- Page 3, line 8, after "e." insert "Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seg;
  - f. Any usual and customary practice in the slaughtering of animals;
  - g. Any usual and customary practice in the culinary arts;
  - h."
- Page 3, line 8, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"
- Page 3, line 9, replace "f." with "i."

Page 3, line 10, replace "g." with "j."

Page 3, line 11, replace "h." with "k."

Page 3, line 11, after "predators" insert ", and the disposition or destruction of any that enter personal property"

Page 3, line 12, replace "i." with "I."

Page 3, line 13, replace "j." with "m."

Page 3, line 15, replace "k." with "n."

Page 3, line 16, replace "I." with "o."

Page 3, line 20, after "a." insert "Beating an animal to its death;

- b. Blinding an animal;
- c. Burning an animal;
- d. Crushing an animal:
- e. Disemboweling an animal while it is still alive;
- f. Dismembering an animal;
- g. Dragging an animal to its death;
- h. Drowning an animal;
- i. Impaling an animal;
- j. Poisoning an animal;
- k. Skinning an animal while it is still alive;



- I. Starving an animal to its death;
- m. Suffocating an animal; or
- <u>n.</u>"

Page 3, line 20, after "any" insert "other"

Page 3, line 20, replace "causes" with ":

(1) Causes"

Page 3, line 23, remove "and"

Page 3, line 24, replace "b. Any act or omission that results" with "or

#### (2) Results"

Page 3, line 27, remove "production agriculture. including all aspects"

Page 3, line 28, replace "<u>of the livestock industry</u>" with "<u>the production of any plant, animal, or</u> <u>animal product that is used for food, feed, fiber, or ornament, and which is distributed</u> <u>commercially</u>"

Page 3, line 29, after "the" insert "boarding,"

Page 3, line 29, after the first underscored comma insert "feeding."

Page 4, line 2, after "e." insert "Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;

- f. Any usual and customary practice in the slaughtering of animals;
- g. Any usual and customary practice in the culinary arts;

<u>h.</u>"

Page 4, line 2, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"

Page 4, line 3, replace "f." with "i."

Page 4, line 4, replace "g." with "j."

Page 4, line 5, replace "h." with "k."

Page 4, line 5, after "predators" insert ", and the disposition or destruction of any that enter personal property"

Page 4, line 6, replace "i." with "I."

Page 4, line 7, replace "j." with "m."

Page 4, line 9, replace "k." with "n."

Page 4, line 10, replace "I." with "o."

- Page 4, line 25, remove "production agriculture, including all aspects"
- Page 4, line 26, replace "of the livestock industry" with "the production of any plant, animal, or animal product, that is used for food, feed, fiber, or ornament, and which is distributed commercially"



Page 4, line 27, after "the" insert "boarding,"

Page 4, line 27, after the first underscored comma insert "feeding,"

Page 4, line 31, after "e." insert "Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;

- f. Any usual and customary practice in the slaughtering of animals;
- g. Any usual and customary practice in the culinary arts;
- h."
- Page 4, line 31, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"
- Page 5, line 1, replace "f." with "i."
- Page 5, line 2, replace "g." with "j."
- Page 5, line 3, replace "h." with "k."
- Page 5, line 3, after "predators" insert ", and the disposition or destruction of any that enter personal property"

Page 5, line 4, replace "i." with "I."

Page 5, line 5, replace "j." with "m."

Page 5, line 6, replace "k." with "n."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 30, replace "by the United States department of agriculture" with "under the Animal Welfare Act, 7 U.S.C. 2131, et seq"

Page 9, line 1, remove "production agriculture, including all aspects"

Page 9, line 2, replace "<u>of the livestock industry</u>" with "<u>the production of any plant, animal, or</u> <u>animal product that is used for food, feed, fiber, or ornament, and which is distributed</u> <u>commercially</u>"

Page 9, line 3, after "the" insert "boarding,"

Page 9, line 3, after the first underscored comma insert "feeding,"

Page 9, line 7, after "e." insert "Any usual and customary practice in the culinary arts;

f. Any usual and customary practice in the slaughtering of animals;

g."

Page 9, line 7, after "trapping" insert ", and any usual and customary practices in the handling of animals obtained under this subdivision"

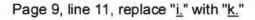
Page 9, line 8, replace "f." with "h."

Page 9, line 9, replace "g." with "i."

Page 9, line 10, replace "h." with "j."



Page 9, line 10, after "predators" insert ", and the disposition or destruction of any that enter personal property"



Page 9, line 12, replace "j." with "I."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person" with "An individual"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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."

Renumber accordingly





13.0380.07006

#### 13.0380.07006

Sixty-third Legislative Assembly of North Dakota

#### FIRST ENGROSSMENT

#### 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 atwo new section sections to chapter 36-01 and chapter
- 2 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of animal
- 3 health and the treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02, 36-21.1-03,
- 4 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
- 5 Code, relating to the treatment of animals; and to provide a penalty.

#### 6 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:
- 9 Restriction on importation of certain animals Exception.
- 10 <u>1.</u> 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.
- The board may exempt, from any restriction imposed under subsection 1, the
   importation or sale of animals for bona fide scientific erpurposes, educational
   purposes, or temporary exhibitions.
- 17 SECTION 2. A new section to chapter 36-01 of the North Dakota Century Code is created
- 18 and enacted as follows:
- 19 Assistance in criminal investigations.
- 20 The state board of animal health shall maintain and make available to any law enforcement
- 21 agency a list of veterinarians who are licensed in this state and trained to provide assistance in
- 22 any criminal investigation pertaining to this state's animal laws.
- 23 SECTION 3. Chapter 36-21.2 of the North Dakota Century Code is created and enacted as

24 follows:

Í

1	36-2	21.2-01. Neglect - Definition - Exemptions - Penalty.
2	1.	Any person that willfully engages in animal neglect is guilty of a class A misdemeanor
3		for a first or a second offense and a class C felony for a third or subsequent offense
4		occurring within ten years.
5	2.	For purposes of this chapter, "neglect" means the failure to provide an animal with:
6		a. Food and water, as appropriate for the species, the breed, and the animal's age
7		and physical condition;
8		b. Shelter from the elements, as appropriate for the species, the breed, and the
9		animal's age and physical condition;
10		c. Necessary medical attention; and
11		d. An environment that is:
12		(1) Ventilated in a manner appropriate for the species, the breed, and the
13		animal's age and physical condition;
14		(2) Cleaned in a manner appropriate for the species, the breed, and the
15		animal's age and physical condition; and
16		(3) Free of conditions likely to cause injury or death to an animal of that
17		species, breed, age, and physical condition.
18	<u>3.</u>	The following do not constitute violations of this section:
19		a. Any usual and customary practice in production agriculture, including all aspects
20		of the livestock industry the production of any plant, animal, or animal product,
21		that is used for food, feed, fiber, or ornament, and which is distributed
22		commercially;
23		b. Any usual and customary practice in the boarding, breeding, feeding, raising,
24		training, showing, and competition of animals;
25		c. Any usual and customary practice in the sport of rodeo and in animal racing;
26		d. Any usual and customary practice in livestock exhibitions and competitions;
27		e. Any usual and customary practice in the use of animals by exhibitors licensed
28		under the Animal Welfare Act, 7 U.S.C. 2131, et seq;
29		f. Any usual and customary practice in the slaughtering of animals;
30		g. Any usual and customary practice in the culinary arts;

13.0380.07006

1		h.	Lawful fishing, hunting, and trapping, and any usual and customary practices in
2			the handling of animals obtained in accordance with this subdivision;
3		<u>f.i.</u>	Lawful wildlife management practices;
4		<del>9.</del> j.	Lawful research and educational activities involving the use of animals;
5		<del>h.</del> k.	Lawful control of pests, rodents, and predators, and the disposition or destruction
6			of any that enter personal property;
7		<u>∔.l.</u>	Lawful animal damage control activities;
8		j.m.	Services provided by or under the direction of a licensed veterinarian; and
9		<del>k.</del> n.	The humane destruction of an animal for cause.
10	36-	21.2-	02. Animal abuse - Definition - Exemptions - Penalty.
11	<u>1.</u>	Any	y person that willfully engages in animal abuse is guilty of a class A misdemeanor
12		for	a first or a second offense and a class C felony for a third or subsequent offense
13		000	curring within ten years.
14	<u>2.</u>	For	purposes of this chapter, "animal abuse" means the physical abuse of an animal,
15		but	does not include any act or omission that falls within the definition of animal
16		cru	elty, as set forth in section 36-21.2-03.
17	3.	The	e following do not constitute violations of this section:
18		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
19			of the livestock industry the production of any plant, animal, or animal product,
20			that is used for food, feed, fiber, or ornament, and which is distributed
21			commercially;
22		<u>b.</u>	Any usual and customary practice in the boarding, breeding, feeding, raising,
23			training, showing, and competition of animals;
24		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
25		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
26		<u>e.</u>	Any usual and customary practice in the use of animals by exhibitors licensed
27			under the Animal Welfare Act, 7 U.S.C. 2131, et seg;
28		f.	Any usual and customary practice in the slaughtering of animals;
29		g.	Any usual and customary practice in the culinary arts;
30		h.	Lawful fishing, hunting, and trapping, and any usual and customary practices in
31			the handling of animals obtained under this subdivision;

1	<u>f.i.</u>	Lawful wildlife management practices;
2	9-1.	Lawful research and educational activities involving the use of animals;
3	h.k.	Lawful control of pests, rodents, and predators, and the disposition or destruction
4		of any that enter personal property;
5	<u>i.l.</u>	Lawful animal damage control activities;
6	i.m.	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	<u>k.n.</u>	Services provided by or under the direction of a licensed veterinarian; and
9	<u>+.o.</u>	The humane destruction of an animal for cause.
10	36-21.2-	03. Animal cruelty - Definition - Exemptions - Penalty.
11	<u>1.</u> Any	person that willfully engages in animal cruelty is guilty of a class C felony.
12	2. For	purposes of this chapter, "animal cruelty" means:
13	<u>a.</u>	Beating an animal to its death:
14	b.	Blinding an animal:
15	<u>C.</u>	Burning an animal:
16	d,	Crushing an animal:
17	е.	Disemboweling an animal while it is still alive;
18	f.	Dismembering an animal:
19	g.	Dragging an animal to its death;
20	h.	Drowning an animal:
21	i.	Impaling an animal:
22	j.	Poisoning an animal:
23	k.	Skinning an animal while it is still alive:
24	I.	Starving an animal to its death:
25	<u> </u>	Suffocating an animal; or
26	<u> </u>	Any other act or omission that-causes:
27		(1) Causes an animal unjustifiable pain, suffering, or death, including the
28		infliction of any injury that results in a substantial risk of death, leaves an
29		animal significantly disfigured, results in broken bones, or causes prolonged
30		impairment of an animal's health;-and
31	<u>b.</u>	Any act or omission that resultsor

1 (2) Results in a serious illness and leaves an animal significantly disfigured or 2 causes prolonged impairment of the animal's health. 3 3. The following do not constitute violations of this section: 4 Any usual and customary practice in production agriculture, including all aspects a. of the livestock industry the production of any plant, animal, or animal product that 5 6 is used for food, feed, fiber, or ornament, and which is distributed commercially; 7 Any usual and customary practice in the boarding, breeding, feeding, raising, b. 8 training, showing, and competition of animals; 9 Any usual and customary practice in the sport of rodeo and in animal racing; C. 10 Any usual and customary practice in livestock exhibitions and competitions; d. 11 e. Any usual and customary practice in the use of animals by exhibitors licensed 12 under the Animal Welfare Act. 7 U.S.C. 2131, et seq: 13 Any usual and customary practice in the slaughtering of animals; f. 14 Any usual and customary practice in the culinary arts; Q. 15 Lawful fishing, hunting, and trapping, and any usual and customary practices in h. 16 the handling of animals obtained under this subdivision: 17 f.i. Lawful wildlife management practices; 18 Lawful research and educational activities involving the use of animals; q. Lawful control of pests, rodents, and predators, and the disposition or destruction 19 h.k. 20 of any that enter personal property; 21 Lawful animal damage control activities; H. 22 Any action taken by an individual against an animal that is attacking or is about to i-m. 23 attack a human, a companion animal, or livestock; 24 Services provided by or under the direction of a licensed veterinarian; and k.n. 25 The humane destruction of an animal for cause. 10. 26 36-21.2-04. Animal abandonment - Definition - Exemptions - Penalty. 27 1. Any person that willfully engages in the abandonment of an animal is guilty of a class A misdemeanor for a first or a second offense and a class C felony for a third or 28 29 subsequent offense occurring within ten years. 30 For purposes of this chapter, "abandonment" means the relinquishment of a person's 2. 31 custody or control, with no intention of reclaiming that custody or control, and without

6       conclusion of a boarding contract or other service contract, other than that         7       specified in section 43-29-16.1.         8       3. The following do not constitute violations of this section:         9       a. Any usual and customary practice in preduction agriculture, including all aspect         10       of the livestock industry the production of any plant, animal, or animal product,         11       that is used for food, feed, fiber, or ornament, and which is distributed         12       commercially;         13       b. Any usual and customary practice in the boarding, breeding, feeding, raising,         14       training, showing, and competition of animals;         15       c. Any usual and customary practice in the sport of rodeo and in animal racing;         16       d. Any usual and customary practice in the use of animals by exhibitors licensed         17       e. Any usual and customary practice in the slauphtering of animals;         18       under the Animal Welfare Act. 7 U.S.C. 2131, et seg;         19       f. Any usual and customary practice in the slauphtering of animals;         20       g. Any usual and customary practice in the slauphtering of animals;         21       h. Lawful fishing, hunting, and trapping, and any usual and customary practices in the heading;         22       the handling of animals obtained under this subdivision;         23	1	plac	cing the animal into the custody or control of another person that is able to provide
4       a. The desertion of an animal; and         5       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.         8       3. The following do not constitute violations of this section:         9       a. Any usual and customary practice in preduction agriculture, including all aspect of the livestock industrythe production of any plant, animal, or animal product, that is used for food, feed, fiber, or omament, and which is distributed commercially;         13       b. Any usual and customary practice in the boarding, breeding, feeding, raising, training, showing, and competition of animals;         15       c. Any usual and customary practice in the sport of rodeo and in animal racing;         16       d. Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act. 7 U.S.C. 2131, et seq;         19       f. Any usual and customary practice in the slaughtering of animals;         20       g. Any usual and customary practice in the slaughtering of animals;         21       h. Lawful fishing, hunting, and trapping, and any usual and customary practices in the handling of animals obtained under this subdivision;         21       h. Lawful research and educational activities involving the use of animals;         22       the handling of pests, rodents, and predators, and the disposition or destruct of any that enter personal property;         23       H. Lawful control of pe	2	car	e for the animal and who knowingly and willingly accepts that responsibility. The
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<ul> <li>b. Any usual and customary practice in the boarding, breeding, feeding, raising, training, showing, and competition of animals;</li> <li>c. Any usual and customary practice in the sport of rodeo and in animal racing;</li> <li>d. Any usual and customary practice in the sport of rodeo and in animal racing;</li> <li>d. Any usual and customary practice in livestock exhibitions and competitions;</li> <li>e. Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq:</li> <li>f. Any usual and customary practice in the staughtering of animals;</li> <li>g. Any usual and customary practice in the staughtering of animals;</li> <li>g. Any usual and customary practice in the staughtering of animals;</li> <li>g. Any usual and customary practice in the culinary arts;</li> <li>h. Lawful fishing, hunting, and trapping, and any usual and customary practices in the handling of animals obtained under this subdivision;</li> <li>f. Lawful wildlife management practices;</li> <li>g. Lawful research and educational activities involving the use of animals;</li> <li>h. Lawful control of pests, rodents, and predators, and the disposition or destruct of any that enter personal property;</li> <li>i. Lawful animal damage control activities;</li> <li>i.m. Services provided by or under the direction of a licensed veterinarian; and</li> </ul>	11		that is used for food, feed, fiber, or ornament, and which is distributed
14       training, showing, and competition of animals;         15       c. Any usual and customary practice in the sport of rodeo and in animal racing;         16       d. Any usual and customary practice in livestock exhibitions and competitions;         17       e. Any usual and customary practice in the use of animals by exhibitors licensed         18       under the Animal Welfare Act, 7 U.S.C. 2131, et seg;         19       f. Any usual and customary practice in the slaughtering of animals;         20       g. Any usual and customary practice in the culinary arts;         19       f. Any usual and customary practice in the culinary arts;         21       h. Lawful fishing, hunting, and trapping, and any usual and customary practices in the handling of animals obtained under this subdivision;         23       fi. Lawful wildlife management practices;         24       g.i. Lawful research and educational activities involving the use of animals;         25       h.k. Lawful control of pests, rodents, and predators, and the disposition or destruct of any that enter personal property;         27       i.l. Lawful animal damage control activities;         28       j.m. Services provided by or under the direction of a licensed veterinarian; and	12		commercially;
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16       d. Any usual and customary practice in livestock exhibitions and competitions;         17       e. Any usual and customary practice in the use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq;         19       f. Any usual and customary practice in the slaughtering of animals;         20       g. Any usual and customary practice in the slaughtering of animals;         21       h. Lawful fishing, hunting, and trapping, and any usual and customary practices i the handling of animals obtained under this subdivision;         23       £i. Lawful wildlife management practices;         24       g.i. Lawful research and educational activities involving the use of animals;         25       h.k. Lawful control of pests, rodents, and predators, and the disposition or destruct of any that enter personal property;         27       i.j. Lawful animal damage control activities;         28       j.m. Services provided by or under the direction of a licensed veterinarian; and	14		training, showing, and competition of animals;
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<ul> <li>f. Any usual and customary practice in the slaughtering of animals;</li> <li>g. Any usual and customary practice in the culinary arts;</li> <li>h. Lawful fishing, hunting, and trapping, and any usual and customary practices in the handling of animals obtained under this subdivision;</li> <li>H. Lawful wildlife management practices;</li> <li>H. Lawful research and educational activities involving the use of animals;</li> <li>h. Lawful control of pests, rodents, and predators, and the disposition or destruct of any that enter personal property;</li> <li>Lawful animal damage control activities;</li> <li>j.m. Services provided by or under the direction of a licensed veterinarian; and</li> </ul>	17	<u>e.</u>	Any usual and customary practice in the use of animals by exhibitors licensed
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<ul> <li>Lawful wildlife management practices;</li> <li>Lawful research and educational activities involving the use of animals;</li> <li>Lawful control of pests, rodents, and predators, and the disposition or destruct</li> <li>of any that enter personal property;</li> <li>Lawful animal damage control activities;</li> <li>Services provided by or under the direction of a licensed veterinarian; and</li> </ul>	21	h.	Lawful fishing, hunting, and trapping, and any usual and customary practices in
<ul> <li>24 g.i. Lawful research and educational activities involving the use of animals;</li> <li>25 h.k. Lawful control of pests, rodents, and predators, and the disposition or destruct</li> <li>26 of any that enter personal property;</li> <li>27 i.i. Lawful animal damage control activities;</li> <li>28 j.m. Services provided by or under the direction of a licensed veterinarian; and</li> </ul>	22		the handling of animals obtained under this subdivision;
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26       of any that enter personal property;         27       iii.         28       j.m.         Services provided by or under the direction of a licensed veterinarian; and	24	मां.	Lawful research and educational activities involving the use of animals;
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28 <u>Services provided by or under the direction of a licensed veterinarian; and</u>	26		of any that enter personal property;
	27	<u>H.</u>	Lawful animal damage control activities;
29 Ken. The humane destruction of an animal for cause.	28	<u>j.m.</u>	Services provided by or under the direction of a licensed veterinarian; and
	29	k.n.	The humane destruction of an animal for cause.

# Sixty-third

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Legislative Assembly

1	4.	For purposes of this section, "care" means food, water, and shelter from the elements,
2		as appropriate for the species, the breed, and the animal's age and physical condition,
3		and necessary medical attention.
4	36-	21.2-05. Seizure of animal - Court order.

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

- A law enforcement officer may petition the court for an order directing the seizure of 1. any animal believed to have been neglected, abused, treated cruelly, or subjected to any act or omission in violation of this chapter.
- 8 2. The court may act without notice to the animal's owner or to the person having 9 custody or control of the animal and may rely solely on testimony or an affidavit in
- 10 considering the petition.
- 11 In the order for seizure, the court may direct that a veterinarian humanely destroy an 3. 12 animal if the veterinarian, upon examining the animal, determines that the animal is
- 13 experiencing excruciating pain or suffering and that the animal's pain or suffering is not
- 14 likely to be alleviated using reasonable medical interventions.
  - 36-21.2-06. Law enforcement Duty upon seizure Notification.
  - Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement 1.
  - officer shall provide care for the animal, either directly or through a contractual

18 arrangement with another person. For purposes of this subsection, "care" means food,

- 19 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.
    - If the owner and the person having custody or control at the time of the seizure a. are known to the officer, the officer shall:

 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.

If the animal's owner is not known to the law enforcement officer, the officer shall b. 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		(1) If the owner does not claim the animal within five days, as required by this
2		subdivision, the law enforcement officer shall sell the animal, place the
3		animal for adoption, or provide for its humane destruction.
4		(2) If the owner is identified within the five-day period, the law enforcement
5		officer shall petition the court for an order directing the animal's disposition.
6	<u>2.</u>	In ruling on a petition for an animal's disposition under this section, a court may direct
7		that the animal be sold, placed for adoption, humanely destroyed, or returned to its
8		owner, with or without conditions.
9	36-2	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.
10	<u>1.</u>	The If convicted of violating this chapter, the owner of an animal seized under section
11		36-21.2-05 is responsible for all costs related to the animal's seizure, including
12		required notifications, attorney's fees, court costs, and any costs incurred in providing
13		the animal with care or in providing for its destruction in accordance with section
14		<u>36-21.2-06.</u>
15	<u>2.</u>	a. The law enforcement agency that seized the animal has a lien upon the animal
16		for all costs incurred as a result of the seizure and conviction. The lien is superior
17		to any other claim or lien.
18		b. If the lien is not satisfied by the animal's owner, the law enforcement agency may
19		apply to the court for an order enforcing the lien.
20	<u>3.</u>	If a seized animal is sold, the proceeds must be used first to satisfy the lienholder to
21		the extent of the lien and second to satisfy any other claims involving the animal. Any
22		remaining proceeds must be returned to the owner, as directed by the court. If the
23		owner is unknown, any proceeds otherwise payable to the owner must be deposited in
24		the general fund of the county.
25	36-	21.2-08. Abandoned animal - Law enforcement officer - Duties.
26	<u>1.</u>	A law enforcement officer may take custody of an animal if the officer has reasonable
27		cause to believe that the animal has been abandoned in violation of this chapter.
28	<u>2.</u>	a. Upon taking custody of an animal in accordance with this section, the law
29		enforcement officer shall:
30		(1) Provide care for the animal, either directly or through a contractual
31		arrangement with another person; and

\*

1			(2)	<u>(a)</u>	Notify the owner, if known to the officer; or
2				(b)	If the owner is not known to the officer, provide notice of the animal's
3					custody, indicate that if the owner does not lay claim to the animal
4					within five days, the animal will be sold, placed for adoption, or
5					humanely destroyed, at the direction of the law enforcement officer,
6					and include the officer's contact information.
7		<u>b.</u>	For	purpo	oses of this subdivision, notice may be provided by:
8			(1)	Pub	lication in the official newspaper of the county if the newspaper is
9				publ	ished daily or in a daily newspaper serving the county;
10			(2)	Any	electronic means; or
11			(3)	Post	ting a description and a photograph at the local law enforcement center.
12	<u>3.</u>	If the	e ow	ner is	identified within the five-day period, the law enforcement officer shall
13		retu	rn the	e anim	nal to the owner only if:
14		<u>a.</u>	The	owne	er demonstrates that the animal was not abandoned in violation of this
15			<u>cha</u>	pter; a	and
16		<u>b.</u>	The	owne	er pays for all costs associated with the animal's care while in custody,
17			inclu	uding	any costs of notifications under this section.
18	<u>4.</u>	If the	e law	enfo	rcement officer refuses to return the animal to its owner, the owner may
19		petit	tion t	he co	urt for an order directing its return. In ruling on a petition under this
20		sub	sectio	on, a (	court may direct that the animal be sold, placed for adoption, humanely
21		dest	troye	d, <mark>or</mark> r	returned to its owner with or without conditions.
22	<u>5.</u>	If th	e ow	ner da	pes not lay claim to the animal within five days, the law enforcement
23		offic	er sh	nall se	Il the animal, place it for adoption, or humanely destroy it.
24	<u>6.</u>	Any	proc	eeds	from the sale or adoption of an animal under this section must be
25		dep	osite	d in th	ne county general fund.
26	<u>7.</u>	Not	withs	tandir	ng the requirements of this section, if upon examining an animal taken
27		into	cust	ody b	y a law enforcement officer in accordance with this section a licensed
28		vete	erinar	rian de	etermines that the animal's condition justifies its destruction, the
29		vete	erinar	rian sh	nall humanely destroy the animal. The law enforcement agency shall
30		reim	burs	e the	veterinarian for the cost of the animal's destruction.

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1	<u>8.</u>	For	purposes of this section, "care" means food, water, and shelter from the elements,				
2		as appropriate for the species, the breed, and the animal's age and physical condition,					
3		and necessary medical attention.					
4	36-2	21.2-	09. Title of animal - Sale or adoption.				
5	The	title	to any animal sold or adopted in accordance with this chapter passes to the				
6	individu	al tak	ing custody or control of the animal.				
7	36-2	21.2-	10. Veterinarian.				
8	If up	oon e	xamining an animal a licensed veterinarian determines that there is reasonable				
9	cause to	o beli	eve an animal has been neglected, abused, treated cruelly, or subjected to any act				
10	or omis	sion i	n violation of this chapter, the veterinarian may retain custody of the animal and				
11	shall im	medi	ately notify law enforcement officials regarding the determination.				
12	36-	21.2-	11. Caged animals - Public display - Exemptions - Penalty.				
13	<u>1.</u>	<u>In a</u>	addition to any other requirements set forth in this chapter, a person placing a				
14		cac	ed animal on public display shall ensure that:				
15		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move				
16			about; and				
17		<u>b.</u>	The cage provides the animal with protection from the elements, as appropriate				
18			for the species, the breed, and the animal's age and physical condition.				
19	<u>2.</u>	Any	y person that willfully fails to meet the requirements of this section is guilty of a				
20		clas	ss A misdemeanor.				
21	<u>3.</u>	Thi	s section does not apply to:				
22		<u>a.</u>	The North Dakota state fair association;				
23		<u>b.</u>	Agricultural fair associations;				
24		<u>C.</u>	Livestock exhibitions and competitions;				
25		<u>d.</u>	Political subdivisions;				
26		<u>e.</u>	Educational exhibitions; or				
27		<u>f.</u>	Exhibitors licensed by the United States department of agriculture under the				
28			Animal Welfare Act, 7 U.S.C. 2131, et seq.				
29	<u>4.</u>	Th	e following do not constitute violations of this section:				



1	<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
2		of the livestock industry the production of any plant, animal, or animal product that
3		is used for food, feed, fiber, or ornament, and which is distributed commercially;
4	<u>b.</u>	Any usual and customary practice in the boarding, breeding, feeding, raising,
5		training, showing, and competition of animals;
6	<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
7	<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
8	<u>e.</u>	Any usual and customary practice in the culinary arts;
9	f.	Any usual and customary practice in the slaughtering of animals;
10	g.	Lawful fishing, hunting, and trapping, and any usual and customary practices in
11		the handling of animals obtained under this subdivision;
12	<u>f.h.</u>	Lawful wildlife management practices;
13	<del>g.</del> i.	Lawful research and educational activities involving the use of animals;
14	<u>h.i.</u>	Lawful control of pests, rodents, and predators, and the disposition or destruction
15		of any that enter personal property;
16	i.k.	Lawful animal damage control activities; and
17	<u>H.</u>	Services provided by or under the direction of a licensed veterinarian.
18	36-21.2-	12. Unattended animal in motor vehicle - Penalty.
19	<u>1. Ap</u>	ersonAn individual may not leave an animal unattended in a motor vehicle without
20	ens	suring that the animal's health and safety is not endangered.
21	2. An	y personAn individual that violates this section is guilty of an infraction.
22	<u>3.</u> Ala	aw enforcement officer may use reasonable means to enter a motor vehicle and
23	ren	nove an animal left in violation of this section.
24	36-21.2-	13. Immunity from liability.
25	A veterir	narian is immune from civil or criminal liability if the veterinarian, on the
26	veterinarian'	s own initiative or at the request of a law enforcement officer or other governmental
27	entity, rende	rs emergency treatment to a sick or injured animal under this chapter. Immunity
28	under this se	ection does not apply in the case of negligence.
29	36-21.2-	14. Estrays.
30	This cha	apter does not apply to estrays.

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repealed.

1	36-21.2-15. Collectives Multiple animals - Status Enhancement of offense.
2	If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
3	same species animals, the violation is deemed to be a singular incident for purposes of
4	determining the status of the offense. If a violation of this chapter involves multiple animals,
5	whether of the same species or not, the violation is deemed to be a singular offense for
6	purposes of enhancement.
7	SECTION 4. REPEAL. Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1 03.1,
8	36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are

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#### 13.0380.07007

#### FIRST ENGROSSMENT

Sixty-third Legislative Assembly of North Dakota

#### 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 atwo new sections to chapter 36-01 and chapter
- 2 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of animal
- 3 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 4
- 5 Code, relating to the treatment of animals; and to provide a penalty.

#### 6 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.
- 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 erpurposes, educational 16 purposes, or temporary exhibitions.
- 17 SECTION 2. A new section to chapter 36-01 of the North Dakota Century Code is created
- 18 and enacted as follows:
- 19 Assistance in criminal investigations.
- 20 The state board of animal health shall maintain and make available to any law enforcement
- 21 agency a list of veterinarians who are licensed in this state and trained to provide assistance in
- 22 any criminal investigation pertaining to this state's animal laws.
- 23 SECTION 3. Chapter 36 21.2 of the North Dakota Century Code is created and enacted as
- 24 follows:

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	Legisia	the Assembly
1	36-	21.2-01. Neglect - Definition - Exemptions - Penalty.
2	1.	Any person that willfully engages in animal neglect is guilty of a class A misdemeanor
3		for a first or a second offense and a class C felony for a third or subsequent offense
4		occurring within ten years.
5	2.	For purposes of this chapter, "neglect" means the failure to provide an animal with:
6		a. Food and water, as appropriate for the species, the breed, and the animal's age
7		and physical condition;
8		b. Shelter from the elements, as appropriate for the species, the breed, and the
9		animal's age and physical condition;
10		c. Necessary medical attention; and
11		d. An environment that is:
12		(1) Ventilated in a manner appropriate for the species, the breed, and the
13		animal's age and physical condition;
14		(2) Cleaned in a manner appropriate for the species, the breed, and the
15		animal's age and physical condition; and
16		(3) Free of conditions likely to cause injury or death to an animal of that
17		species, breed, age, and physical condition.
18	3.	The following do not constitute violations of this section:
19		a. Any usual and customary practice in production agriculture, including all aspects
20		of the livestock industry;
21		b. Any usual and customary practice in the breeding, raising, training, showing, and
22		competition of animals;
23		c. Any usual and customary practice in the sport of rodeo and in animal racing;
24		d. Any usual and customary practice in livestock exhibitions and competitions;
25		e. Lawful fishing, hunting, and trapping;
26		f. Lawful wildlife management practices;
27		g. Lawful research and educational activities involving the use of animals;
28		h. Lawful control of pests, rodents, and predators;
29		i. Lawful animal damage control activities;
30		j. Services provided by or under the direction of a licensed veterinarian; and
31		k. The humane destruction of an animal for cause:



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	Legislative Assembly
1	3. 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. The humane or swift destruction of an animal for cause; and
16	c. Services provided by or under the direction of a licensed veterinarian.
17	36-21.2-02. Animal abuse - Definition - Exemptions - Penalty.
18	1. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
19	for a first or a second offense and a class C felony for a third or subsequent offense
20	occurring within ten years.
21	2. For purposes of this chapter, "animal abuse" means the physical abuse of any act or
22	omission that results in physical injury to an animal or that causes the death of an
23	animal, but does not include any act or omission that falls within the definition of
24	animal cruelty, as set forth in section 36 21.2 03.
25	3. The following do not constitute violations of this section:
26	a. Any usual and customary practice in production agriculture, including all aspects
27	of the livestock industry;
28	b. Any usual and customary practice in the breeding, raising, training, showing, and
29	competition of animals;
30	c. Any usual and customary practice in the sport of rodeo and in animal racing;
31	d. Any usual and customary practice in livestock exhibitions and competitions;

1 -	e. Lawful fishing, hunting, and trapping;
2 -	f. Lawful wildlife management practices;
3 -	g. Lawful research and educational activities involving the use of animals;
4 –	h. Lawful control of pests, rodents, and predators;
5 -	i. Lawful animal damage control activities;
6 -	j. 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 -	k. Services provided by or under the direction of a licensed veterinarian; and
9 -	I. The humane destruction of an animal for cause.
10 _	3. The following do not constitute violations of this section:
11	a. Any usual and customary practice in:
12 _	(1) The production of food, feed, fiber, or ornament;
13 _	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
14	and training of animals;
15	(3) The sport of rodeo:
16	(4) Animal racing:
17	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
18	7 U.S.C. 2131, et seq;
19	(6) Fishing, hunting, and trapping;
20	(7) Wildlife management;
21 _	(8) The culinary arts;
22	(9) Lawful research and educational activities; and
23 _	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
24	b. Any action taken by an individual against an animal that is attacking or is about to
25	attack a human, a companion animal, or livestock;
26	c. The humane or swift destruction of an animal for cause; and
27	d. Services provided by or under the direction of a licensed veterinarian.
28	36-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.
29	1. Any person that willfully engages in animal cruelty is guilty of a class C felony.
30	2. For purposes of this chapter, "animal cruelty" means:

1 -	a. Any act or omission that causes an animal unjustifiable pain, suffering, or death,
2	including the infliction of any injury that results in a substantial risk of death,
3	leaves an animal significantly disfigured, results in broken bones, or causes
4	prolonged impairment of an animal's health; and
5 -	b. Any act or omission that results in a serious illness and leaves an animal
6	significantly disfigured or causes prolonged impairment of the animal's health.
7 -	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. Any action taken by an individual against an animal that is attacking or is about to
20	attack a human, a companion animal, or livestock;
21 -	k. Services provided by or under the direction of a licensed veterinarian; and
22 -	I. The humane destruction of an animal for cause.
23	a. The killing of an animal with a depravity of mind and a wanton disregard for its
24	life: or
25	b. The torturing of an animal for the purpose of inflicting pain.
26	3. The following do not constitute violations of this section:
27	a. Any usual and customary practice in:
28	(1) The production of food, feed, fiber, or ornament;
29	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
30	and training of animals;
31	(3) The sport of rodeo;



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-	1 _		(4) Animal racing;
2	2 _		(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
	3		7 U.S.C. 2131, et sea:
	4		(6) Fishing, hunting, and trapping;
	5		(7) Wildlife management:
	6		(8) The culinary arts;
	7		(9) Lawful research and educational activities; and
	8		(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
	9		b. Any action taken by an individual against an animal that is attacking or is about to
	10		attack a human, a companion animal, or livestock;
	11		c. The humane or swift destruction of an animal for cause; and
	12		d. Services provided by or under the direction of a licensed veterinarian.
	13	36-2	1.2-04. Animal abandonment - Definition - Exemptions - Penalty.
	14	<u>1.</u>	Any person that willfully engages in the abandonment of an animal is guilty of a
	15		class A misdemeanor for a first or a second offense and a class C felony for a third or
	16		subsequent offense occurring within ten years.
	17	<u>2.</u>	For purposes of this chapter, "abandonment" means the relinquishment of a person's
	18		custody or control, with no intention of reclaiming that custody or control, and without
	19		placing the animal into the custody or control of another person that is able to provide
	20		care for the animal and who knowingly and willingly accepts that responsibility. The
	21		term includes:
	22		a. The desertion of an animal; and
	23		b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
	24		conclusion of a boarding contract or other service contract, other than that
	25		specified in section 43-29-16.1.
	26	3.	The following do not constitute violations of this section:
	27		a. Any usual and customary practice in production agriculture, including all aspects
	28		of the livestock industry;
	29		b. Any usual and customary practice in the breeding, raising, training, showing, and
	30		competition of animals;
	31		<u>—c. Any usual and customary practice in the sport of rodeo and in animal racing;</u>

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1 -	d. Any usual and customary practice in livestock exhibitions and competitions;
2 -	e. Lawful fishing, hunting, and trapping;
3 -	f. Lawful wildlife management practices;
4 -	g. Lawful research and educational activities involving the use of animals;
5 -	h. Lawful control of pests, rodents, and predators;
6 -	i. Lawful animal damage control activities;
7 -	<u>Services provided by or under the direction of a licensed veterinarian; and</u>
8 -	k. The humane destruction of an animal for cause.
9	3. The following do not constitute violations of this section:
10	a. Any usual and customary practice in:
11	(1) The production of food, feed, fiber, or ornament;
12	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
13	and training of animals;
14	(3) The sport of rodeo:
15	(4) Animal racing:
16	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
17	7 U.S.C. 2131. et seq:
18	(6) Fishing, hunting, and trapping;
19	(7) Wildlife management:
20	(8) The culinary arts:
21	(9) Lawful research and educational activities; and
22	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
23	b. The humane or swift destruction of an animal for cause; and
24	c. Services provided by or under the direction of a licensed veterinarian.
25	4. For purposes of this section, "care" means food, water, and shelter from the elements,
26	as appropriate for the species, the breed, and the animal's age and physical condition,
27	and necessary medical attention.
28	36-21.2-05. Seizure of animal - Court order.
29	1. A law enforcement officer may petition the court for an order directing the seizure of
30	any animal believed to have been neglected, abused, treated cruelly, or subjected to
31	any act or omission in violation of this chapter.

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1	2.	The court may act without notice to the animal's owner or to the person having
2		custody or control of the animal and may rely solely on testimony or an affidavit in
3		considering the petition.
4	3.	In the order for seizure, the court may direct that a veterinarian humanely destroy an
5		animal if the veterinarian, upon examining the animal, determines that the animal is
6		experiencing excruciating pain or suffering and that the animal's pain or suffering is not
7		likely to be alleviated using reasonable medical interventions.
8	36-	21.2-06. Law enforcement - Duty upon seizure - Notification.
9	1.	Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement
10		officer shall provide care for the animal, either directly or through a contractual
11		arrangement with another person. For purposes of this subsection, "care" means food,
12		water, and shelter from the elements, as appropriate for the species, the breed, and
13		the animal's age and physical condition, and necessary medical attention.
14		a. If the owner and the person having custody or control at the time of the seizure
15		are known to the officer, the officer shall:
16		(1) Provide notice of the seizure to the owner and the person having custody or
17		control of the animal; and
18		(2) Petition the court for an order directing the animal's disposition.
19		b. If the animal's owner is not known to the law enforcement officer, the officer shall
20		publish notice of the animal's seizure in the official newspaper of the county and
21		indicate that if the owner does not claim the animal within five days, the animal
22		will be sold, placed for adoption, or humanely destroyed, at the direction of the
23		law enforcement officer.
24		(1) If the owner does not claim the animal within five days, as required by this
25		subdivision, the law enforcement officer shall sell the animal, place the
26		animal for adoption, or provide for its humane destruction.
27		(2) If the owner is identified within the five-day period, the law enforcement
28		officer shall petition the court for an order directing the animal's disposition.
29	<u>2.</u>	In ruling on a petition for an animal's disposition under this section, a court may direct
30		that the animal be sold, placed for adoption, humanely destroyed, or returned to its
31		owner, with or without conditions.

2	<u>1.</u>	The	If con	victed	of violating this chapter, the owner of an animal seized under section
3		36-2	21.2 (	05 is re	esponsible for all costs related to the animal's seizure, including
4		requ	uired	notifica	ations, attorney's fees, court costs, and any costs incurred in providing
5		the	anima	al with	care or in providing for its destruction in accordance with section
6		36-2	21.2-0	06.	
7	<u>2.</u>	<u>a.</u>	The	law er	nforcement agency that seized the animal has a lien upon the animal
8			for a	all cost	s incurred as a result of the seizure and conviction. The lien is superior
9			to a	ny othe	er claim or lien.
10		<u>b.</u>	If th	e lien i	is not satisfied by the animal's owner, the law enforcement agency may
11			app	ly to th	e court for an order enforcing the lien.
12	<u>3.</u>	lf a	seize	d anim	nal is sold, the proceeds must be used first to satisfy the lienholder to
13		the	exter	t of the	e lien and second to satisfy any other claims involving the animal. Any
14		rem	ainin	g proce	eeds must be returned to the owner, as directed by the court. If the
5		owr	ner is	unkno	wn, any proceeds otherwise payable to the owner must be deposited in
16		the	gene	ral fund	d of the county.
17	36-	21.2-	08. AI	bando	ned animal - Law enforcement officer - Duties.
18	<u>1.</u>	Ala	w ent	forcem	ent officer may take custody of an animal if the officer has reasonable
19		cau	se to	believ	e that the animal has been abandoned in violation of this chapter.
20	<u>2.</u>	<u>a.</u>	Upo	on takir	ng custody of an animal in accordance with this section, the law
21			enfo	orceme	ent officer shall:
22			(1)	Prov	ide care for the animal, either directly or through a contractual
23				arran	ngement with another person; and
24			(2)	<u>(a)</u>	Notify the owner, if known to the officer; or
25				(b)	If the owner is not known to the officer, provide notice of the animal's
26					custody, indicate that if the owner does not lay claim to the animal
27					within five days, the animal will be sold, placed for adoption, or
28					humanely destroyed, at the direction of the law enforcement officer,
29					and include the officer's contact information.
30		b.	For	nurno	ses of this subdivision, notice may be provided by:

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-	1		(1)	Publication in the official newspaper of the county if the newspaper is				
2	2			published daily or in a daily newspaper serving the county;				
	3		(2)	Any electronic means; or				
	4		(3)	Posting a description and a photograph at the local law enforcement center.				
	5	<u>3.</u>	If the own	ner is identified within the five-day period, the law enforcement officer shall				
	6		return the	e animal to the owner only if:				
	7		a. The	owner demonstrates that the animal was not abandoned in violation of this				
	8		cha	pter; and				
	9		b. The	owner pays for all costs associated with the animal's care while in custody,				
	10		inclu	uding any costs of notifications under this section.				
	11	<u>4.</u>	If the law	enforcement officer refuses to return the animal to its owner, the owner may				
	12		petition t	ne court for an order directing its return. In ruling on a petition under this				
	13		subsectio	on, a court may direct that the animal be sold, placed for adoption, humanely				
	14		destroye	d, or returned to its owner with or without conditions.				
	15	<u>5.</u>	If the ow	ner does not lay claim to the animal within five days, the law enforcement				
	16		officer sh	all sell the animal, place it for adoption, or humanely destroy it.				
	17	<u>6.</u>	Any proc	eeds from the sale or adoption of an animal under this section must be				
	18		deposite	d in the county general fund.				
	19	<u>7.</u>	Notwiths	tanding the requirements of this section, if upon examining an animal taken				
	20		into cust	ody by a law enforcement officer in accordance with this section a licensed				
	21		veterinar	ian determines that the animal's condition justifies its destruction, the				
	22		veterinarian shall humanely destroy the animal. The law enforcement agency shall					
	23		reimburs	e the veterinarian for the cost of the animal's destruction.				
	24	<u>8.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,					
	25		as appro	priate for the species, the breed, and the animal's age and physical condition,				
	26		and nece	essary medical attention.				
	27	36-2	21.2-09. Ti	tle of animal - Sale or adoption.				
	28	The	title to an	y animal sold or adopted in accordance with this chapter passes to the				
	29	individu	al taking c	ustody or control of the animal.				



1	36-2	21.2-	10. Veterinarian.
2	If up	oon e	xamining an animal a licensed veterinarian determines that there is reasonable
3	cause to	belie	eve an animal has been neglected, abused, treated cruelly, or subjected to any act
4	or omiss	sion i	n violation of this chapter, the veterinarian may retain custody of the animal and
5	shall im	media	ately notify law enforcement officials regarding the determination.
6	36-2	21.2-	11. Caged animals - Public display - Exemptions - Penalty.
7	<u>1.</u>	In a	ddition to any other requirements set forth in this chapter, a person placing a
8		cag	ed animal on public display shall ensure that:
9		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move
10			about; and
11		<u>b.</u>	The cage provides the animal with protection from the elements, as appropriate
12			for the species, the breed, and the animal's age and physical condition.
13	<u>2.</u>	Any	person that willfully fails to meet the requirements of this section is guilty of a
14		clas	ss A misdemeanor.
15	<u>3.</u>	This	s section does not apply to:
16	-	<u>a.</u>	The North Dakota state fair association;
17		<u>b.</u>	Agricultural fair associations; or
18		<u>G.</u>	Livestock exhibitions and competitions;
19		d.c.	Political subdivisions:
20		<u>e.</u>	Educational exhibitions; or
21		<u>f.</u>	Exhibitors licensed by the United States department of agriculture.
22	-4.	The	e following do not constitute violations of this section:
23		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
24			of the livestock industry:
25		<u>b.</u>	-Any usual and customary practice in the breeding, raising, training, showing, and
26			competition of animals;
27		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
28		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
29		0.	Lawful fishing, hunting, and trapping;
30		<u>f.</u>	Lawful wildlife management practices;
31		<u>g.</u>	-Lawful research and educational activities involving the use of animals;



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1	h. Lawful control of pests, rodents, and predators;
2	i. Lawful animal damage control activities; and
3	<u>i. Services provided by or under the direction of a licensed veterinarian.</u>
4	4. The following do not constitute violations of this section:
5	a. Any usual and customary practice in:
6	(1) The production of food, feed, fiber, or ornament:
7	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
8	and training of animals;
9	(3) The sport of rodeo;
10	(4) Animal racing;
11	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
12	<u>7 U.S.C. 2131. et seq:</u>
13	(6) Fishing, hunting, and trapping;
14	(7) Wildlife management:
15	(8) The culinary arts:
16	(9) Lawful research and educational activities; and
17	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
18	b. Any action taken by an individual against an animal that is attacking or is about t
19	attack a human, a companion animal, or livestock;
20	c. The humane or swift destruction of an animal for cause; and
21	d. Services provided by or under the direction of a licensed veterinarian.
22	36-21.2-12. Unattended animal in motor vehicle - Penalty.
23	1. A personAn individual may not leave an animal unattended in a motor vehicle without
24	ensuring that the animal's health and safety is not endangered.
25	2. Any personAn individual that violates this section is guilty of an infraction.
26	3. A law enforcement officer may use reasonable means to enter a motor vehicle and
27	remove an animal left in violation of this section.
28	36-21.2-13. Immunity from liability.
29	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 governmenta



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Legislative Assembly

- 1 entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity
- 2 under this section does not apply in the case of negligence.
  - 36-21.2-14. Estrays.
- 4 This chapter does not apply to estrays.
  - 36-21.2-15. Collectives Multiple animals Status Enhancement of offense.
- 6 If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
- 7 same species animals, the violation is deemed to be a singular incident for purposes of
- 8 determining the status of the offense. If a violation of this chapter involves multiple animals,
- 9 whether of the same species or not, the violation is deemed to be a singular offense for
- 10 purposes of enhancement.
- 11 SECTION 4. REPEAL. Sections 36 21.1-01, 36 21.1 02, 36 21.1-03, 36-21.1-03.1,
- 12 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
- 13 repealed.





13.0380.07007 Title. Prepared by the Legislative Council staff for Representative Belter March 25, 2013

3-25-2013

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ". or temporary exhibitions"

Page 1, after line 15, insert:

"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 state board of animal health 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."

Page 2, replace lines 11 through 24 with:

- "3. The following do not constitute violations of this section:
  - a. Any usual and customary practice in:
    - The production of food, feed, fiber, or ornament;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;</u>
    - (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, unwelcome animal, and animal damage control;
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"



#### Page 2, line 30, remove "or omission"

Page 3, replace lines 1 through 16 with:

- "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;
    - (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, unwelcome animal, and animal damage control;
  - 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."

Page 3, remove lines 20 through 31

Page 4, replace lines 1 through 10 with:

- "a. <u>The killing of an animal with a depravity of mind and a wanton</u> disregard for its life; or
- b. The torturing of an animal for the purpose of inflicting pain.
- 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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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, unwelcome animal, and animal damage control;
- 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."

Page 4, remove lines 24 through 31

Page 5, replace lines 1 through 6 with:

- "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;
    - (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, unwelcome animal, and animal damage control;
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."



Page 8, line 28, replace the underscored semicolon with an underscored period

Page 8, remove lines 29 through 31

Page 9, replace lines 1 through 12 with:

- "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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
    - (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, unwelcome animal, and animal damage control;
  - <u>b.</u> 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."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person" with "An individual"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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."

Renumber accordingly





Prepared by the North Dakota Legisla staff

March 26, 2013

buncil

# ENGROSSED SENATE BILL NO. 2211 DEFINITION OPTIONS WORKING DRAFT

Neglect means:	Abuse means:	Cruelty means:
<ol> <li>The failure to provide an animal with:         <ol> <li>Food and water, as appropriate for the species, the breed, and the animal's age and physical condition;</li> <li>Shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition;</li> <li>Necessary medical attention; and</li> <li>An environment that is:                 <ul></ul></li></ol></li></ol>	The physical abuse of an animal, but does not include any act or omission that falls within the definition of animal cruelty, as set forth in North Dakota Century Code Section 36-21.2-03.	Any act or omission that causes an animal unjustifiable pain, suffering, or death, including the infliction of any injury that results in a substantial risk of death, leaves an animal significantly disfigured, results in broken bones, or causes prolonged impairment of an animal's health; and Any act or omission that results in a serious illness and leaves an animal significantly disfigured or causes prolonged impairment of the animal's health.
2.	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.	The killing of an animal with a depravity of mind and a wonton disregard for its life; or The torturing of an animal.
3.		The infliction of a physical injury upon an animal in a manner that: 1. Causes protracted suffering; 2. Places the animal in imminent danger of death; or 3. Causes the animal's death.
4.		The deprivation of food, water, or medical attention if the deprivation: 1. Causes prolonged impairment of the animal's health; or 2. Causes the animal's death.
5.		Kill, maim, disfigure, torture, beat, mutilate, or otherwise inflict harm upon an animal
6.		The infliction upon an animal of severe physical pain with a depraved or sadistic intent to cause prolonged suffering or death.
7.		The injury or killing of an animal in any manner not expressly exempted.
8.		The killing or injury of an animal in a heinous, atrocious, or exceptionally depraved manner.
9.		Any act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted.





#### LANGUAGE IN ENGROSSED SENATE BILL NO. 2211

- Any act or omission that causes an animal unjustifiable pain, suffering, or death, including the infliction of any injury that results in a substantial risk of death, leaves an animal significantly disfigured, results in broken bones, or causes prolonged impairment of an animal's health; and
- 2. Any act or omission that results in a serious illness and leaves an animal significantly disfigured or causes prolonged impairment of the animal's health.

### **OPTION NO. 1**

- 1. Any act or omission that causes an animal unjustifiable pain, suffering, or death, including the infliction of any injury that results
  - a. Results in a substantial risk of death, leaves;
  - b. Leaves an animal significantly disfigured, results;
  - c. Results in broken bones, or causes;
  - d. Causes prolonged impairment of an animal's health; and
- 2. Any act or omission that results or
  - e. Results in a serious illness and leaves an animal significantly disfigured or causes prolonged impairment of the animal's health.

# **OPTION NO. 2**

- 1. Any act or omission that causes an animal unjustifiable pain, protracted suffering, or death, including the infliction of any injury that results and
  - a. Leaves the animal in a substantial risk imminent danger of death, leaves;
  - b. Leaves an animal significantly disfigured, results;
  - c. Results in broken bones, or causes;
  - d. Causes the prolonged impairment of an animal's health; and
- 2. Any act or omission that results
  - e. Results in a serious illness and leaves an animal significantly disfigured or causes prolonged impairment of the animal's health; or
  - f. Results in the animal's death.

3-26-2013 SBZZII March 26, 2013

# North Dakota Farm Bureau

## Class C Felony

An individual who intentionally engages in animal cruelty is guilty of a Class C Felony. Animal cruelty means to (intentionally) physically torture, mutilate, or cause extreme pain, broken bones, or prolonged impairment of an animal's health.

#### Class A Misdemeanor

Animal abuse and neglect:

An individual engages in animal neglect is guilty of a Class A Misdemeanor. Animal abuse or neglect means failing to provide an animal under an individual's care or control with food and water of sufficient quantity and quality to sustain the animal's health, or fails to provide minimal protection for adverse weather conditions or appropriate medical care in the event of injury or illness with consideration given to the species, or the willful infliction of physical harm or pain for no legitimate purpose.

#### 13.0380.07008 Title.

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, replace "a" with "three"

Page 1, line 1, replace "section" with "sections"

Page 1, after line 15, insert:

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

State board of animal health - Assistance in criminal investigations.

The state board of animal health 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. A new section to chapter 36 01 of the North Dakota Century Code is created and enacted as follows:

State board of animal health - Reporting of violations - Biennial reports to legislative management.

The state board of animal health shall work with law enforcement representatives to develop a reporting mechanism and compile information regarding violations of chapter 36-21.2. The board shall present its findings to the legislative management biennially."

Renumber accordingly

13.0380.07009 Title.

## PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 5, after the semicolon insert "to provide for a report to legislative management;"

Page 9, after line 29, insert:

## "SECTION 3. 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."

Renumber accordingly



13.0380.07010 Title.

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, replace "a" with "three"

Page 1, line 1, replace "section" with "sections"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

"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 state board of animal health 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. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

State board of animal health - Reporting of violations - Biennial reports to legislative management.

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

Page 1, line 23, replace "as appropriate" with "that is:

(1) Appropriate"

Page 1, line 23, replace the second underscored comma with "and"

Page 1, line 23, remove ", and the animal's age"

Page 1, line 24, replace "and physical condition" with "; and

(2) Sufficient to sustain the animal's health"

Page 2, line 1, replace "Shelter" with "At least minimal protection"

Page 2, line 1, replace "the elements" with "adverse weather conditions"

Page 2, line 1, replace the second underscored comma with "and"

Page 2, line 1, remove ", and the"

Page 2, line 2, remove "animal's age and physical condition"

- Page 2, line 3, replace "Necessary medical" with "Medical"
- Page 2, line 3, after "attention" insert "in the event of an injury or illness, as appropriate for the species and the breed"
- Page 2, replace lines 11 through 24 with:
  - "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;
      - (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, unwelcome animal, and animal damage control;
    - b. The humane or swift destruction of an animal for cause; and
    - c. Services provided by or under the direction of a licensed veterinarian."
- Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"
- Page 2, line 30, remove "or omission"
- Page 3, replace lines 1 through 16 with:
  - "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;
      - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
      - (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, unwelcome animal, and animal damage control;
- 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."

Page 3, line 18, replace "willfully" with "intentionally"

Page 3, remove lines 20 through 31

Page 4, replace lines 1 through 10 with:

- "a. Breaking an animal's bones;
- b. Causing an animal extreme pain;
- c. Causing the prolonged impairment of an animal's health;
- d. Mutilating an animal; or
- e. 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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding,</u> 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, unwelcome animal, and animal damage control;

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- 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."

Page 4, remove lines 24 through 31

Page 5, replace lines 1 through 6 with:

- "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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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, unwelcome animal, and animal damage control;
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."
- Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

- Page 8, remove lines 29 through 31
- Page 9, replace lines 1 through 12 with:
  - "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;

Page No. 4

13.0380.07010

- (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, unwelcome animal, and animal damage control;
- 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."

Page 9, line 14, replace "Aperson" with "An individual"

Page 9, line 16, replace "Any person" with "An individual"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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 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."

Renumber accordingly

#### 13.0380.07010

#### Sixty-third Legislative Assembly of North Dakota

# FIRST ENGROSSMENT

## 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 athree new section sections to chapter 36-01 and chapter

2 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of animal

- 3 health and the treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02, 36-21.1-03,
- 4 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
- 5 Code, relating to the treatment of animals; and to provide a penalty; and to provide for reports to
- 6 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 <u>1.</u> 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 or purposes, educational
- 17 purposes, 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 state board of animal health shall maintain and make available to any law enforcement
- 22 agency a list of veterinarians who are licensed in this state and trained to provide assistance in
- 23 any criminal investigation pertaining to this state's animal laws.

1	SEC	CTION 3. A new section to chapter 36-01 of the North Dakota Century Code is created		
2		and enacted as follows:		
3	1	te board of animal health - Reporting of violations - Biennial reports to legislative		
4		management.		
5				
6		state board of animal health shall work with law enforcement representatives to		
7		a reporting mechanism and compile information regarding violations of chapter		
		. The board shall report its findings to the legislative management biennially.		
8		CTION 4. Chapter 36-21.2 of the North Dakota Century Code is created and enacted as		
9 10	follows:	21.2-01. Neglect - Definition - Exemptions - Penalty.		
11	137	Any person that willfully engages in animal neglect is guilty of a class A misdemeanor		
12	<u>1</u> .			
12		for a first or a second offense and a class C felony for a third or subsequent offense		
	0	occurring within ten years.		
14	2.	For purposes of this chapter, "neglect" means the failure to provide an animal with:		
15		<ul> <li><u>a.</u> Food and water, as appropriate that is:</li> <li>(1) Appropriate for the appropriate and the broad and the apimal's appropriate for the appropriate that is:</li> </ul>		
16		(1) Appropriate for the species, and the breed, and the animal's age and		
17		physical condition; and		
18		(2) Sufficient to sustain the animal's health;		
19		b. ShelterAt least minimal protection from the elements adverse weather conditions,		
20		as appropriate for the species, and the breed, and the animal's age and physical		
21		condition;		
22		c. <u>Necessary medical Medical attention in the event of an injury or illness, as</u>		
23		appropriate for the species and the breed; and		
24		<u>d.</u> <u>An environment that is:</u>		
25		(1) Ventilated in a manner appropriate for the species, the breed, and the		
26		animal's age and physical condition;		
27		(2) Cleaned in a manner appropriate for the species, the breed, and the		
28		animal's age and physical condition; and		
29		(3) Free of conditions likely to cause injury or death to an animal of that		
30		species, breed, age, and physical condition.		
31	<u>3.</u>	The following do not constitute violations of this section:		

1 -	a. Any usual and customary practice in production agriculture, including all aspects
2	of the livestock industry;
3 -	b. Any usual and customary practice in the breeding, raising, training, showing, and
4	competition of animals;
5 -	c. Any usual and customary practice in the sport of rodeo and in animal racing;
6 -	d. Any usual and customary practice in livestock exhibitions and competitions;
7 -	e. Lawful fishing, hunting, and trapping;
8 -	f. Lawful wildlife management practices;
9 -	g. Lawful research and educational activities involving the use of animals;
10 -	h. Lawful control of pests, rodents, and predators;
11 -	i. Lawful animal damage control activities;
12 -	j. Services provided by or under the direction of a licensed veterinarian; and
13 -	k. The humane destruction of an animal for cause.
14	3. The following do not constitute violations of this section:
15	a. Any usual and customary practice in:
16	(1) The production of food, feed, fiber, or ornament;
17	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
18	and training of animals;
19	(3) The sport of rodeo;
20	(4) Animal racing;
21	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
22	7 U.S.C. 2131, et seq;
23	(6) Fishing, hunting, and trapping;
24	(7) Wildlife management;
25	(8) The culinary arts;
26	(9) Lawful research and educational activities; and
27 _	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
28	b. The humane or swift destruction of an animal for cause; and
29	c. Services provided by or under the direction of a licensed veterinarian.

1	36-	21.2-02. Animal abuse - Definition - Exemptions - Penalty.
2	1.	Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
3		for a first or a second offense and a class C felony for a third or subsequent offense
4		occurring within ten years.
5	2.	For purposes of this chapter, "animal abuse" means the physical abuse of any act or
6		omission that results in physical injury to an animal or that causes the death of an
7		animal, but does not include any act or omission that falls within the definition of
8		animal cruelty, as set forth in section 36-21.2-03.
9 -	3.	The following do not constitute violations of this section:
10 -		a. Any usual and customary practice in production agriculture, including all aspects
11		of the livestock industry;
12 -		b. Any usual and customary practice in the breeding, raising, training, showing, and
13		competition of animals;
14 -		<u>c.</u> <u>Any usual and customary practice in the sport of rodeo and in animal racing;</u>
15 -	_	d. Any usual and customary practice in livestock exhibitions and competitions;
16 -		e. Lawful fishing, hunting, and trapping;
17 -		<u>f. Lawful wildlife management practices:</u>
18 -		g. Lawful research and educational activities involving the use of animals;
19 -	_	h. Lawful control of pests, rodents, and predators;
20 -	_	i. Lawful animal damage control activities;
21 -		j. Any action taken by an individual against an animal that is attacking or is about to
22		attack a human, a companion animal, or livestock;
23 -	-	k. Services provided by or under the direction of a licensed veterinarian; and
24 -		I. The humane destruction of an animal for cause.
25	3.	The following do not constitute violations of this section:
26		a. Any usual and customary practice in:
27	_	(1) The production of food, feed, fiber, or ornament;
28		(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
29		and training of animals;
30	_	(3) The sport of rodeo;
31		(4) Animal racing:

1	(5) The use of animals by exhibitors licensed under	er the Animal Welfare Act,
2	7 U.S.C. 2131, et seq;	
3	(6) Fishing, hunting, and trapping;	
4	(7) Wildlife management;	
5	(8) The culinary arts;	
6	(9) Lawful research and educational activities; and	
7	(10) Pest, vermin, predator, unwelcome animal, and	animal damage control;
8	b. Any action taken by an individual against an animal	that is attacking or is about to
9	attack a human, a companion animal, or livestock;	
10	c. The humane or swift destruction of an animal for cau	use; and
11	d. Services provided by or under the direction of a licer	nsed veterinarian.
12	36-21.2-03. Animal cruelty - Definition - Exemptions - Pena	ity.
13	1. Any person that willfully intentionally engages in animal cr	uelty is guilty of a class C
14	felony.	
15	2. For purposes of this chapter, "animal cruelty" means:	
16	a. Any act or omission that causes an animal unjustifia	ble pain, suffering, or death,
17	including the infliction of any injury that results in a s	substantial risk of death,
18	leaves an animal significantly disfigured, results in b	roken bones, or causes
19	prolonged impairment of an animal's health; and	
20	b. Any act or omission that results in a serious illness a	and leaves an animal
21	significantly disfigured or causes prolonged impairm	ent of the animal's health.
22	<u>— 3. The following do not constitute violations of this section:</u>	
23	a. Any usual and customary practice in production agri	culture, including all aspects
24	of the livestock industry;	
25	b. Any usual and customary practice in the breeding, re	aising, training, showing, and
26	competition of animals;	
27	e. Any usual and customary practice in the sport of rod	leo and in animal racing;
28	d. Any usual and customary practice in livestock exhibition	itions and competitions;
29	e. Lawful fishing, hunting, and trapping;	
30	<u>f. Lawful wildlife management practices;</u>	
31 -	g. Lawful research and educational activities involving	the use of animals;

1 -	h. Lawful control of pests, rodents, and predators;
2 -	i. Lawful animal damage control activities;
3 -	j. Any action taken by an individual against an animal that is attacking or is about to
4	attack a human, a companion animal, or livestock;
5 -	k. Services provided by or under the direction of a licensed veterinarian; and
6 -	I. The humane destruction of an animal for cause.
7	a. Breaking an animal's bones;
8	b. Causing an animal extreme pain;
9	c. Causing the prolonged impairment of an animal's health;
0	d. Mutilating an animal; or
1	e. Physically torturing an animal.
2	3. The following do not constitute violations of this section:
3	a. Any usual and customary practice in:
4 _	(1) The production of food, feed, fiber, or ornament;
5	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
6	and training of animals;
7	(3) The sport of rodeo;
8 _	(4) Animal racing;
9 _	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
20	<u>7 U.S.C. 2131, et seq;</u>
1	(6) Fishing, hunting, and trapping;
2	(7) Wildlife management;
23	(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
27	attack a human, a companion animal, or livestock;
.8	c. The humane or swift destruction of an animal for cause; and
29	d. Services provided by or under the direction of a licensed veterinarian.

1	36-	21.2-04. Animal abandonment - Definition - Exemptions - Penalty.
2	<u>1.</u>	Any person that willfully engages in the abandonment of an animal is guilty of a
3		class A misdemeanor for a first or a second offense and a class C felony for a third or
4		subsequent offense occurring within ten years.
5	<u>2.</u>	For purposes of this chapter, "abandonment" means the relinquishment of a person's
6		custody or control, with no intention of reclaiming that custody or control, and without
7		placing the animal into the custody or control of another person that is able to provide
8		care for the animal and who knowingly and willingly accepts that responsibility. The
9		term includes:
10		a. The desertion of an animal; and
11		b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
12		conclusion of a boarding contract or other service contract, other than that
13		specified in section 43-29-16.1.
14	<u>3.</u>	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. Services provided by or under the direction of a licensed veterinarian; and
27		k. The humane destruction of an animal for cause.
28	3.	The following do not constitute violations of this section:
29		a. Any usual and customary practice in:
30		(1) The production of food, feed, fiber, or ornament;

1	1.1	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
2		and training of animals;
3	_	(3) The sport of rodeo;
4	_	(4) Animal racing;
5		(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
6		7 U.S.C. 2131, et seq;
7	_	(6) Fishing, hunting, and trapping;
8		(7) Wildlife management;
9		(8) The culinary arts;
10	_	(9) Lawful research and educational activities; and
11		(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
12		b. The humane or swift destruction of an animal for cause; and
13		c. Services provided by or under the direction of a licensed veterinarian.
14	<u>4.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,
15		as appropriate for the species, the breed, and the animal's age and physical condition,
16		and necessary medical attention.
17	36-	21.2-05. Seizure of animal - Court order.
18	<u>1.</u>	A law enforcement officer may petition the court for an order directing the seizure of
19		any animal believed to have been neglected, abused, treated cruelly, or subjected to
20		any act or omission in violation of this chapter.
21	<u>2.</u>	The court may act without notice to the animal's owner or to the person having
22		custody or control of the animal and may rely solely on testimony or an affidavit in
23		considering the petition.
24	<u>3.</u>	In the order for seizure, the court may direct that a veterinarian humanely destroy an
25		animal if the veterinarian, upon examining the animal, determines that the animal is
26		experiencing excruciating pain or suffering and that the animal's pain or suffering is not
27		likely to be alleviated using reasonable medical interventions.
28	36-	21.2-06. Law enforcement - Duty upon seizure - Notification.
29	<u>1.</u>	Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement
30		officer shall provide care for the animal, either directly or through a contractual
31		arrangement with another person. For purposes of this subsection, "care" means food,

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1		water, and shelter from the elements, as appropriate for the species, the breed, and
2		the animal's age and physical condition, and necessary medical attention.
3		a. If the owner and the person having custody or control at the time of the seizure
4		are known to the officer, the officer shall:
5		(1) Provide notice of the seizure to the owner and the person having custody or
6		control of the animal; and
7		(2) Petition the court for an order directing the animal's disposition.
8		b. If the animal's owner is not known to the law enforcement officer, the officer shall
9		publish notice of the animal's seizure in the official newspaper of the county and
10		indicate that if the owner does not claim the animal within five days, the animal
11		will be sold, placed for adoption, or humanely destroyed, at the direction of the
12		law enforcement officer.
13		(1) If the owner does not claim the animal within five days, as required by this
14		subdivision, the law enforcement officer shall sell the animal, place the
15		animal for adoption, or provide for its humane destruction.
16		(2) If the owner is identified within the five-day period, the law enforcement
17		officer shall petition the court for an order directing the animal's disposition.
18	<u>2.</u>	In ruling on a petition for an animal's disposition under this section, a court may direct
19		that the animal be sold, placed for adoption, humanely destroyed, or returned to its
20		owner, with or without conditions.
21	36-	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.
22	<u>1.</u>	Thelf convicted of violating this chapter, the owner of an animal seized under section
23		36-21.2-05 is responsible for all costs related to the animal's seizure, including
24		required notifications, attorney's fees, court costs, and any costs incurred in providing
25		the animal with care or in providing for its destruction in accordance with section
26		<u>36-21.2-06.</u>
27	<u>2.</u>	a. The law enforcement agency that seized the animal has a lien upon the animal
28		for all costs incurred as a result of the seizure and conviction. The lien is superior
29		to any other claim or lien.
30		b. If the lien is not satisfied by the animal's owner, the law enforcement agency may
31		apply to the court for an order enforcing the lien.

1	<u>3.</u>	If a seize	ed animal is sold, the proceeds must be used first to satisfy the lienholder to
2		the exte	nt of the lien and second to satisfy any other claims involving the animal. Any
3		remainir	ng proceeds must be returned to the owner, as directed by the court. If the
4		owner is	unknown, any proceeds otherwise payable to the owner must be deposited in
5		the gene	eral fund of the county.
6	36-2	1.2-08. A	bandoned animal - Law enforcement officer - Duties.
7	1.	A law en	forcement officer may take custody of an animal if the officer has reasonable
8		cause to	believe that the animal has been abandoned in violation of this chapter.
9	2.	a. Up	on taking custody of an animal in accordance with this section, the law
10		enf	orcement officer shall:
11		(1)	Provide care for the animal, either directly or through a contractual
12			arrangement with another person; and
13		(2)	(a) Notify the owner, if known to the officer; or
14			(b) If the owner is not known to the officer, provide notice of the animal's
15			custody, indicate that if the owner does not lay claim to the animal
16			within five days, the animal will be sold, placed for adoption, or
17			humanely destroyed, at the direction of the law enforcement officer,
18			and include the officer's contact information.
19		b. For	purposes of this subdivision, notice may be provided by:
20		(1)	Publication in the official newspaper of the county if the newspaper is
21			published daily or in a daily newspaper serving the county;
22		(2)	Any electronic means; or
23		(3)	Posting a description and a photograph at the local law enforcement center.
24	<u>3.</u>	If the ow	mer is identified within the five-day period, the law enforcement officer shall
25		return th	e animal to the owner only if:
26		a. The	e owner demonstrates that the animal was not abandoned in violation of this
27		cha	apter; and
28		b. The	e owner pays for all costs associated with the animal's care while in custody,
29		inc	uding any costs of notifications under this section.
30	<u>4.</u>	If the lay	v enforcement officer refuses to return the animal to its owner, the owner may
31		petition	the court for an order directing its return. In ruling on a petition under this

		· · · · · · · · · · · · · · · · · · ·
1		subsection, a court may direct that the animal be sold, placed for adoption, humanely
2		destroyed, or returned to its owner with or without conditions.
3	<u>5.</u>	If the owner does not lay claim to the animal within five days, the law enforcement
4		officer shall sell the animal, place it for adoption, or humanely destroy it.
5	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be
6		deposited in the county general fund.
7	<u>7.</u>	Notwithstanding the requirements of this section, if upon examining an animal taken
8		into custody by a law enforcement officer in accordance with this section a licensed
9		veterinarian determines that the animal's condition justifies its destruction, the
10		veterinarian shall humanely destroy the animal. The law enforcement agency shall
11		reimburse the veterinarian for the cost of the animal's destruction.
12	<u>8.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,
13		as appropriate for the species, the breed, and the animal's age and physical condition,
14		and necessary medical attention.
15	36-	21.2-09. Title of animal - Sale or adoption.
16	The	title to any animal sold or adopted in accordance with this chapter passes to the
17	individu	al taking custody or control of the animal.
18	36-	21.2-10. Veterinarian.
19	<u>If up</u>	oon examining an animal a licensed veterinarian determines that there is reasonable
20	cause to	o believe an animal has been neglected, abused, treated cruelly, or subjected to any act
21	or omis	sion in violation of this chapter, the veterinarian may retain custody of the animal and
22	shall im	mediately notify law enforcement officials regarding the determination.
23	36-	21.2-11. Caged animals - Public display - Exemptions - Penalty.
24	<u>1.</u>	In addition to any other requirements set forth in this chapter, a person placing a
25		caged animal on public display shall ensure that:
26		a. The size of the cage allows the animal to stand up, lie down, and turn or move
27		about; and
28		b. The cage provides the animal with protection from the elements, as appropriate
29		for the species, the breed, and the animal's age and physical condition.
30	<u>2.</u>	Any person that willfully fails to meet the requirements of this section is guilty of a
31		class A misdemeanor.

1 3. This section does not apply to: 2 The North Dakota state fair association: a. 3 Agricultural fair associations; or b. 4 Livestock exhibitions and competitions: C. 5 Political subdivisions: d.c. 6 Educational exhibitions; or e. 7 f. Exhibitors licensed by the United States department of agriculture. 8 The following do not constitute violations of this section: 9 Any usual and customary practice in production agriculture, including all aspects a. 10 of the livestock industry: 11 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 Any usual and customary practice in livestock exhibitions and competitions: d. 15 Lawful fishing, hunting, and trapping; e. 16 f. Lawful wildlife management practices: 17 Lawful research and educational activities involving the use of animals; a. 18 h. Lawful control of pests, rodents, and predators; 19 Lawful animal damage control activities; and 20 Services provided by or under the direction of a licensed veterinarian. 21 4 The following do not constitute violations of this section: 22 Any usual and customary practice in: a. 23 The production of food, feed, fiber, or ornament; (1)24 The boarding, breeding, competition, exhibition, feeding, raising, showing, (2)25 and training of animals; 26 (3)The sport of rodeo; 27 (4)Animal racing; 28 The use of animals by exhibitors licensed under the Animal Welfare Act. (5)29 7 U.S.C. 2131, et sea: 30 Fishing, hunting, and trapping; (6)31 Wildlife management; (7)

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1	(8) The culinary arts;		
2	(9) Lawful research and educational activities; and		
3	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;		
4	b. Any action taken by an individual against an animal that is attacking or is about	t to	
5	attack a human, a companion animal, or livestock;		
6	c. The humane or swift destruction of an animal for cause; and		
7	d. Services provided by or under the direction of a licensed veterinarian.		
8	36-21.2-12. Unattended animal in motor vehicle - Penalty.		
9	1. ApersonAn individual may not leave an animal unattended in a motor vehicle witho	ut	
10	ensuring that the animal's health and safety is not endangered.		
11	2. Any personAn individual that violates this section is guilty of an infraction.		
12	3. A law enforcement officer may use reasonable means to enter a motor vehicle and		
13	remove an animal left in violation of this section.		
14	36-21.2-13. Immunity from liability.		
15	A veterinarian is immune from civil or criminal liability if the veterinarian, on the		
16	veterinarian's own initiative or at the request of a law enforcement officer or other government	tal	
17	entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity		
18	under this section does not apply in the case of negligence.		
19	36-21.2-14. Estrays.		
20	This chapter does not apply to estrays.		
21	36-21.2-15. Collectives Multiple animals - Status Enhancement of offense.		
22	If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective	of	
23	same-species animals, the violation is deemed to be a singular incident for purposes of		
24	determining the status of the offense. If a violation of this chapter involves multiple animals,		
25	whether of the same species or not, the violation is deemed to be a singular offense for		
26	purposes of enhancement.		
27	SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS -		
28	REPORT TO LEGISLATIVE MANAGEMENT. Before July 1, 2014, representatives of		
29	agricultural production groups, including representatives of this state's livestock industry, sha	II	
30	compile information regarding the effects of this Act on the various sectors of the agricultural		

- 1 industry. The compiled information must be presented to the legislative management for review,
- 2 together with any suggestions for potential statutory changes.
- 3 SECTION 6. 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 are
- 5 repealed.

13.0380.07011 Title.

## PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 22, after "ineglect" insert with respect to dogs, cats, and other domestic pets,"

Page 1, line 22, remove "an animal with"

- Page 2, line 11, after "<u>3.</u>" insert "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;
  - <u>At least minimal protection from adverse weather conditions, as</u> 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."

Renumber accordingly

#### 13.0380.07011

## FIRST ENGROSSMENT

Sixty-third Legislative Assembly of North Dakota

## 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 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 <u>1.</u> 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 <u>nature, if the board has reason to believe that the animal may pose a threat to the</u>
- 13 health and well-being of this state's human or animal population.
- <u>14</u> <u>2.</u> <u>The board may exempt, from any restriction imposed under subsection 1, the</u>
   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. Neglect - Definition - Exemptions - Penalty.

- 19 <u>1. Any person that willfully engages in animal neglect is guilty of a class A misdemeanor</u>
- for a first or a second offense and a class C felony for a third or subsequent offense
   occurring within ten years.
- 22 2. For purposes of this chapter, "neglect" with respect to dogs, cats, and other domestic
   23 pets, means the failure to provide an animal with:

1		<u>a.</u>	Food and water, as appropriate for the species, the breed, and the animal's age					
2			and physical condition;					
3		<u>b.</u>	Shelter from the elements, as appropriate for the species, the breed, and the					
4			animal's age and physical condition;					
5		<u>c.</u>	Necessary medical attention; and					
6		<u>d.</u>	An environment that is:					
7			(1) Ventilated in a manner appropriate for the species, the breed, and the					
8			animal's age and physical condition;					
9			(2) Cleaned in a manner appropriate for the species, the breed, and the					
10			animal's age and physical condition; and					
11			(3) Free of conditions likely to cause injury or death to an animal of that					
12			species, breed, age, and physical condition.					
13	<u>3.</u>	For	purposes of this chapter, "neglect" with respect to all animals other than those					
14		incl	uded in subsection 2, means the failure to provide:					
15		a.	Food and water that is:					
16			(1) Appropriate for the species and the breed; and					
17			(2) Sufficient to sustain the animal's health;					
18		b.	At least minimal protection from adverse weather conditions, as appropriate for					
19			the species and the breed; and					
20		C.	Medical attention in the event of an injury or illness, as appropriate for the					
21			species and the breed.					
22	4.	The	e following do not constitute violations of this section:					
23		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects					
24			of the livestock industry;					
25		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and					
26			competition of animals;					
27		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;					
28		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;					
29		<u>e.</u>	Lawful fishing, hunting, and trapping;					
30		<u>f.</u>	Lawful wildlife management practices;					
31		<u>g.</u>	Lawful research and educational activities involving the use of animals;					

1		h. Lawful control of pests, rodents, and predators;					
2		i. Lawful animal damage control activities;					
3		j. Services provided by or under the direction of a licensed veterinarian; and					
4		k. The humane destruction of an animal for cause.					
5	36-	1.2-02. Animal abuse - Definition - Exemptions - Penalty.					
6	<u>1.</u>	Any person that willfully engages in animal abuse is guilty of a class A misdemeanor					
7		for a first or a second offense and a class C felony for a third or subsequent offense					
8		occurring within ten years.					
9	<u>2.</u>	For purposes of this chapter, "animal abuse" means the physical abuse of an animal,					
10		but does not include any act or omission that falls within the definition of animal					
11		cruelty, as set forth in section 36-21.2-03.					
12	<u>3.</u>	The following do not constitute violations of this section:					
13		a. Any usual and customary practice in production agriculture, including all aspects					
14		of the livestock industry;					
15		b. Any usual and customary practice in the breeding, raising, training, showing, and					
16		competition of animals;					
17		c. Any usual and customary practice in the sport of rodeo and in animal racing;					
18		d. Any usual and customary practice in livestock exhibitions and competitions;					
19		e. Lawful fishing, hunting, and trapping;					
20		f. Lawful wildlife management practices;					
21		g. Lawful research and educational activities involving the use of animals;					
22		h. Lawful control of pests, rodents, and predators;					
23		i. Lawful animal damage control activities;					
24		j. Any action taken by an individual against an animal that is attacking or is about to					
25		attack a human, a companion animal, or livestock;					
26		k. Services provided by or under the direction of a licensed veterinarian; and					
27		I. The humane destruction of an animal for cause.					
28	36-	1.2-03. Animal cruelty - Definition - Exemptions - Penalty.					
29	<u>1.</u>	1. Any person that willfully engages in animal cruelty is guilty of a class C felony.					
30	<u>2.</u>	2. For purposes of this chapter, "animal cruelty" means:					

1		<u>a.</u>	Any act or omission that causes an animal unjustifiable pain, suffering, or death,
2			including the infliction of any injury that results in a substantial risk of death.
3			leaves an animal significantly disfigured, results in broken bones, or causes
4			prolonged impairment of an animal's health; and
5		<u>b.</u>	Any act or omission that results in a serious illness and leaves an animal
6			significantly disfigured or causes prolonged impairment of the animal's health.
7	<u>3.</u>	The	e following do not constitute violations of this section:
8		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
9			of the livestock industry;
10		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
11			competition of animals;
12		<u>c</u> .	Any usual and customary practice in the sport of rodeo and in animal racing;
13		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
14		<u>e.</u>	Lawful fishing, hunting, and trapping;
15		<u>f.</u>	Lawful wildlife management practices;
16		g.	Lawful research and educational activities involving the use of animals;
17		<u>h.</u>	Lawful control of pests, rodents, and predators;
18		<u>i.</u>	Lawful animal damage control activities;
19		i.	Any action taken by an individual against an animal that is attacking or is about to
20			attack a human, a companion animal, or livestock;
21		<u>k.</u>	Services provided by or under the direction of a licensed veterinarian; and
22		<u>I.</u>	The humane destruction of an animal for cause.
23	36-	21.2-	04. Animal abandonment - Definition - Exemptions - Penalty.
24	<u>1.</u>	Any	person that willfully engages in the abandonment of an animal is guilty of a
25		clas	ss A misdemeanor for a first or a second offense and a class C felony for a third or
26		sub	esequent offense occurring within ten years.
27	<u>2.</u>	For	purposes of this chapter, "abandonment" means the relinquishment of a person's
28		cus	tody or control, with no intention of reclaiming that custody or control, and without
29		pla	cing the animal into the custody or control of another person that is able to provide
30		car	e for the animal and who knowingly and willingly accepts that responsibility. The
31		terr	m includes:

1		a. The desertion of an animal; and
2		<u>b.</u> The failure to retrieve an animal within forty-eight hours after the agreed-upon
3		conclusion of a boarding contract or other service contract, other than that
4		specified in section 43-29-16.1.
5	<u>3.</u>	The following do not constitute violations of this section:
6		a. Any usual and customary practice in production agriculture, including all aspects
7		of the livestock industry;
8		b. Any usual and customary practice in the breeding, raising, training, showing, and
9		competition of animals;
10		c. Any usual and customary practice in the sport of rodeo and in animal racing;
11		d. Any usual and customary practice in livestock exhibitions and competitions;
12		e. Lawful fishing, hunting, and trapping;
13		f. Lawful wildlife management practices;
14		g. Lawful research and educational activities involving the use of animals;
15		h. Lawful control of pests, rodents, and predators;
16		i. Lawful animal damage control activities;
17		j. Services provided by or under the direction of a licensed veterinarian; and
18		k. The humane destruction of an animal for cause.
19	<u>4.</u>	For purposes of this section, "care" means food, water, and shelter from the elements.
20		as appropriate for the species, the breed, and the animal's age and physical condition,
21		and necessary medical attention.
22	36-	21.2-05. Seizure of animal - Court order.
23	<u>1.</u>	A law enforcement officer may petition the court for an order directing the seizure of
24		any animal believed to have been neglected, abused, treated cruelly, or subjected to
25		any act or omission in violation of this chapter.
26	<u>2.</u>	The court may act without notice to the animal's owner or to the person having
27		custody or control of the animal and may rely solely on testimony or an affidavit in
28		considering the petition.
29	3.	In the order for seizure, the court may direct that a veterinarian humanely destroy an
30		animal if the veterinarian, upon examining the animal, determines that the animal is

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1		experiencing excruciating pain or suffering and that the animal's pain or suffering is not					
2		likely to be alleviated using reasonable medical interventions.					
3	36-	21.2-06. Law enforcement - Duty upon seizure - Notification.					
4	<u>1.</u>	Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement					
5		officer shall provide care for the animal, either directly or through a contractual					
6		arrangement with another person. For purposes of this subsection, "care" means food,					
7		water, and shelter from the elements, as appropriate for the species, the breed, and					
8		the animal's age and physical condition, and necessary medical attention.					
9		a. If the owner and the person having custody or control at the time of the seizure					
10		are known to the officer, the officer shall:					
11		(1) Provide notice of the seizure to the owner and the person having custody or					
12		control of the animal; and					
13		(2) Petition the court for an order directing the animal's disposition.					
14		b. If the animal's owner is not known to the law enforcement officer, the officer shall					
15		publish notice of the animal's seizure in the official newspaper of the county and					
16		indicate that if the owner does not claim the animal within five days, the animal					
17		will be sold, placed for adoption, or humanely destroyed, at the direction of the					
18		law enforcement officer.					
19		(1) If the owner does not claim the animal within five days, as required by this					
20		subdivision, the law enforcement officer shall sell the animal, place the					
21		animal for adoption, or provide for its humane destruction.					
22		(2) If the owner is identified within the five-day period, the law enforcement					
23		officer shall petition the court for an order directing the animal's disposition.					
24	2.	In ruling on a petition for an animal's disposition under this section, a court may direct					
25		that the animal be sold, placed for adoption, humanely destroyed, or returned to its					
26		owner, with or without conditions.					
27	36-	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.					
28	<u>1.</u>	The owner of an animal seized under section 36-21.2-05 is responsible for all costs					
29		related to the animal's seizure, including required notifications, attorney's fees, court					
30		costs, and any costs incurred in providing the animal with care or in providing for its					
31		destruction in accordance with section 36-21.2-06.					

1	2.	<u>a.</u>	The	law e	nforcement agency that seized the animal has a lien upon the animal
2			for a	all cos	ts incurred as a result of the seizure. The lien is superior to any other
3			clai	m or li	en.
4		<u>b.</u>	If th	e lien	is not satisfied by the animal's owner, the law enforcement agency may
5			app	ly to th	ne court for an order enforcing the lien.
6	<u>3.</u>	lfa	seize	d anir	nal is sold, the proceeds must be used first to satisfy the lienholder to
7		the	exter	nt of th	e lien and second to satisfy any other claims involving the animal. Any
8		rem	ainin	g proc	eeds must be returned to the owner, as directed by the court. If the
9		owr	ner is	unkno	own, any proceeds otherwise payable to the owner must be deposited in
10		the	gene	ral fun	d of the county.
11	36-	21.2-0	08. AI	bando	oned animal - Law enforcement officer - Duties.
12	<u>1.</u>	A la	w enf	orcen	nent officer may take custody of an animal if the officer has reasonable
13		cau	se to	believ	e that the animal has been abandoned in violation of this chapter.
14	<u>2.</u>	<u>a.</u>	Upo	n taki	ng custody of an animal in accordance with this section, the law
15			enfo	orcem	ent officer shall:
16			(1)	Prov	ide care for the animal, either directly or through a contractual
17				arra	ngement with another person; and
18			(2)	<u>(a)</u>	Notify the owner, if known to the officer; or
19				(b)	If the owner is not known to the officer, provide notice of the animal's
20					custody, indicate that if the owner does not lay claim to the animal
21					within five days, the animal will be sold, placed for adoption, or
22					humanely destroyed, at the direction of the law enforcement officer,
23					and include the officer's contact information.
24		<u>b.</u>	For	purpo	ses of this subdivision, notice may be provided by:
25			(1)	Publ	ication in the official newspaper of the county if the newspaper is
26				publi	shed daily or in a daily newspaper serving the county;
27			(2)	Any	electronic means; or
28			(3)	Post	ing a description and a photograph at the local law enforcement center.
29	<u>3.</u>	If the	e owr	ner is i	dentified within the five-day period, the law enforcement officer shall
30		retu	rn the	anim	al to the owner only if:

1		a. The owner demonstrates that the animal was not abandoned in violation of this					
2		chapter; and					
3		b. The owner pays for all costs associated with the animal's care while in custody,					
4		including any costs of notifications under this section.					
5	<u>4.</u>	If the law enforcement officer refuses to return the animal to its owner, the owner may					
6		petition the court for an order directing its return. In ruling on a petition under this					
7		subsection, a court may direct that the animal be sold, placed for adoption, humanely					
8		destroyed, or returned to its owner with or without conditions.					
9	<u>5.</u>	If the owner does not lay claim to the animal within five days, the law enforcement					
10		officer shall sell the animal, place it for adoption, or humanely destroy it.					
11	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be					
12		deposited in the county general fund.					
13	<u>7.</u>	Notwithstanding the requirements of this section, if upon examining an animal taken					
14		into custody by a law enforcement officer in accordance with this section a licensed					
15		veterinarian determines that the animal's condition justifies its destruction, the					
16		veterinarian shall humanely destroy the animal. The law enforcement agency shall					
17		reimburse the veterinarian for the cost of the animal's destruction.					
18	<u>8.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,					
19		as appropriate for the species, the breed, and the animal's age and physical condition,					
20		and necessary medical attention.					
21	36-	21.2-09. Title of animal - Sale or adoption.					
22	The	title to any animal sold or adopted in accordance with this chapter passes to the					
23	individu	al taking custody or control of the animal.					
24	36-2	21.2-10. Veterinarian.					
25	Ifug	oon examining an animal a licensed veterinarian determines that there is reasonable					
26	cause to	believe an animal has been neglected, abused, treated cruelly, or subjected to any act					
27	or omis	sion in violation of this chapter, the veterinarian may retain custody of the animal and					
28	shall im	mediately notify law enforcement officials regarding the determination.					
29	36-2	21.2-11. Caged animals - Public display - Exemptions - Penalty.					
30	<u>1.</u>	In addition to any other requirements set forth in this chapter, a person placing a					
31		caged animal on public display shall ensure that:					

1		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move						
2			about; and						
3		<u>b.</u>	The cage provides the animal with protection from the elements, as appropriate						
4			for the species, the breed, and the animal's age and physical condition.						
5	2.	Any	person that willfully fails to meet the requirements of this section is guilty of a						
6		clas	class A misdemeanor.						
7	<u>3.</u>	This	This section does not apply to:						
8		<u>a.</u>	The North Dakota state fair association;						
9		<u>b.</u>	Agricultural fair associations;						
10		<u>C.</u>	Livestock exhibitions and competitions;						
11		<u>d.</u>	Political subdivisions:						
12		<u>e.</u>	Educational exhibitions; or						
13		<u>f.</u>	Exhibitors licensed by the United States department of agriculture.						
14	<u>4.</u>	The	following do not constitute violations of this section:						
15		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects						
16			of the livestock industry;						
17		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and						
18			competition of animals;						
19		<u>c.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;						
20		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;						
21		<u>e.</u>	Lawful fishing, hunting, and trapping;						
22		<u>f.</u>	Lawful wildlife management practices;						
23		<u>g.</u>	Lawful research and educational activities involving the use of animals;						
24		<u>h.</u>	Lawful control of pests, rodents, and predators;						
25		<u>i.</u>	Lawful animal damage control activities; and						
26		j.	Services provided by or under the direction of a licensed veterinarian.						
27	36-	21.2-1	2. Unattended animal in motor vehicle - Penalty.						
28	1.	A person may not leave an animal unattended in a motor vehicle without ensuring that							
29		the	animal's health and safety is not endangered.						
30	<u>2.</u>	Any person that violates this section is guilty of an infraction.							

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- 1 <u>3.</u> <u>A law enforcement officer may use reasonable means to enter a motor vehicle and</u>
- 2 remove an animal left in violation of this section.

# 3 36-21.2-13. Immunity from liability.

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

# 8 36-21.2-14. Estrays.

9 This chapter does not apply to estrays.

# 10 36-21.2-15. Collectives - Status of offense.

- 11 If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
- 12 same-species animals, the violation is deemed to be a singular incident for purposes of
- 13 determining the status of the offense.
- 14 SECTION 3. REPEAL. Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
- 15 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are

16 repealed.

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#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, replace "a" with "three"

Page 1, line 1, replace "section" with "sections"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

"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 state board of animal health 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. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

State board of animal health - Reporting of violations - Biennial reports to legislative management.

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

Page 1, line 22, after ""neglect"" insert "with respect to dogs, cats, and other domestic pets,"

Page 2, replace lines 11 through 24 with:

"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;
    - (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, unwelcome animal, and animal damage <u>control;</u>
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."
- Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"
- Page 2, line 30, remove "or omission"
- Page 3, replace lines 1 through 16 with:
  - "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;
      - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
      - (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, unwelcome animal, and animal damage control;
- 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."

Page 3, line 18, replace "willfully" with "intentionally"

- Page 3, remove lines 20 through 31
- Page 4, replace lines 1 through 10 with:
  - "a. Breaking an animal's bones;
  - <u>b.</u> Causing an animal extreme pain;
  - <u>Causing the prolonged impairment of an animal's health;</u>
  - d. Mutilating an animal; or
  - e. 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;
      - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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, unwelcome animal, and animal damage control;
    - <u>b.</u> 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."

Page 4, remove lines 24 through 31

#### Page 5, replace lines 1 through 6 with:

- "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;
    - (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, unwelcome animal, and animal damage control;
  - <u>b.</u> The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

Page 8, remove lines 29 through 31

Page 9, replace lines 1 through 12 with:

- "4. The following do not constitute violations of this section:
  - a. Any usual and customary practice in:
    - The production of food, feed, fiber, or ornament;
    - (2) The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;
    - (3) The sport of rodeo;
    - (4) Animal racing;

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- (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, unwelcome animal, and animal damage control;
- <u>b.</u> 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."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person" with "An individual"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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 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."

Renumber accordingly

#### 13.0380.07012

# FIRST ENGROSSMENT

Sixty-third Legislative Assembly of North Dakota

## 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 athree new section sections to chapter 36-01 and chapter
- 2 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of animal
- 3 health and the treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02, 36-21.1-03,
- 4 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
- 5 Code, relating to the treatment of animals; and to provide a penalty; and to provide for reports to
- 6 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 <u>1.</u> 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 <u>nature, if the board has reason to believe that the animal may pose a threat to the</u>
- 14 health and well-being of this state's human or animal population.
- 15 <u>2.</u> The board may exempt, from any restriction imposed under subsection 1, the
   importation or sale of animals for bona fide scientific <del>or</del>purposes, educational
   purposes, 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 state board of animal health shall maintain and make available to any law enforcement
- 22 agency a list of veterinarians who are licensed in this state and trained to provide assistance in
- 23 any criminal investigation pertaining to this state's animal laws.

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1	SEC	стю	N 3. A new section to chapter 36-01 of the North Dakota Century Code is created						
2	and enacted as follows:								
3	State board of animal health - Reporting of violations - Biennial reports to legislative								
4	manage	management.							
5	The	state	e board of animal health shall work with law enforcement representatives to						
6	develop	a re	porting mechanism and compile information regarding violations of chapter						
7	36-21.2	. The	board shall report its findings to the legislative management biennially.						
3	SEC	стю	N 4. Chapter 36-21.2 of the North Dakota Century Code is created and enacted as						
9	follows:								
D	36-2	21.2-	01. Neglect - Definition - Exemptions - Penalty.						
1	<u>1.</u>	Any	y person that willfully engages in animal neglect is guilty of a class A misdemeanor						
2		for	a first or a second offense and a class C felony for a third or subsequent offense						
3		000	curring within ten years.						
4	<u>2.</u>	For	purposes of this chapter, "neglect" with respect to dogs, cats, and other domestic						
5		pet	s, means the failure to provide an animal with:						
6		<u>a.</u>	Food and water, as appropriate for the species, the breed, and the animal's age						
7			and physical condition;						
3		<u>b.</u>	Shelter from the elements, as appropriate for the species, the breed, and the						
9			animal's age and physical condition;						
0		<u>C.</u>	Necessary medical attention; and						
1		<u>d.</u>	An environment that is:						
2			(1) Ventilated in a manner appropriate for the species, the breed, and the						
3			animal's age and physical condition;						
4			(2) Cleaned in a manner appropriate for the species, the breed, and the						
5			animal's age and physical condition; and						
6			(3) Free of conditions likely to cause injury or death to an animal of that						
7			species, breed, age, and physical condition.						
3	<u>3.</u>	The	e following do not constitute violations of this section:						
9	-	<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects						
)			of the livestock industry;						

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1	b. Any usual and customary practice in the breeding, raising, training, showing, and
2	competition of animals;
3 -	c. Any usual and customary practice in the sport of rodeo and in animal racing;
4 -	d. Any usual and customary practice in livestock exhibitions and competitions;
5	e. Lawful fishing, hunting, and trapping;
6 -	f. Lawful wildlife management practices;
7 -	g. Lawful research and educational activities involving the use of animals;
8 -	h. Lawful control of pests, rodents, and predators;
9	i. Lawful animal damage control activities;
10 -	j. Services provided by or under the direction of a licensed veterinarian; and
11 -	k. The humane destruction of an animal for cause.
12	3. For purposes of this chapter, "neglect" with respect to all animals other than those
13	included in subsection 2, means the failure to provide:
14	a. Food and water that is:
15	(1) Appropriate for the species and the breed; and
16	(2) Sufficient to sustain the animal's health;
17	b. Minimal protection from adverse weather conditions, as appropriate for the
18	species and the breed; and
19	c. Medical attention in the event of an injury or illness, as appropriate for the
20	species and the breed.
21	4. The following do not constitute violations of this section:
22	a. Any usual and customary practice in:
23	(1) The production of food, feed, fiber, or ornament;
24	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
25	and training of animals;
26	(3) The sport of rodeo;
27	(4) Animal racing:
28	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
29	7 U.S.C. 2131, et seq;
30	(6) Fishing, hunting, and trapping;
31	(7) Wildlife management;

1	(8) The culinary arts;
2	(9) Lawful research and educational activities; and
3	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
4	b. The humane or swift destruction of an animal for cause; and
5	c. Services provided by or under the direction of a licensed veterinarian.
6	36-21.2-02. Animal abuse - Definition - Exemptions - Penalty.
7	1. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
8	for a first or a second offense and a class C felony for a third or subsequent offense
9	occurring within ten years.
10	2. For purposes of this chapter, "animal abuse" means the physical abuse of any act or
11	omission that results in physical injury to an animal or that causes the death of an
12	animal, but does not include any act or omission that falls within the definition of
13	animal 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	I. The humane destruction of an animal for cause.
30	3. The following do not constitute violations of this section:
31	a. Any usual and customary practice in:

Ū	
_	(1) The production of food, feed, fiber, or ornament;
	(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, unwelcome animal, and animal damage control;
	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.
30	5-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.
1	Any person that willfully intentionally engages in animal cruelty is guilty of a class C
	felony.
2	For purposes of this chapter, "animal cruelty" means:
	a. Any act or omission that causes an animal unjustifiable pain, suffering, or death,
	including the infliction of any injury that results in a substantial risk of death,
	leaves an animal significantly disfigured, results in broken bones, or causes
	prolonged impairment of an animal's health; and
_	b. Any act or omission that results in a serious illness and leaves an animal
	significantly disfigured or causes prolonged impairment of the animal's health.
3	The following do not constitute violations of this section:
	a. Any usual and customary practice in production agriculture, including all aspects
	of the livestock industry:
	b. Any usual and customary practice in the breeding, raising, training, showing, and

1	c. Any usual and customary practice in the sport of rodeo and in animal racing;
2	d. Any usual and customary practice in livestock exhibitions and competitions;
3	e. Lawful fishing, hunting, and trapping;
4 -	<u>f. Lawful wildlife management practices;</u>
5	g. Lawful research and educational activities involving the use of animals;
6	h. Lawful control of pests, rodents, and predators;
7	i. Lawful animal damage control activities;
8	j. Any action taken by an individual against an animal that is attacking or is about to
9	attack a human, a companion animal, or livestock;
10	k. Services provided by or under the direction of a licensed veterinarian; and
11	I. The humane destruction of an animal for cause.
12	a. Breaking an animal's bones;
13	b. Causing an animal extreme pain;
14	c. Causing the prolonged impairment of an animal's health;
15	d. Mutilating an animal; or
16	e. Physically torturing an animal.
17	3. The following do not constitute violations of this section:
18	a. Any usual and customary practice in:
19	(1) The production of food, feed, fiber, or ornament;
20	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
21	and training of animals;
22	(3) The sport of rodeo;
23	(4) Animal racing;
24	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
25	7 U.S.C. 2131, et seq;
26	(6) Fishing, hunting, and trapping;
27	(7) Wildlife management;
28	(8) The culinary arts;
29	(9) Lawful research and educational activities; and
30	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;

1		b. Any action taken by an individual against an animal that is attacking or is about to
2		attack a human, a companion animal, or livestock;
3		c. The humane or swift destruction of an animal for cause; and
4		d. Services provided by or under the direction of a licensed veterinarian.
5	36-	21.2-04. Animal abandonment - Definition - Exemptions - Penalty.
6	<u>1.</u>	Any person that willfully engages in the abandonment of an animal is guilty of a
7		class A misdemeanor for a first or a second offense and a class C felony for a third or
8		subsequent offense occurring within ten years.
9	<u>2.</u>	For purposes of this chapter, "abandonment" means the relinquishment of a person's
10		custody or control, with no intention of reclaiming that custody or control, and without
11		placing the animal into the custody or control of another person that is able to provide
12		care for the animal and who knowingly and willingly accepts that responsibility. The
13		term includes:
14		a. The desertion of an animal; and
15		b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
16		conclusion of a boarding contract or other service contract, other than that
17		specified in section 43-29-16.1.
18	3.	The following do not constitute violations of this section:
19		a. Any usual and customary practice in production agriculture, including all aspects
20		of the livestock industry;
21		b. Any usual and customary practice in the breeding, raising, training, showing, and
22		competition of animals;
23	_	c. Any usual and customary practice in the sport of rodeo and in animal racing;
24		d. Any usual and customary practice in livestock exhibitions and competitions;
25	_	e. Lawful fishing, hunting, and trapping;
26	_	f. Lawful wildlife management practices;
27		g. Lawful research and educational activities involving the use of animals;
28		h. Lawful control of pests, rodents, and predators;
29		i. Lawful animal damage control activities;
30		j. Services provided by or under the direction of a licensed veterinarian; and
31		k. The humane destruction of an animal for cause.

1	3.	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. The humane or swift destruction of an animal for cause; and			
16 _		c. Services provided by or under the direction of a licensed veterinarian.			
17	<u>4.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,			
18		as appropriate for the species, the breed, and the animal's age and physical condition,			
19		and necessary medical attention.			
20	36-	21.2-05. Seizure of animal - Court order.			
21	<u>1.</u>	A law enforcement officer may petition the court for an order directing the seizure of			
22		any animal believed to have been neglected, abused, treated cruelly, or subjected to			
23		any act or omission in violation of this chapter.			
24	<u>2.</u>	The court may act without notice to the animal's owner or to the person having			
25		custody or control of the animal and may rely solely on testimony or an affidavit in			
26		considering the petition.			
27	<u>3.</u>	In the order for seizure, the court may direct that a veterinarian humanely destroy an			
28		animal if the veterinarian, upon examining the animal, determines that the animal is			
29		experiencing excruciating pain or suffering and that the animal's pain or suffering is not			

1	36-	21.2-06. Law enforcement - Duty upon seizure - Notification.					
2	<u>1.</u>	Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement					
3		officer shall provide care for the animal, either directly or through a contractual					
4		arrangement with another person. For purposes of this subsection, "care" means food,					
5		water, and shelter from the elements, as appropriate for the species, the breed, and					
6		the animal's age and physical condition, and necessary medical attention.					
7		a. If the owner and the person having custody or control at the time of the seizure					
8		are known to the officer, the officer shall:					
9		(1) Provide notice of the seizure to the owner and the person having custody or					
10		control of the animal; and					
11		(2) Petition the court for an order directing the animal's disposition.					
12		b. If the animal's owner is not known to the law enforcement officer, the officer shall					
13		publish notice of the animal's seizure in the official newspaper of the county and					
14		indicate that if the owner does not claim the animal within five days, the animal					
15		will be sold, placed for adoption, or humanely destroyed, at the direction of the					
16		law enforcement officer.					
17		(1) If the owner does not claim the animal within five days, as required by this					
18		subdivision, the law enforcement officer shall sell the animal, place the					
19		animal for adoption, or provide for its humane destruction.					
20		(2) If the owner is identified within the five-day period, the law enforcement					
21		officer shall petition the court for an order directing the animal's disposition.					
22	<u>2.</u>	In ruling on a petition for an animal's disposition under this section, a court may direct					
23		that the animal be sold, placed for adoption, humanely destroyed, or returned to its					
24		owner, with or without conditions.					
25	36-	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.					
26	<u>1.</u>	The If convicted of violating this chapter, the owner of an animal seized under section					
27		36-21.2-05 is responsible for all costs related to the animal's seizure, including					
28		required notifications, attorney's fees, court costs, and any costs incurred in providing					
29		the animal with care or in providing for its destruction in accordance with section					
30		<u>36-21.2-06.</u>					

1	<u>2.</u>	<u>a.</u>	The	a law e	nforcement agency that seized the animal has a lien upon the animal	
2			for a	all cos	ts incurred as a result of the seizure and conviction. The lien is superior	
3			to a	ny oth	er claim or lien.	
4		<u>b.</u>	If th	e lien	is not satisfied by the animal's owner, the law enforcement agency may	
5			app	ly to the	ne court for an order enforcing the lien.	
6	3.	<u>lf a</u>	seize	ed anir	nal is sold, the proceeds must be used first to satisfy the lienholder to	
7		the	exter	nt of th	e lien and second to satisfy any other claims involving the animal. Any	
8		ren	nainin	g proc	eeds must be returned to the owner, as directed by the court. If the	
9		ow	ner is	unkno	own, any proceeds otherwise payable to the owner must be deposited in	
10		the	gene	ral fur	d of the county.	
11	36-	21.2-	08. A	bando	oned animal - Law enforcement officer - Duties.	
12	<u>1.</u>	Ala	aw ent	forcen	nent officer may take custody of an animal if the officer has reasonable	
13		cau	ise to	believ	the the animal has been abandoned in violation of this chapter.	
14	2.	<u>a.</u>	Upo	on taki	ng custody of an animal in accordance with this section, the law	
15			enfo	orcem	ent officer shall:	
16			(1)	Prov	ide care for the animal, either directly or through a contractual	
17				arra	ngement with another person; and	
18			(2)	<u>(a)</u>	Notify the owner, if known to the officer; or	
19				<u>(b)</u>	If the owner is not known to the officer, provide notice of the animal's	
20					custody, indicate that if the owner does not lay claim to the animal	
21					within five days, the animal will be sold, placed for adoption, or	
22					humanely destroyed, at the direction of the law enforcement officer,	
23					and include the officer's contact information.	
24		<u>b.</u>	For	purpo	ses of this subdivision, notice may be provided by:	
25			(1)	Publ	ication in the official newspaper of the county if the newspaper is	
26				publ	shed daily or in a daily newspaper serving the county;	
27			(2)	Any	electronic means; or	
28			(3)	Post	ing a description and a photograph at the local law enforcement center.	
29	3.	If the owner is identified within the five-day period, the law enforcement officer shall				
30		return the animal to the owner only if:				

1		a. The owner demonstrates that the animal was not abandoned in violation of this
2		chapter; and
3		b. The owner pays for all costs associated with the animal's care while in custody,
4		including any costs of notifications under this section.
5	<u>4.</u>	If the law enforcement officer refuses to return the animal to its owner, the owner may
6		petition the court for an order directing its return. In ruling on a petition under this
7		subsection, a court may direct that the animal be sold, placed for adoption, humanely
8		destroyed, or returned to its owner with or without conditions.
9	<u>5.</u>	If the owner does not lay claim to the animal within five days, the law enforcement
10		officer shall sell the animal, place it for adoption, or humanely destroy it.
11	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be
12		deposited in the county general fund.
13	<u>7.</u>	Notwithstanding the requirements of this section, if upon examining an animal taken
14		into custody by a law enforcement officer in accordance with this section a licensed
15		veterinarian determines that the animal's condition justifies its destruction, the
16		veterinarian shall humanely destroy the animal. The law enforcement agency shall
17		reimburse the veterinarian for the cost of the animal's destruction.
18	<u>8.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,
19		as appropriate for the species, the breed, and the animal's age and physical condition,
20		and necessary medical attention.
21	36-	21.2-09. Title of animal - Sale or adoption.
22	The	title to any animal sold or adopted in accordance with this chapter passes to the
23	individu	al taking custody or control of the animal.
24	36-2	21.2-10. Veterinarian.
25	If up	oon examining an animal a licensed veterinarian determines that there is reasonable
26	cause to	believe an animal has been neglected, abused, treated cruelly, or subjected to any act
27	or omis	sion in violation of this chapter, the veterinarian may retain custody of the animal and
28	shall im	mediately notify law enforcement officials regarding the determination.
29	36-2	21.2-11. Caged animals - Public display - Exemptions - Penalty.
30	<u>1.</u>	In addition to any other requirements set forth in this chapter, a person placing a
31		caged animal on public display shall ensure that:

1	<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move
2		about; and
3	<u>b.</u>	The cage provides the animal with protection from the elements, as appropriate
4		for the species, the breed, and the animal's age and physical condition.
5	2. Any	person that willfully fails to meet the requirements of this section is guilty of a
6	clas	ss A misdemeanor.
7	<u>3.</u> This	s section does not apply to:
8	<u>a.</u>	The North Dakota state fair association;
9	<u>b.</u>	Agricultural fair associations; or
10	<u><u> </u></u>	Livestock exhibitions and competitions;
11	d.c.	Political subdivisions:
12	<u>.</u>	Educational exhibitions; or
13	<u>f.</u>	Exhibitors licensed by the United States department of agriculture.
14	<u>4.</u> <u>The</u>	following do not constitute violations of this section:
15	<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
16		of the livestock industry;
17	<u>b</u>	Any usual and customary practice in the breeding, raising, training, showing, and
18		competition of animals;
19	<u><u> </u></u>	Any usual and customary practice in the sport of rodeo and in animal racing;
20	<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
21	<u>— <u>e.</u></u>	Lawful fishing, hunting, and trapping;
22	<u>f.</u>	Lawful wildlife management practices;
23	<u>g.</u>	Lawful research and educational activities involving the use of animals;
24	<u>h.</u>	Lawful control of pests, rodents, and predators;
25	<u> </u>	Lawful animal damage control activities; and
26	<u> </u>	Services provided by or under the direction of a licensed veterinarian.
27	4. The	e 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	36-21.2-12. Unattended animal in motor vehicle - Penalty.
15	1. A person An individual may not leave an animal unattended in a motor vehicle without
16	ensuring that the animal's health and safety is not endangered.
17	2. Any personAn individual that violates this section is guilty of an infraction.
18	3. A law enforcement officer may use reasonable means to enter a motor vehicle and
19	remove an animal left in violation of this section.
20	36-21.2-13. Immunity from liability.
21	A veterinarian is immune from civil or criminal liability if the veterinarian, on the
22	veterinarian's own initiative or at the request of a law enforcement officer or other governmental
23	entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity
24	under this section does not apply in the case of negligence.
25	<u>36-21.2-14. Estrays.</u>
26	This chapter does not apply to estrays.
27	36-21.2-15. Collectives Multiple animals - Status Enhancement of offense.
28	If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
29	same species animals, the violation is deemed to be a singular incident for purposes of
30	determining the status of the offense. If a violation of this chapter involves multiple animals,

1	whether of the same species or not, the violation is deemed to be a singular offense for
2	purposes of enhancement.
3	SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS -
4	REPORT TO LEGISLATIVE MANAGEMENT. Before July 1, 2014, representatives of
5	agricultural production groups, including representatives of this state's livestock industry, shall
6	compile information regarding the effects of this Act on the various sectors of the agricultural
7	industry. The compiled information must be presented to the legislative management for review,
8	together with any suggestions for potential statutory changes.
9	SECTION 6. REPEAL. Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
10	36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
11	repealed.

3/29/13 #1

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Changes to marked up version 13.0380.0714

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Page 2, line 14, replace the second comma with "and"

Page 2, line 14, remove ", and other domestic,"

Page 2, line 15, remove "pets"

#2 3/29/13

#### Proposed Amendment to Senate Bill 2211

Agriculture Committee Representative Joshua Boschee

Strike Page 2, Line 10 to Page 3, Line 20.

Insert:

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

- Any person that willfully engages in animal neglect 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."
- For purposes of this chapter, ""neglect"" 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."



13.0380.07014 Title.

## PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

Page 1, line 1, replace "a" with "three"

Page 1, line 1, replace "section" with "sections"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to the legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

"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 state board of animal health 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. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

State board of animal health - Reporting of violations - Biennial reports to legislative management.

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

Page 1, remove line 20

Page 1, line 21, remove "occurring within ten years"

Page 1, line 22, after ""neglect"" insert "with respect to dogs, cats, and other domestic pets,"

Page 2, replace lines 11 through 24 with:

- "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

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- 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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
    - (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, unwelcome animal, and animal damage control;
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"

Page 2, line 30, remove "or omission"

Page 3, replace lines 1 through 16 with:

- "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;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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, unwelcome animal, and animal damage control;
- <u>Any action taken by an individual against an animal that is attacking or</u> 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."
- Page 3, line 18, replace "willfully" with "intentionally"
- Page 3, remove lines 20 through 31
- Page 4, replace lines 1 through 10 with:
  - "a. Breaking an animal's bones;
  - b. Causing an animal extreme pain;
  - c. Causing the prolonged impairment of an animal's health;
  - d. Mutilating an animal; or
  - e. 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;
      - (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, unwelcome animal, and animal damage control;
    - <u>b.</u> 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."

Page 4, line 13, remove "for a first or a second offense and a class C felony for a third or"

Page 4, line 14, remove "subsequent offense occurring within ten years"

#### Page 4, remove lines 24 through 31

Page 5, replace lines 1 through 6 with:

- "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;
    - (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, unwelcome animal, and animal damage control;
  - b. The humane or swift destruction of an animal for cause; and
  - c. Services provided by or under the direction of a licensed veterinarian."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

- Page 8, remove lines 29 through 31
- Page 9, replace lines 1 through 12 with:
  - "4. The following do not constitute violations of this section:
    - a. Any usual and customary practice in:
      - The production of food, feed, fiber, or ornament;
      - (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, unwelcome animal, and animal damage control;
- 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."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person" with "An individual"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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 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."

Renumber accordingly





#### 13.0380.07014

# FIRST ENGROSSMENT

Sixty third Legislative Assembly of North Dakota

# 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 athree new sections to chapter 36-01 and chapter
- 2 36-21.2 of the North Dakota Century Code, relating to the duties of the state board of animal
- 3 health and the treatment of animals; to repeal sections 36-21.1-01, 36-21.1-02, 36-21.1-03,
- 4 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
- 5 Code, relating to the treatment of animals; and to provide a penalty: and to provide for reports to
- 6 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.
- <u>1.</u> 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
- 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.
- <u>15</u> <u>2.</u> The board may exempt, from any restriction imposed under subsection 1, the
   importation or sale of animals for bona fide scientific orpurposes, educational
   purposes, 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 state board of animal health shall maintain and make available to any law enforcement
- 22 agency a list of veterinarians who are licensed in this state and trained to provide assistance in
- 23 any criminal investigation pertaining to this state's animal laws.

1	SEC	TIOI	N 3. A new section to chapter 36-01 of the North Dakota Century Code is created				
2	and enacted as follows:						
3	State board of animal health - Reporting of violations - Biennial reports to legislative						
4	manage	emen	<u>t.</u>				
5	The	state	board of animal health shall work with law enforcement representatives to				
6	develop	a rep	porting mechanism and compile information regarding violations of chapter				
7	36-21.2.	The	board shall report its findings to the legislative management biennially.				
8	SEC	стю	N 4. Chapter 36-21.2 of the North Dakota Century Code is created and enacted as				
9	follows:						
10	36-2	21.2-	01. Neglect - Definition - Exemptions - Penalty.				
11	<u>1.</u>	Any	person that willfully engages in animal neglect is guilty of a class A misdemeanor				
12		for	a first or a second offense and a class C felony for a third or subsequent offense				
13		000	urring within ten years.				
14	<u>2.</u>	For	purposes of this chapter, "neglect" with respect to dogs, cats, and other domestic				
15		pet	s, means the failure to provide an animal with:				
16		<u>a.</u>	Food and water, as appropriate for the species, the breed, and the animal's age				
17			and physical condition;				
18		<u>b.</u>	Shelter from the elements, as appropriate for the species, the breed, and the				
19			animal's age and physical condition;				
20		<u>C.</u>	Necessary medical attention; and				
21		<u>d.</u>	An environment that is:				
22			(1) Ventilated in a manner appropriate for the species, the breed, and the				
23			animal's age and physical condition;				
24			(2) Cleaned in a manner appropriate for the species, the breed, and the				
25			animal's age and physical condition; and				
26			(3) Free of conditions likely to cause injury or death to an animal of that				
27			species, breed, age, and physical condition.				
28	<u>3.</u>	- <u>The</u>	e following do not constitute violations of this section:				
29		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects				
30			of the livestock industry;				

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1		b. Any usual and customary practice in the breeding, raising, training, showing, and
2		competition of animals;
3		<u>c.</u> Any usual and customary practice in the sport of rodeo and in animal racing;
4		<u>d. Any usual and customary practice in livestock exhibitions and competitions;</u>
5		e. Lawful fishing, hunting, and trapping;
6		f. Lawful wildlife management practices;
7		g. Lawful research and educational activities involving the use of animals;
8		h. Lawful control of pests, rodents, and predators;
9	-	i. Lawful animal damage control activities;
10	-	j. Services provided by or under the direction of a licensed veterinarian; and
11		k. The humane destruction of an animal for cause.
12	3.	For purposes of this chapter, "neglect" with respect to all animals other than those
13		included in subsection 2, means the failure to provide:
14		a. Food and water that is:
15		(1) Appropriate for the species and the breed; and
16		(2) Sufficient to sustain the animal's health:
17		b. Minimal protection from adverse weather conditions, as appropriate for the
18		species and the breed; and
19	_	c. Medical attention in the event of an injury or illness, as appropriate for the
20		species and the breed.
21	4.	The following do not constitute violations of this section:
22		a. Any usual and customary practice in:
23		(1) The production of food, feed, fiber, or ornament;
24		(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
25		and training of animals;
26		(3) The sport of rodeo;
27		(4) Animal racing:
28		(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
29		7 U.S.C. 2131, et seq;
30		(6) Fishing, hunting, and trapping;
31		(7) Wildlife management;
31		(7) Wildlife management;

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1	Logiorat	(8) The culinary arts;
2		
3		(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
4		b. The humane or swift destruction of an animal for cause; and
5		c. Services provided by or under the direction of a licensed veterinarian.
6		21.2-02. Animal abuse - Definition - Exemptions - Penalty.
7	<u>1.</u>	Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
8		for a first or a second offense and a class C felony for a third or subsequent offense
9		occurring within ten years.
10	<u>2.</u>	For purposes of this chapter, "animal abuse" means the physical abuse of any act or
11		omission that results in physical injury to an animal or that causes the death of an
12		animal, but does not include any act or omission that falls within the definition of
13		animal 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		I. The humane destruction of an animal for cause.
30	3.	The following do not constitute violations of this section:
31		a. Any usual and customary practice in:

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1 _	<ol><li>The production of food, feed, fiber, or ornament;</li></ol>
2 _	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
3	and training of animals:
4 _	(3) The sport of rodeo:
5 _	(4) Animal racing:
6	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
7	7 U.S.C. 2131, et seq;
8	(6) Fishing, hunting, and trapping;
9	(7) Wildlife management;
10 _	(8) The culinary arts:
11 _	(9) Lawful research and educational activities; and
12 _	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
13	b. Any action taken by an individual against an animal that is attacking or is about to
14	attack a human, a companion animal, or livestock;
15	c. The humane or swift destruction of an animal for cause; and
16	d. Services provided by or under the direction of a licensed veterinarian.
17	36-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.
18	1. Any person that willfully intentionally engages in animal cruelty is guilty of a class C
19	felony.
20	2. For purposes of this chapter, "animal cruelty" means:
21 -	a. Any act or omission that causes an animal unjustifiable pain, suffering, or death,
22	including the infliction of any injury that results in a substantial risk of death,
23	leaves an animal significantly disfigured, results in broken bones, or causes
24	prolonged impairment of an animal's health; and
25	b. Any act or omission that results in a serious illness and leaves an animal
26	significantly disfigured or causes prolonged impairment of the animal's health.
27	3. The following do not constitute violations of this section:
28	a. Any usual and customary practice in production agriculture, including all aspects
29	of the livestock industry;
30 -	b. Any usual and customary practice in the breeding, raising, training, showing, and
31	competition of animals;

1 -	s. Any usual and customary practice in the sport of rodeo and in animal racing;
2 -	d. Any usual and customary practice in livestock exhibitions and competitions;
3 -	e. Lawful fishing, hunting, and trapping;
4	f. Lawful wildlife management practices;
5 -	g. Lawful research and educational activities involving the use of animals;
6 -	h. Lawful control of pests, rodents, and predators;
7 -	i. Lawful animal damage control activities;
8 -	j. Any action taken by an individual against an animal that is attacking or is about to
9	attack a human, a companion animal, or livestock;
10 -	k. Services provided by or under the direction of a licensed veterinarian; and
11 -	I. The humane destruction of an animal for cause.
12	a. Breaking an animal's bones;
13	b. Causing an animal extreme pain;
14	c. Causing the prolonged impairment of an animal's health;
15	d. Mutilating an animal; or
16	e. Physically torturing an animal.
17	3. The following do not constitute violations of this section:
18	a. Any usual and customary practice in:
19	(1) The production of food, feed, fiber, or ornament;
20	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
21	and training of animals:
22	(3) The sport of rodeo;
23	(4) Animal racing:
24	(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
25	<u>7 U.S.C. 2131, et seq;</u>
26	(6) Fishing, hunting, and trapping;
27	(7) Wildlife management:
28	(8) The culinary arts;
29	(9) Lawful research and educational activities; and
30	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;

1		b.	Any action taken by an individual against an animal that is attacking or is about to
2			attack a human, a companion animal, or livestock;
3		C.	The humane or swift destruction of an animal for cause: and
4		d.	Services provided by or under the direction of a licensed veterinarian.
5	36-	21.2-	04. Animal abandonment - Definition - Exemptions - Penalty.
6	<u>1.</u>	Any	person that willfully engages in the abandonment of an animal is guilty of a
7		clas	ss A misdemeanor for a first or a second offense and a class C felony for a third or
8		sub	sequent offense occurring within ten years.
9	<u>2.</u>	For	purposes of this chapter, "abandonment" means the relinquishment of a person's
10		cus	tody or control, with no intention of reclaiming that custody or control, and without
11		pla	cing the animal into the custody or control of another person that is able to provide
12		car	e for the animal and who knowingly and willingly accepts that responsibility. The
13		terr	n includes:
14		<u>a.</u>	The desertion of an animal; and
15		<u>b.</u>	The failure to retrieve an animal within forty-eight hours after the agreed-upon
16			conclusion of a boarding contract or other service contract, other than that
17			specified in section 43-29-16.1.
18	<u>3.</u>	The	e following do not constitute violations of this section:
19		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
20			of the livestock industry:
21		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
22			competition of animals;
23		<u><u> </u></u>	Any usual and customary practice in the sport of rodeo and in animal racing;
24		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
25		<u>e.</u>	Lawful fishing, hunting, and trapping;
26	-	<u>f.</u>	Lawful wildlife management practices;
27		<u>g.</u>	<ul> <li>Lawful research and educational activities involving the use of animals;</li> </ul>
28		<u>h.</u>	Lawful control of pests, rodents, and predators;
29		<u>i.</u>	Lawful animal damage control activities;
30		Ŀ	Services provided by or under the direction of a licensed veterinarian; and
31		<u>k.</u>	The humane destruction of an animal for cause.

1 _	3.	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 seg;
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. The humane or swift destruction of an animal for cause; and
16 _		c. Services provided by or under the direction of a licensed veterinarian.
17	<u>4.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,
18		as appropriate for the species, the breed, and the animal's age and physical condition,
19		and necessary medical attention.
20	36-	21.2-05. Seizure of animal - Court order.
21	1.	A law enforcement officer may petition the court for an order directing the seizure of
22		any animal believed to have been neglected, abused, treated cruelly, or subjected to
23		any act or omission in violation of this chapter.
24	<u>2.</u>	The court may act without notice to the animal's owner or to the person having
25		custody or control of the animal and may rely solely on testimony or an affidavit in
26		considering the petition.
27	<u>3.</u>	In the order for seizure, the court may direct that a veterinarian humanely destroy an
28		animal if the veterinarian, upon examining the animal, determines that the animal is
29		experiencing excruciating pain or suffering and that the animal's pain or suffering is not
30		likely to be alleviated using reasonable medical interventions.

	<u>1.</u>	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		
6		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		
6		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.		
(	<u>2.</u>	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.		
	36-2	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.		
5	1.	Thelf 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		
3		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		
0		36-21.2 06.		

1	<u>2.</u>	<u>a.</u>	The	law e	nforcement agency that seized the animal has a lien upon the animal
2			for a	all cos	ts incurred as a result of the seizure and conviction. The lien is superior
3			<u>to a</u>	ny oth	er claim or lien.
4		<u>b.</u>	<u>lf th</u>	e lien	is not satisfied by the animal's owner, the law enforcement agency may
5			app	ly to th	ne court for an order enforcing the lien.
6	<u>3.</u>	<u>lf a</u>	seize	d anir	nal is sold, the proceeds must be used first to satisfy the lienholder to
7		<u>the</u>	exter	nt of th	e lien and second to satisfy any other claims involving the animal. Any
8		rem	nainin	g proc	eeds must be returned to the owner, as directed by the court. If the
9		<u>ow</u>	ner is	unkno	wn, any proceeds otherwise payable to the owner must be deposited in
10		<u>the</u>	gene	ral fun	d of the county.
11	<u>36-</u>	21.2-	08. A	bando	oned animal - Law enforcement officer - Duties.
12	<u>1.</u>	<u>A la</u>	aw en	forcen	nent officer may take custody of an animal if the officer has reasonable
13		<u>ca</u>	ise to	believ	e that the animal has been abandoned in violation of this chapter.
14	<u>2.</u>	<u>a.</u>	<u>Upc</u>	on taki	ng custody of an animal in accordance with this section, the law
15			enfo	orcem	ent officer shall:
16			<u>(1)</u>	Prov	ide care for the animal, either directly or through a contractual
17				arrai	ngement with another person; and
18			(2)	<u>(a)</u>	Notify the owner, if known to the officer; or
19				<u>(b)</u>	If the owner is not known to the officer, provide notice of the animal's
20					custody, indicate that if the owner does not lay claim to the animal
21					within five days, the animal will be sold, placed for adoption, or
22					humanely destroyed, at the direction of the law enforcement officer,
<b>2</b> 3					and include the officer's contact information.
24		<u>b.</u>	<u>For</u>	purpo	ses of this subdivision, notice may be provided by:
25			(1)	<u>Pub</u>	ication in the official newspaper of the county if the newspaper is
26				<u>publ</u>	ished daily or in a daily newspaper serving the county;
27			<u>(2)</u>	<u>Any</u>	electronic means; or
28			<u>(3)</u>	Post	ing a description and a photograph at the local law enforcement center.
29	<u>3.</u>	<u>If t</u>	ne ow	ner is	identified within the five-day period, the law enforcement officer shall
30		ret	<u>urn th</u>	e anin	nal to the owner only if:



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1		a. The owner demonstrates that the animal was not abandoned in violation of this				
2		chapter; and				
3		b. The owner pays for all costs associated with the animal's care while in custody,				
4		including any costs of notifications under this section.				
5	4.	If the law enforcement officer refuses to return the animal to its owner, the owner may				
6		petition the court for an order directing its return. In ruling on a petition under this				
7		subsection, a court may direct that the animal be sold, placed for adoption, humanely				
8		destroyed, or returned to its owner with or without conditions.				
9	<u>5.</u>	If the owner does not lay claim to the animal within five days, the law enforcement				
10		officer shall sell the animal, place it for adoption, or humanely destroy it.				
11	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be				
12		deposited in the county general fund.				
13	<u>7.</u>	Notwithstanding the requirements of this section, if upon examining an animal taken				
14		into custody by a law enforcement officer in accordance with this section a licensed				
15		veterinarian determines that the animal's condition justifies its destruction, the				
16		veterinarian shall humanely destroy the animal. The law enforcement agency shall				
17		reimburse the veterinarian for the cost of the animal's destruction.				
18	<u>8.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,				
19		as appropriate for the species, the breed, and the animal's age and physical condition,				
20		and necessary medical attention.				
21	36-	21.2-09. Title of animal - Sale or adoption.				
22	The	e title to any animal sold or adopted in accordance with this chapter passes to the				
23	individu	al taking custody or control of the animal.				
24	36-	21.2-10. Veterinarian.				
25	If upon examining an animal a licensed veterinarian determines that there is reasonable					
26	cause t	o believe an animal has been neglected, abused, treated cruelly, or subjected to any act				
27	or omis	sion in violation of this chapter, the veterinarian may retain custody of the animal and				
28	shall im	mediately notify law enforcement officials regarding the determination.				
29	36-	21.2-11. Caged animals - Public display - Exemptions - Penalty.				
30	<u>1.</u>	In addition to any other requirements set forth in this chapter, a person placing a				
31		caged animal on public display shall ensure that:				

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1		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move
2			about; and
3		<u>b.</u>	The cage provides the animal with protection from the elements, as appropriate
4			for the species, the breed, and the animal's age and physical condition.
5	<u>2.</u>	Any	person that willfully fails to meet the requirements of this section is guilty of a
6		clas	ss A misdemeanor.
7	<u>3.</u>	This	s section does not apply to:
8		<u>a.</u>	The North Dakota state fair association;
9		<u>b.</u>	Agricultural fair associations; or
10		<u>C.</u>	Livestock exhibitions and competitions;
11		d.c.	Political subdivisions:
12		<u>e.</u>	Educational exhibitions; or
13		<u>f.</u>	Exhibitors licensed by the United States department of agriculture.
14	<u>4.</u>	The	e following do not constitute violations of this section:
15		<del>a.</del>	Any usual and customary practice in production agriculture, including all aspects
16			of the livestock industry;
17		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
18			competition of animals;
19		<u>C.</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
20		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
21		<u>e.</u>	Lawful fishing, hunting, and trapping;
22		<u>f</u> .	Lawful wildlife management practices;
23		<u>g.</u>	Lawful research and educational activities involving the use of animals;
24	-	<u>h.</u>	Lawful control of pests, rodents, and predators;
25		<u>i</u> .	Lawful animal damage control activities; and
26		Ŀ	Services provided by or under the direction of a licensed veterinarian.
27	4.	The	e following do not constitute violations of this section:
28		а.	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;

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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	36-21.2-12. Unattended animal in motor vehicle - Penalty.
15	1. ApersonAn individual may not leave an animal unattended in a motor vehicle without
16	ensuring that the animal's health and safety is not endangered.
17	2. Any personAn individual that violates this section is guilty of an infraction.
18	3. A law enforcement officer may use reasonable means to enter a motor vehicle and
19	remove an animal left in violation of this section.
20	36-21.2-13. Immunity from liability.
21	A veterinarian is immune from civil or criminal liability if the veterinarian, on the
22	veterinarian's own initiative or at the request of a law enforcement officer or other governmental
23	entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity
24	under this section does not apply in the case of negligence.
25	<u>36-21.2-14. Estrays.</u>
26	This chapter does not apply to estrays.
27	36-21.2-15. CollectivesMultiple animals - StatusEnhancement of offense.
28	If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
29	same species animals, the violation is deemed to be a singular incident for purposes of
30	determining the status of the offense. If a violation of this chapter involves multiple animals,



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- 1 whether of the same species or not, the violation is deemed to be a singular offense for
- 2 purposes of enhancement.
  - SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS -
- 4 REPORT TO LEGISLATIVE MANAGEMENT. Before July 1, 2014, representatives of
- 5 agricultural production groups, including representatives of this state's livestock industry, shall
- 6 compile information regarding the effects of this Act on the various sectors of the agricultural
- 7 industry. The compiled information must be presented to the legislative management for review,
- 8 together with any suggestions for potential statutory changes.
- 9 SECTION 6. REPEAL. Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
- 10 36 21.1-04, 36-21.1-06, 36-21.1 12, and 36-21.1 13 of the North Dakota Century Code are
- 11 repealed.

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# FIRST ENGROSSMENT

Sixty-third Legislative Assembly of North Dakota

# 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 athree new sections to chapter 36-01 and a new
- 2 section to chapter 36-21.2 of the North Dakota Century Code, relating to the duties of the state
- 3 board of 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; and to provide a penalty; and to
- 6 provide 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.

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 The board may exempt, from any restriction imposed under subsection 1, the 2. 16 importation or sale of animals for bona fide scientific orpurposes, educational
  - purposes, 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:

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- 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	SECT	ION 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 bo	bard sha	Il work with law enforcement representatives to develop a reporting						
5	mechanisn	n and co	ompile information regarding violations of chapter 36-21.2. The board shall						
6	report its fi	ndings t	to the legislative management biennially.						
7	SECT	ON 4. C	Chapter 36-21.2 of the North Dakota Century Code is created and enacted as						
8	follows:								
9	36-21.	2-01. Ne	eglect - Definition - Exemptions - Penalty.						
10	1. A	ny pers	on that willfully engages in animal neglect is guilty of a class A misdemeanor						
11	fe	or a first	or a second offense and a class C felony for a third or subsequent offense						
12	Ð	ccurring	within ten years.						
13	<u>2.</u> E	or purpo	oses of this chapter, "neglect" with respect to dogs and cats, means the						
14	fa	ailure to	provide an animal with:						
15	a	E Eoo	d and water, as appropriate for the species, the breed, and the animal's age						
16		and	physical condition:						
17	b	She	Iter from the elements, as appropriate for the species, the breed, and the						
18		anin	nal's age and physical condition:						
19	Q	Nec	essary medical attention; and						
20	d	<u>Ane</u>	environment that is:						
21		(1)	Ventilated in a manner appropriate for the species, the breed, and the						
22			animal's age and physical condition:						
23		(2)	Cleaned in a manner appropriate for the species, the breed, and the						
24			animal's age and physical condition: and						
25	L.	(3)	Free of conditions likely to cause injury or death to an animal of that						
26			species, breed, age, and physical condition.						
27	<u>-3.</u> I	he follo	wing do not constitute violations of this section:						
28	<u> </u>	. Any	usual and customary practice in production agriculture, including all aspects						
29		ofth	ne livestock industry:						
30	<u>b</u>	. Any	usual and customary practice in the breeding, raising, training, showing, and						
31		com	apetition of animals:						

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1	c. Any usual and customary practice in the sport of rodeo and in animal racing;
2	d. Any usual and customary practice in livestock exhibitions and competitions:
3 -	e. Lawful fishing, hunting, and trapping;
4	f. Lawful wildlife management practices;
5	g. Lawful research and educational activities involving the use of animals;
6	h. Lawful control of pests, rodents, and predators;
7	i. Lawful animal damage control activities;
8	j. Services provided by or under the direction of a licensed veterinarian: and
9	k. The humane destruction of an animal for cause.
10	3. For purposes of this chapter, "neglect" with respect to all animals other than those
	included in subsection 2, means the failure to provide:
12	a. Food and water that is:
13	(1) Appropriate for the species and the breed; and
14	(2) Sufficient to sustain the animal's health;
15	b. Minimal protection from adverse weather conditions, as appropriate for the
16	species and the breed; and
	c. Medical attention in the event of an injury or illness, as appropriate for the
18	species and the breed.
19	4. The following do not constitute violations of this section:
20	a. Any usual and customary practice in:
21	(1) The production of food, feed, fiber, or ornament;
22	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
23	and training of animals:
24	(3) The sport of rodeo:
25	(4) Animal racing:
26	(5) The use of animals by exhibitors licensed under the Animal Welfare Act.
27	7 U.S.C. 2131, et seq;
28	(6) Fishing, hunting, and trapping;
29	(7) Wildlife management:
30	(8) The culinary arts:
31	(9) Lawful research and educational activities: and

1		(10) Pest, vermin, predator, unwelcome animal, and animal damage control;	
2		b. The humane or swift destruction of an animal for cause; and	
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4	26		
	5	21.2-02. Animal abuse - Definition - Exemptions - Penalty.	
5	1.	Any person that willfully engages in animal abuse is guilty of a class A misdemeanor	
6		for a first or a second offense and a class C felony for a third or subsequent offense	
7	1	occurring within ten years.	
8	2.	For purposes of this chapter, "animal abuse" means the physical abuse of any act or	
9		omission that results in physical injury to an animal or that causes the death of an	
10		animal, but does not include any act or omission that falls within the definition of	
11	1	animal cruelty, as set forth in section 36-21.2-03.	
12	<u>3.</u>	- The following do not constitute violations of this section:	
13		a. Any usual and customary practice in production agriculture, including all aspects-	
14		of the livestock industry:	
15	1	<u>b. Any usual and customary practice in the breeding, raising, training, showing, and</u>	
16		competition of animals:	
17	-	<u>c. Any usual and customary practice in the sport of rodeo and in animal racing:</u>	
18	-	d. <u>Any usual and customary practice in livestock exhibitions and competitions:</u>	
19		<u>e. Lawful fishing. hunting. and trapping:</u>	
20		f. Lawful wildlife management practices:	
21	-	g. Lawful research and educational activities involving the use of animals;	
22	-	h. Lawful control of pests, rodents, and predators;	
23		i. Lawful animal damage control activities;	
24		j. Any action taken by an individual against an animal that is attacking or is about to	
25		attack a human, a companion animal, or livestock;	
26	-	k. Services provided by or under the direction of a licensed veterinarian; and	
27	-		
28	3.	The following do not constitute violations of this section:	
29		a. Any usual and customary practice in:	
30		(1) The production of food, feed, fiber, or ornament;	

1	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
2	and training of animals;
3	(3) The sport of rodeo:
4	(4) Animal racing;
5	(5) The use of animals by exhibitors licensed under the Animal Welfare Act.
6	7 U.S.C. 2131, et seq:
7	(6) Fishing, hunting, and trapping;
8	(7) Wildlife management:
9	(8) The culinary arts:
10	(9) Lawful research and educational activities; and
11	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
12	b. Any action taken by an individual against an animal that is attacking or is about to
13	attack a human, a companion animal, or livestock;
14	c. The humane or swift destruction of an animal for cause; and
15	d. Services provided by or under the direction of a licensed veterinarian.
16	36-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.
17	1. Any person that willfully intentionally engages in animal cruelty is guilty of a class C
18	felony.
19	2. For purposes of this chapter. "animal cruelty" means:
20	a. Any act or omission that causes an animal unjustifiable pain, suffering, or death,
21	including the infliction of any injury that results in a substantial risk of death,
22	leaves an animal significantly disfigured, results in broken bones, or causes-
23	prolonged impairment of an animal's health: and
24	b. Any act or omission that results in a serious illness and leaves an animal-
25	significantly disfigured or causes prolonged impairment of the animal's health.
26	<u>3. The following do not constitute violations of this section:</u>
27	a. Any usual and customary practice in production agriculture, including all aspects-
28	of the livestock industry:
29	b. Any usual and customary practice in the breeding, raising, training, showing, and
30	competition of animals;
31	<u>c. Any usual and customary practice in the sport of rodeo and in animal racing:</u>

1 -	d. Any usual and customary practice in livestock exhibitions and competitions:
2 -	o. Lawful fishing, hunting, and trapping;
3 -	f. Lawful wildlife management practices;
4 -	g. Lawful research and educational activities involving the use of animals;
5 -	h. Lawful control of pests, rodents, and predators;
6 -	i. Lawful animal damage control activities;
7 -	j. Any action taken by an individual against an animal that is attacking or is about to
8	attack a human, a companion animal, or livestock;
9 -	k. Services provided by or under the direction of a licensed veterinarian; and
10 -	I. The humane destruction of an animal for cause.
11	a. Breaking an animal's bones:
12	b. Causing an animal extreme pain:
13	c. Causing the prolonged impairment of an animal's health:
14 .	d. Mutilating an animal: or
15	e. Physically torturing an animal.
16	3. The following do not constitute violations of this section:
17	a. Any usual and customary practice in:
18	(1) The production of food, feed, fiber, or ornament:
19	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
20	and training of animals:
21	(3) The sport of rodeo:
22	(4) Animal racing:
23	(5) The use of animals by exhibitors licensed under the Animal Welfare Act.
24	7 U.S.C. 2131, et seq:
25	(6) Fishing, hunting, and trapping;
26	(7) Wildlife management:
27	(8) The culinary arts:
28	(9) Lawful research and educational activities: and
29	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
30	b. Any action taken by an individual against an animal that is attacking or is about to
31	attack a human, a companion animal, or livestock;

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1		c. The humane or swift destruction of an animal for cause; and
2		d. Services provided by or under the direction of a licensed veterinarian.
3	36-	21.2-04. Animal abandonment - Definition - Exemptions - Penalty.
4	1.	Any person that willfully engages in the abandonment of an animal is guilty of a
5		class A misdemeanor-for a first or a second offense and a class C felony for a third or
6		subsequent offense occurring within ten years.
7	2.	For purposes of this chapter, "abandonment" means the relinquishment of a person's
8		custody or control, with no intention of reclaiming that custody or control, and without,
9		placing the animal into the custody or control of another person that is able to provide
10		care for the animal and who knowingly and willingly accepts that responsibility. The
11		term includes:
12		a. The desertion of an animal: and
13		b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
14		conclusion of a boarding contract or other service contract, other than that
15		specified in section 43-29-16.1.
16	-3.	The following do not constitute violations of this section:
17		a. Any usual and customary practice in production agriculture, including all aspects
18		of the livestock industry:
19		b. Any usual and customary practice in the breeding, raising, training, showing, and
20		competition of animals:
21		c. Any usual and customary practice in the sport of rodeo and in animal racing:
22	-	d. Any usual and customary practice in livestock exhibitions and competitions:
23		c. Lawful fishing, hunting, and trapping;
24		f. Lawful wildlife management practices:
25		g. Lawful research and educational activities involving the use of animals:
26		h. Lawful control of pests, rodents, and predators;
27		i. Lawful animal damage control activities:
28	-	j. Services provided by or under the direction of a licensed veterinarian; and
29		k. The humane destruction of an animal for cause.
30	3.	The following do not constitute violations of this section:
31	_	a. Any usual and customary practice in:

	1	
1		(1) The production of food, feed, fiber, or ornament;
2		(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
3	1	and training of animals;
4		(3) The sport of rodeo:
5		(4) Animal racing:
6		(5) The use of animals by exhibitors licensed under the Animal Welfare Act.
7		7 U.S.C. 2131. et seq:
8		(6) Fishing, hunting, and trapping:
9		(7) Wildlife management:
10		(8) The culinary arts:
11	- Martine	(9) Lawful research and educational activities; and
12	and and	(10) Pest, vermin, predator, unwelcome animal, and animal damage control;
13	h <u>n</u>	b. The humane or swift destruction of an animal for cause: and
14	-	c. Services provided by or under the direction of a licensed veterinarian.
15	4.	For purposes of this section, "care" means food, water, and shelter from the elements.
16		as appropriate for the species, the breed, and the animal's age and physical condition.
17		and necessary medical attention.
18	36-	21.2-05. Seizure of animal - Court order.
19	1.	A law enforcement officer may petition the court for an order directing the seizure of
20		any animal believed to have been neglected, abused, treated cruelly, or subjected to
21		any act or omission in violation of this chapter.
22	<u>2.</u>	The court may act without notice to the animal's owner or to the person having
23		custody or control of the animal and may rely solely on testimony or an affidavit in
24		considering the petition.
25	<u>3.</u>	In the order for seizure, the court may direct that a veterinarian humanely destroy an
26		animal if the veterinarian, upon examining the animal, determines that the animal is
27		experiencing excruciating pain or suffering and that the animal's pain or suffering is not
28		likely to be alleviated using reasonable medical interventions.
29	36-	21.2-06. Law enforcement - Duty upon seizure - Notification.
30	1.	Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement
31		officer shall provide care for the animal, either directly or through a contractual

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1		arrangement with another person. For purposes of this subsection, "care" means food,
2		water, and shelter from the elements, as appropriate for the species, the breed, and
3		the animal's age and physical condition, and necessary medical attention.
4		a. If the owner and the person having custody or control at the time of the seizure
5		are known to the officer, the officer shall:
6		(1) Provide notice of the seizure to the owner and the person having custody or
7		control of the animal; and
8		(2) Petition the court for an order directing the animal's disposition.
9		b. If the animal's owner is not known to the law enforcement officer, the officer shall
10		publish notice of the animal's seizure in the official newspaper of the county and
11		indicate that if the owner does not claim the animal within five days, the animal
12		will be sold, placed for adoption, or humanely destroyed, at the direction of the
13		law enforcement officer.
14		(1) If the owner does not claim the animal within five days, as required by this
15		subdivision, the law enforcement officer shall sell the animal, place the
16		animal for adoption, or provide for its humane destruction.
17		(2) If the owner is identified within the five-day period, the law enforcement
18		officer shall petition the court for an order directing the animal's disposition.
19	2.	In ruling on a petition for an animal's disposition under this section, a court may direct
20		that the animal be sold, placed for adoption, humanely destroyed, or returned to its
21		owner, with or without conditions.
22	36-	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.
23	1.	The If convicted of violating this chapter, the owner of an animal seized under section
24		36-21.2-05 is responsible for all costs related to the animal's seizure, including
25		required notifications, attorney's fees, court costs, and any costs incurred in providing
26		the animal with care or in providing for its destruction in accordance with section
27		36-21.2-06.
28	2	a. The law enforcement agency that seized the animal has a lien upon the animal
29		for all costs incurred as a result of the seizure and conviction. The lien is superior
30		to any other claim or lien.

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1		b.	If th	e lien	is not satisfied by the animal's owner, the law enforcement agency may	
2			app	ly to th	ne court for an order enforcing the lien.	
3	<u>3.</u>	<u>lf a</u>	seize	d anir	nal is sold, the proceeds must be used first to satisfy the lienholder to	
4		the	exter	nt of th	e lien and second to satisfy any other claims involving the animal. Any	
5		rem	nainin	g proc	eeds must be returned to the owner, as directed by the court. If the	
6		OW	ner is	unkno	own, any proceeds otherwise payable to the owner must be deposited in	
7		the	gene	ral fur	d of the county	
8	36-	21.2-	08. A	bando	oned animal - Law enforcement officer - Duties.	
9	1.	Ala	aw en	forcen	nent officer may take custody of an animal if the officer has reasonable	
10		cau	ise to	believ	e that the animal has been abandoned in violation of this chapter.	
11	2.	<u>a.</u>	Upo	n taki	ng custody of an animal in accordance with this section, the law	
12			enfo	orcem	ent officer shall:	
13			(1)	Prov	ide care for the animal, either directly or through a contractual	
14				arra	ngement with another person; and	
15			(2)	<u>(a)</u>	Notify the owner, if known to the officer: or	
16				<u>(b)</u>	If the owner is not known to the officer, provide notice of the animal's	(
17					custody, indicate that if the owner does not lay claim to the animal	
18					within five days, the animal will be sold, placed for adoption, or	
19					humanely destroyed, at the direction of the law enforcement officer.	
20					and include the officer's contact information.	
21		b.	For	purpo	ses of this subdivision, notice may be provided by:	
22			(1)	Pub	ication in the official newspaper of the county if the newspaper is	
23				publ	ished daily or in a daily newspaper serving the county:	
24			(2)	Any	electronic means; or	
25			(3)	Post	ing a description and a photograph at the local law enforcement center.	
26	<u>3.</u>	<u>If th</u>	he ow	ner is	identified within the five-day period, the law enforcement officer shall	
27		retu	urn th	e anin	nal to the owner only if:	
28		<u>a.</u>	The	owne	er demonstrates that the animal was not abandoned in violation of this	
29			cha	pter: a	and	
30		<u>b.</u>	The	owne	er pays for all costs associated with the animal's care while in custody.	
31			incl	uding	any costs of notifications under this section.	

1	4.	If the	e law enforcement officer refuses to return the animal to its owner, the owner may
2		petit	tion the court for an order directing its return. In ruling on a petition under this
3		subs	section, a court may direct that the animal be sold, placed for adoption, humanely
4		dest	royed, or returned to its owner with or without conditions.
5	<u>5.</u>	If the	e owner does not lay claim to the animal within five days, the law enforcement
6		offic	er shall sell the animal, place it for adoption, or humanely destroy it.
7	<u>6.</u>	Any	proceeds from the sale or adoption of an animal under this section must be
8		dep	osited in the county general fund.
9	7.	Not	withstanding the requirements of this section, if upon examining an animal taken
10		into	custody by a law enforcement officer in accordance with this section a licensed
11		vete	rinarian determines that the animal's condition justifies its destruction, the
12		vete	rinarian shall humanely destroy the animal. The law enforcement agency shall
13		reim	burse the veterinarian for the cost of the animal's destruction.
14	<u>8.</u>	For	purposes of this section. "care" means food, water, and shelter from the elements.
15		as a	ppropriate for the species, the breed, and the animal's age and physical condition.
16		and	necessary medical attention.
17	36-2	1.2-0	9. Title of animal - Sale or adoption.
18	The	title t	o any animal sold or adopted in accordance with this chapter passes to the
19	individua	l taki	ing custody or control of the animal.
20	36-2	1.2-1	0. Veterinarian.
21	If up	on ex	camining an animal a licensed veterinarian determines that there is reasonable
22	cause to	belie	eve an animal has been neglected, abused, treated cruelly, or subjected to any act
23	or omiss	ion ir	n violation of this chapter, the veterinarian may retain custody of the animal and
24	shall imn	nedia	ately notify law enforcement officials regarding the determination.
25	36-2	1.2-1	1. Caged animals - Public display - Exemptions - Penalty.
26	1.	In a	ddition to any other requirements set forth in this chapter, a person placing a
27		cage	ed animal on public display shall ensure that:
28		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move
29			about: and
30		<u>b.</u>	The cage provides the animal with protection from the elements, as appropriate
31			for the species, the breed, and the animal's age and physical condition.

1	2.	Any person that willfully fails to meet the requirements of this section is guilty of a	
2		class A misdemeanor.	
3	3.	This section does not apply to:	
4		a. The North Dakota state fair association;	
5		b. Agricultural fair associations: or	
6		c. Livestock exhibitions and competitions;	
7		d.c. Political subdivisions:	
8		c. Educational exhibitions: or	
9		f. Exhibitors licensed by the United States department of agriculture.	
10	-4.	The following do not constitute violations of this section:	
11		a. Any usual and customary practice in production agriculture, including all aspects	
12		of the livestock industry;	
13		b. Any usual and customary practice in the breeding, raising, training, showing, and	
14		competition of animals:	
15	-	c. Any usual and customary practice in the sport of rodeo and in animal racing:	
16		d. Any usual and customary practice in livestock exhibitions and competitions;	(
17		e. Lawful fishing, hunting, and trapping;	
18		f. Lawful wildlife management practices:	
19		g. Lawful research and educational activities involving the use of animals;	
20		h. Lawful control of pests, rodents, and predators;	
21		i. Lawful animal damage control activities: and	
22		j. Services provided by or under the direction of a licensed veterinarian.	
23	4.	The following do not constitute violations of this section:	
24		a. Any usual and customary practice in:	
25		(1) The production of food, feed, fiber, or ornament:	
26		(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,	
27		and training of animals;	
28		(3) The sport of rodeo:	
29		(4) Animal racing:	
30		(5) The use of animals by exhibitors licensed under the Animal Welfare Act,	
31		7 U.S.C. 2131, et seq;	

		Legislative Assembly							
	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	36-21.2-12. Unattended animal in motor vehicle - Penalty.							
	11	1. A personAn individual may not leave an animal unattended in a motor vehicle without							
	12	ensuring that the animal's health and safety is not endangered.							
	13	2. Any person that An individual who violates this section is guilty of an infraction.							
	14	3. A law enforcement officer may use reasonable means to enter a motor vehicle and							
	15	remove an animal left in violation of this section.							
	16	36-21.2-13. Immunity from liability.							
	17	A veterinarian is immune from civil or criminal liability if the veterinarian, on the							
	18	veterinarian's own initiative or at the request of a law enforcement officer or other governmental.							
	19	entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity							
	20	under this section does not apply in the case of negligence.							
	21	<u>36-21.2-14. Estrays.</u>							
	22	This chapter does not apply to estrays.							
	23	36-21.2-15. Gollectives Multiple animals - Status Enhancement of offense.							
	24	If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of							
	25	same species animals, the violation is deemed to be a singular incident for purposes of							
	26	determining the status of the offense. If a violation of this chapter involves multiple animals.							
	27	whether of the same species or not, the violation is deemed to be a singular offense for							
	28	purposes of enhancement.							
	29	SECTION 5. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS -							
	30	REPORT TO LEGISLATIVE MANAGEMENT. Before July 1, 2014, representatives of							
	31	agricultural production groups, including representatives of this state's livestock industry, shall							

13.0380.07015

- 1 compile information regarding the effects of this Act on the various sectors of the agricultural
- 2 industry. The compiled information must be presented to the legislative management for review,
- 3 together with any suggestions for potential statutory changes.
- 4 SECTION 6. REPEAL. Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
- 5 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
- 6 repealed.

13.0380.07018 Title.

April 17, 2013

### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

That the House recede from its amendments as printed on pages 1088-1093 of the Senate Journal and pages 1176-1181 of the House Journal and that Engrossed Senate Bill No. 2211 be amended as follows:

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after the second "and" insert "a new section to"

Page 1, line 5, remove "and"

Page 1, line 5, after "penalty" insert "; and to provide for reports to the legislative management"

Page 1, line 15, replace the second "or" with "purposes,"

Page 1, line 15, after "purposes" insert ", or temporary exhibitions"

Page 1, after line 15, insert:

"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."

Page 1, remove line 20

Page 1, line 21, remove "occurring within ten years"

Page 1, line 22, after ""neglect"" insert "with respect to dogs and cats,"

Page 2, replace lines 11 through 24 with:

- "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:
    - Appropriate for the species and the breed; and
    - (2) Sufficient to sustain the animal's health;
  - <u>Minimal protection from adverse weather conditions, as appropriate</u> 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.
- 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) <u>The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;</u>
  - (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."
- Page 2, line 27, remove "or a second"
- Page 2, line 27, replace "third" with "second"
- Page 2, line 28, replace "ten" with "five"
- Page 2, line 29, replace "the physical abuse of" with "any act or omission that results in physical injury to an animal or that causes the death of"
- Page 2, line 30, remove "or omission"
- Page 3, replace lines 1 through 16 with:
  - "3. The following do not constitute violations of this section:
    - a. Any usual and customary practice in:
      - <u>The production of food, feed, fiber, or ornament, including all</u> aspects of the livestock industry;
      - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
      - (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."

Page 3, line 18, replace "willfully" with "intentionally"

Page 3, remove lines 20 through 31

Page 4, replace lines 1 through 10 with:

- "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."

Page 4, line 13, remove "for a first or a second offense and a class C felony for a third or"

Page 4, line 14, remove "subsequent offense occurring within ten years"

Page 4, remove lines 24 through 31

Page 5, replace lines 1 through 6 with:

- "3. The following do not constitute violations of this section:
  - a. Any usual and customary practice in:
    - <u>The production of food, feed, fiber, or ornament, including all</u> aspects of the livestock industry;
    - (2) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> 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."

Page 6, line 15, replace "The" with "If convicted of violating this chapter, the"

Page 6, line 20, after "seizure" insert "and conviction"

Page 8, line 26, after the underscored semicolon insert "or"

Page 8, remove line 27

Page 8, line 28, replace "d." with "c."

Page 8, line 28, replace the underscored semicolon with an underscored period

Page 8, remove lines 29 through 31

### Page 9, replace lines 1 through 12 with:

- "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) <u>The boarding, breeding, competition, exhibition, feeding, raising,</u> <u>showing, and training of animals;</u>
    - (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;
  - <u>Any action taken by an individual against an animal that is attacking or</u> 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."

Page 9, line 14, replace "A person" with "An individual"

Page 9, line 16, replace "Any person that" with "An individual who"

Page 9, line 26, replace "Collectives" with "Multiple animals"

Page 9, line 26, replace "Status" with "Enhancement"

Page 9, replace lines 27 through 29 with:

"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. 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."





Renumber accordingly

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13.0380.07019 Title. Prepared by the Legislative Council staff for Senator Miller

April 18, 2013

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

That the House recede from its amendments as printed on pages 1088-1093 of the Senate Journal and pages 1176-1181 of the House Journal and that Engrossed Senate Bill No. 2211 be amended as follows:

Page 6, after line 28, insert:

#### "36-21.2-07.5 Seizure for cause - No prior hearing.

- Notwithstanding section 36-21.2-05, a law enforcement officer may enter upon the property of another and lawfully seize any animal if the officer has reasonable cause to believe that:
  - <u>The animal has been neglected, abused, or treated cruelly, in violation</u> of this chapter, or been subjected to any act or omission in violation of this chapter; and
  - b. The animal's health or well-being necessitates its immediate seizure.
- 2. Upon completion of the seizure, the law enforcement officer shall petition the court for a hearing to show that reasonable cause existed for the seizure. The hearing must be held no later than fifteen days after the seizure.
- 3. a. If the court determines that cause was not shown for the seizure, the court shall return the animal to its owner or to the person having custody and control of the animal at the time of the seizure.
  - b. If the court determines that cause was shown for the seizure, the court may provide for any appropriate remedy permitted by this chapter.
- <u>4.</u> The hearing to show cause, as required by this section, may be waived by the animal's owner or by the person having custody and control of the animal.
- 5. The requirement for a hearing to show cause, as set forth in this section, is not applicable if the seized animal is destroyed by a licensed veterinarian in accordance with section 36-21.2-05."

Page 9, after line 18, insert:

### "36-21.2-12.5. Law enforcement officer - Destruction of animal.

If a law enforcement officer acting in an official capacity encounters an animal that has been severely injured or otherwise subjected to any act or omission in violation of this chapter, and if the officer through training and experience determines that the animal's condition warrants its immediate destruction, the officer may perform such act in a humane or swift manner."

Renumber accordingly

13.0380.07019 Title. Prepared by the Legislative Council staff for Senator Miller

April 18, 2013

### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2211

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  - a. The animal has been neglected, abused, or treated cruelly, in violation of this chapter, or been subjected to any act or omission in violation of this chapter; and
  - b. The animal's health or well-being necessitates its immediate seizure.
- Upon completion of the seizure, the law enforcement officer shall petition the court for a hearing to show that reasonable cause existed for the seizure. The hearing must be held no later than fifteen days after the seizure.
- 3. a. If the court determines that cause was not shown for the seizure, the court shall return the animal to its owner or to the person having custody and control of the animal at the time of the seizure.
  - b. If the court determines that cause was shown for the seizure, the court may provide for any appropriate remedy permitted by this chapter.
- 4. The hearing to show cause, as required by this section, may be waived by the animal's owner or by the person having custody and control of the animal.
- 5. The requirement for a hearing to show cause, as set forth in this section, is not applicable if the seized animal is destroyed by a licensed veterinarian in accordance with section 36-21.2-05."

Page 9, after line 18, insert:

### "36-21.2-12.5. Law enforcement officer - Destruction of animal.

If a law enforcement officer acting in an official capacity encounters an animal that has been severely injured or otherwise subjected to any act or omission in violation of this chapter, and if the officer through training and experience determines that the animal's condition warrants its immediate destruction, the officer may perform such act in a humane or swift manner."

Renumber accordingly

#### 13.0380.07018

### Sixty-third Legislative Assembly of North Dakota

## FIRST ENGROSSMENT

## 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 atwo new section sections to chapter 36-01 and a new
- 2 section to chapter 36-21.2 of the North Dakota Century Code, relating to the duties of the state
- 3 board of 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; and to provide a penalty; and to
- 6 provide 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.
- 111.The state board of animal health may restrict the importation and the sale or other12distribution within the state of any domestic animal and any animal that is wild by
- 13 <u>nature, if the board has reason to believe that the animal may pose a threat to the</u>
- 14 <u>health and well-being of this state's human or animal population.</u>
- 15 <u>2.</u> The board may exempt, from any restriction imposed under subsection 1, the
   importation or sale of animals for bona fide scientific expurposes, educational
   purposes, 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	SEC	CTIO	N 3. C	hapter 36-21.2 of the North Dakota Century Code is created and enacted as
2	follows:			
3	36-2	21.2-0	01. Ne	eglect - Definition - Exemptions - Penalty.
4	<u>1.</u>	Any	pers	on that willfully engages in animal neglect is guilty of a class A misdemeanor
5		for	a first	or a second offense and a class C felony for a third or subsequent offense
6		000	urring	within ten years.
7	2.	For	purpo	oses of this chapter, "neglect" with respect to dogs and cats, means the
8	1	failu	ure to	provide an animal with:
9		<u>a.</u>	Foo	d and water, as appropriate for the species, the breed, and the animal's age
10			and	physical condition;
11		<u>b.</u>	She	Iter from the elements, as appropriate for the species, the breed, and the
12			anin	nal's age and physical condition;
13		<u>C.</u>	Nec	essary medical attention; and
14		<u>d.</u>	Ane	environment that is:
15			(1)	Ventilated in a manner appropriate for the species, the breed, and the
16				animal's age and physical condition;
17			(2)	Cleaned in a manner appropriate for the species, the breed, and the
18				animal's age and physical condition; and
19			(3)	Free of conditions likely to cause injury or death to an animal of that
20				species, breed, age, and physical condition.
21	<u>3.</u>	The	e follo	wing do not constitute violations of this section:
22		<u>a.</u>	Any	usual and customary practice in production agriculture, including all aspects
23			of th	ne livestock industry;
24		b.	Any	usual and customary practice in the breeding, raising, training, showing, and
25			con	petition of animals;
26		<u>G.</u>	Any	usual and customary practice in the sport of rodeo and in animal racing;
27		<u>d.</u>	Any	usual and customary practice in livestock exhibitions and competitions;
28		<u>e.</u>	Law	ful fishing, hunting, and trapping;
29		<u>f.</u>	Law	ful wildlife management practices;
30		<u>g.</u>	Law	ful research and educational activities involving the use of animals;
31		<u>h.</u>	Law	ful control of pests, rodents, and predators;

<ul> <li>i. Lawful animal damage control activities: <ol> <li>Services provided by or under the direction of a licensed veterinarian, and</li> <li>K. The humane destruction of an animal for cause.</li> </ol> </li> <li>3. For purposes of this chapter, "neglect" with respect to all animals other than those included in subsection 2, means the failure to provide: <ol> <li>Food and water that is:</li> <li>Appropriate for the species and the breed; and</li> <li>Sufficient to sustain the animal's health;</li> <li>Minimal protection from adverse weather conditions, as appropriate for the species and the breed; and</li> <li>Medical attention in the event of an injury or illness, as appropriate for the species and the breed.</li> </ol> </li> <li>4. The following do not constitute violations of this section: <ul> <li>Any usual and customary practice in:</li> <li>The production of food, feed, fiber, or ornament, including all aspects of the livestock industry.</li> <li>The boarding, breeding, competition, exhibition, feeding, raising, showing and training of animals;</li> <li>The sport of rodeo;</li> <li>Animal racing;</li> <li>The culinary arts;</li> <li>Lawful research and educational activities; and</li> <li>Pest, vermin, predator, and animal damage control, including the disposit of wild animals that have entered structures or personal property;</li> </ul> </li> </ul>		
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of wild animals that have entered structures or personal property;	(5) The use of animals by exhibitors licen-	sed under the Animal Welfare Act,
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of wild animals that have entered structures or personal property;	(7) Wildlife management;	atoria
of wild animals that have entered structures or personal property;	(8) The culinary arts;	her. ur
of wild animals that have entered structures or personal property;	(9) Lawful research and educational activ	ities; and
	(10) Pest, vermin, predator, and animal da	mage control, including the disposition
b. The humane or swift destruction of an animal for cause: and		
	b. The humane or swift destruction of an anim	al for cause; and

1	36-	21.2-02. Animal abuse - Definition - Exemptions - Penalty.
2	<u>1.</u>	Any person that willfully engages in animal abuse is guilty of a class A misdemeanor
3		for a first or a second offense and a class C felony for a thirdsecond or subsequent
4		offense occurring within tenfive years.
5	<u>2.</u>	For purposes of this chapter, "animal abuse" means the physical abuse of any act or
6		omission that results in physical injury to an animal or that causes the death of an
7		animal, but does not include any act or omission that falls within the definition of
8		animal cruelty, as set forth in section 36-21.2-03.
9 -	<u>3.</u>	The following do not constitute violations of this section:
10 -		a. Any usual and customary practice in production agriculture, including all aspects
11		of the livestock industry;
12 -		b. Any usual and customary practice in the breeding, raising, training, showing, and
13		competition of animals;
14 -	_	c. Any usual and customary practice in the sport of rodeo and in animal racing;
15 -		d. Any usual and customary practice in livestock exhibitions and competitions;
16 -		e. Lawful fishing, hunting, and trapping;
17 -		<u>f.</u> Lawful wildlife management practices;
18 -		g. Lawful research and educational activities involving the use of animals;
19		h. Lawful control of pests, rodents, and predators;
20		i. Lawful animal damage control activities;
21		j. Any action taken by an individual against an animal that is attacking or is about to
22		attack a human, a companion animal, or livestock;
23		k. Services provided by or under the direction of a licensed veterinarian; and
24 :		I. The humane destruction of an animal for cause.
25	3.	The following do not constitute violations of this section:
26		a. Any usual and customary practice in:
27	-	(1) The production of food, feed, fiber, or ornament, including all aspects of the
28		livestock industry;
29		(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
30		and training of animals;
31		(3) The sport of rodeo;

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1	(4) Animal racing:
2	(5) The use of animals by exhibitors licensed under the Animal Welfare Act.
3	7 U.S.C. 2131, et seq.;
4	(6) Fishing, hunting, and trapping;
5	(7) Wildlife management;
6	(8) The culinary arts;
7	(9) Lawful research and educational activities; and
8	(10) Pest, vermin, predator, and animal damage control, including the disposition
9	of wild animals that have entered structures or personal property;
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 willfully intentionally engages in animal cruelty is guilty of a class C
16	felony.
17	2. For purposes of this chapter, "animal cruelty" means:
18 -	a. Any act or omission that causes an animal unjustifiable pain, suffering, or death,
19	including the infliction of any injury that results in a substantial risk of death,
20	leaves an animal significantly disfigured, results in broken bones, or causes
21	prolonged impairment of an animal's health; and
22	b. Any act or omission that results in a serious illness and leaves an animal
23	significantly disfigured or causes prolonged impairment of the animal's health.
24	<u>3. The following do not constitute violations of this section:</u>
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;

	<u>f. Lawful wildlife management practices:</u>
	g. Lawful research and educational activities involving the use of animals;
	h. Lawful control of pests, rodents, and predators;
	i. Lawful animal damage control activities;
	j. Any action taken by an individual against an animal that is attacking or is about to
	attack a human, a companion animal, or livestock;
	<u>k.</u> Services provided by or under the direction of a licensed veterinarian; and <u>k.</u> The humane destruction of an animal for cause. <u>a. Breaking an animal's bones;     <u>b. Causing the prolonged impairment of an animal's health;</u> </u>
	I. The humane destruction of an animal for cause.
	a. Breaking an animal's bones; Aemoverstructure
	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

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1		d.	Services provided by or under the direction of a licensed veterinarian.
2	36-:	21.2-0	04. Animal abandonment - Definition - Exemptions - Penalty.
3	1.	Any	person that willfully engages in the abandonment of an animal is guilty of a
4		clas	ss A misdemeanor for a first or a second offense and a class C felony for a third or
5		sub	sequent offense occurring within ten years.
6	2.	For	purposes of this chapter, "abandonment" means the relinquishment of a person's
7		cus	tody or control, with no intention of reclaiming that custody or control, and without
8		plac	cing the animal into the custody or control of another person that is able to provide
9		car	e for the animal and who knowingly and willingly accepts that responsibility. The
10		terr	n includes:
11		<u>a.</u>	The desertion of an animal; and
12		<u>b.</u>	The failure to retrieve an animal within forty-eight hours after the agreed-upon
13			conclusion of a boarding contract or other service contract, other than that
14			specified in section 43-29-16.1.
15	<u>3.</u>	The	e following do not constitute violations of this section;
16	·	<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
17			of the livestock industry;
18	-	<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
19			competition of animals;
20		<u>G:</u>	Any usual and customary practice in the sport of rodeo and in animal racing;
21		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
22		<u>e.</u>	Lawful fishing, hunting, and trapping;
23		<u>f.</u>	Lawful wildlife management practices;
24		g.	<ul> <li>Lawful research and educational activities involving the use of animals;</li> </ul>
25		<u>h.</u>	Lawful control of pests, rodents, and predators;
26		<u>i.</u>	Lawful animal damage control activities;
27		Ŀ	Services provided by or under the direction of a licensed veterinarian; and
28		<u>k.</u>	The humane destruction of an animal for cause.
29	3.	The	e following do not constitute violations of this section:
30		a.	Any usual and customary practice in:

1		(1) The production of food, feed, fiber, or ornament, including all aspects of the
2		livestock industry:
3 _		(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
4		and training of animals;
5 _		(3) The sport of rodeo;
6 _		(4) Animal racing;
7 _		(5) The use of animals by exhibitors licensed under the Animal Welfare Act,
B		7 U.S.C. 2131, et seq.;
9 _		(6) Fishing, hunting, and trapping;
0 _	_	(7) Wildlife management;
1 _		(8) The culinary arts;
2 _		(9) Lawful research and educational activities; and
3 _	_	(10) Pest, vermin, predator, and animal damage control, including the disposition
4		of wild animals that have entered structures or personal property;
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.
0	36-2	21.2-05. Seizure of animal - Court order.
1	<u>1.</u>	A law enforcement officer may petition the court for an order directing the seizure of
2		any animal believed to have been neglected, abused, treated cruelly, or subjected to
3		any act or omission in violation of this chapter.
4	<u>2.</u>	The court may act without notice to the animal's owner or to the person having
5		custody or control of the animal and may rely solely on testimony or an affidavit in
6		considering the petition.
7	<u>3.</u>	In the order for seizure, the court may direct that a veterinarian humanely destroy an
8		animal if the veterinarian, upon examining the animal, determines that the animal is
9		experiencing excruciating pain or suffering and that the animal's pain or suffering is no
		likely to be alleviated using reasonable medical interventions.

1	36-	21.2-06. Law enforcement - Duty upon seizure - Notification.			
2	1.	Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement			
3		officer shall provide care for the animal, either directly or through a contractual			
4		arrangement with another person. For purposes of this subsection, "care" means food,			
5		water, and shelter from the elements, as appropriate for the species, the breed, and			
6		the animal's age and physical condition, and necessary medical attention.			
7		a. If the owner and the person having custody or control at the time of the seizure			
8		are known to the officer, the officer shall:			
9		(1) Provide notice of the seizure to the owner and the person having custody or			
10		control of the animal; and			
11		(2) Petition the court for an order directing the animal's disposition.			
12		b. If the animal's owner is not known to the law enforcement officer, the officer shall			
13		publish notice of the animal's seizure in the official newspaper of the county and			
14		indicate that if the owner does not claim the animal within five days, the animal			
15		will be sold, placed for adoption, or humanely destroyed, at the direction of the			
16		law enforcement officer.			
17		(1) If the owner does not claim the animal within five days, as required by this			
18		subdivision, the law enforcement officer shall sell the animal, place the			
19		animal for adoption, or provide for its humane destruction.			
20		(2) If the owner is identified within the five-day period, the law enforcement			
21		officer shall petition the court for an order directing the animal's disposition.			
22	<u>2.</u>	In ruling on a petition for an animal's disposition under this section, a court may direct			
23		that the animal be sold, placed for adoption, humanely destroyed, or returned to its			
24		owner, with or without conditions.			
25	36-	21.2-07. Costs of seizure and care - Responsibility of owner - Lien.			
26	<u>1.</u>	Thelf convicted of violating this chapter, the owner of an animal seized under section			
27		36-21.2-05 is responsible for all costs related to the animal's seizure, including			
28		required notifications, attorney's fees, court costs, and any costs incurred in providing			
29		the animal with care or in providing for its destruction in accordance with section			
30		36-21.2-06.			

1	2.	<u>a.</u>	The	law e	nforcement agency that seized the animal has a lien upon the animal
2			for a	all cost	ts incurred as a result of the seizure and conviction. The lien is superior
3			to a	ny oth	er claim or lien.
4		<u>b.</u>	<u>If th</u>	e lien	is not satisfied by the animal's owner, the law enforcement agency may
5			app	ly to th	ne court for an order enforcing the lien.
6	<u>3.</u>	<u>If a</u>	seize	d anin	nal is sold, the proceeds must be used first to satisfy the lienholder to
7		the	exter	nt of th	e lien and second to satisfy any other claims involving the animal. Any
8		rem	nainin	g proc	eeds must be returned to the owner, as directed by the court. If the
9		ow	ner is	unkno	own, any proceeds otherwise payable to the owner must be deposited in
10		the	gene	ral fun	d of the county.
11	36-	21.2-	08. A	bando	oned animal - Law enforcement officer - Duties.
12	1.	Ala	aw ent	forcen	nent officer may take custody of an animal if the officer has reasonable
13		cau	ise to	believ	e that the animal has been abandoned in violation of this chapter.
14	<u>2.</u>	<u>a.</u>	Upo	on taki	ng custody of an animal in accordance with this section, the law
15			enfo	orcem	ent officer shall:
16			(1)	Prov	ide care for the animal, either directly or through a contractual
17				arra	ngement with another person; and
18			(2)	(a)	Notify the owner, if known to the officer; or
19				(b)	If the owner is not known to the officer, provide notice of the animal's
20					custody, indicate that if the owner does not lay claim to the animal
21					within five days, the animal will be sold, placed for adoption, or
22					humanely destroyed, at the direction of the law enforcement officer,
23					and include the officer's contact information.
24		<u>b.</u>	For	purpo	ses of this subdivision, notice may be provided by:
25			(1)	Pub	lication in the official newspaper of the county if the newspaper is
26				publ	ished daily or in a daily newspaper serving the county;
27			(2)	Any	electronic means; or
28			(3)	Post	ting a description and a photograph at the local law enforcement center.
29	<u>3.</u>	If th	ne ow	ner is	identified within the five-day period, the law enforcement officer shall
30		ret	urn th	e anim	nal to the owner only if:

1		a. The owner demonstrates that the animal was not abandoned in violation of this
2		chapter; and
3		b. The owner pays for all costs associated with the animal's care while in custody,
4		including any costs of notifications under this section.
5	<u>4.</u>	If the law enforcement officer refuses to return the animal to its owner, the owner may
6		petition the court for an order directing its return. In ruling on a petition under this
7		subsection, a court may direct that the animal be sold, placed for adoption, humanely
8		destroyed, or returned to its owner with or without conditions.
9	<u>5.</u>	If the owner does not lay claim to the animal within five days, the law enforcement
10		officer shall sell the animal, place it for adoption, or humanely destroy it.
11	<u>6.</u>	Any proceeds from the sale or adoption of an animal under this section must be
12		deposited in the county general fund.
13	<u>7.</u>	Notwithstanding the requirements of this section, if upon examining an animal taken
14		into custody by a law enforcement officer in accordance with this section a licensed
15		veterinarian determines that the animal's condition justifies its destruction, the
16		veterinarian shall humanely destroy the animal. The law enforcement agency shall
17		reimburse the veterinarian for the cost of the animal's destruction.
18	<u>8.</u>	For purposes of this section, "care" means food, water, and shelter from the elements,
19		as appropriate for the species, the breed, and the animal's age and physical condition,
20		and necessary medical attention.
21	36-	21.2-09. Title of animal - Sale or adoption.
22	The	e title to any animal sold or adopted in accordance with this chapter passes to the
23	individu	al taking custody or control of the animal.
24	36-	21.2-10. Veterinarian.
25	<u>If u</u>	pon examining an animal a licensed veterinarian determines that there is reasonable
26	cause t	o believe an animal has been neglected, abused, treated cruelly, or subjected to any act
27	or omis	sion in violation of this chapter, the veterinarian may retain custody of the animal and
28	shall im	mediately notify law enforcement officials regarding the determination.
29	36-	21.2-11. Caged animals - Public display - Exemptions - Penalty.
30	<u>1.</u>	In addition to any other requirements set forth in this chapter, a person placing a
31		caged animal on public display shall ensure that:

1		<u>a.</u>	The size of the cage allows the animal to stand up, lie down, and turn or move
2			about; and
3		b.	The cage provides the animal with protection from the elements, as appropriate
4			for the species, the breed, and the animal's age and physical condition.
5	2.	Any	person that willfully fails to meet the requirements of this section is guilty of a
6		clas	ss A misdemeanor.
7	<u>3.</u>	Thi	s section does not apply to:
8		<u>a.</u>	The North Dakota state fair association;
9		<u>b.</u>	Agricultural fair associations; or
10	<u> </u>	<u>C.</u>	Livestock exhibitions and competitions;
11		d.c.	Political subdivisions.
12		<u>e.</u>	Educational exhibitions; or
13		<u>f.</u>	Exhibitors licensed by the United States department of agriculture.
14	<u>4.</u>	The	e following do not constitute violations of this section:
15		<u>a.</u>	Any usual and customary practice in production agriculture, including all aspects
16			of the livestock industry:
17		<u>b.</u>	Any usual and customary practice in the breeding, raising, training, showing, and
18			competition of animals;
19		<u>C.</u>	-Any usual and customary practice in the sport of rodeo and in animal racing;
20		<u>d.</u>	Any usual and customary practice in livestock exhibitions and competitions;
21		<u>e.</u>	Lawful fishing, hunting, and trapping;
22		<u>f.</u>	Lawful wildlife management practices;
23		<u>g.</u>	-Lawful research and educational activities involving the use of animals;
24		<u>h.</u>	Lawful control of pests, rodents, and predators;
25		<u>i.</u>	Lawful animal damage control activities; and
26		Ŀ	Services provided by or under the direction of a licensed veterinarian.
27	4.	The	e 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, including all aspects of the
30			livestock industry:

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1	(2) The boarding, breeding, competition, exhibition, feeding, raising, showing,
2	and training of animals:
3	(3) The sport of rodeo;
4	(4) Animal racing;
5	(5) The use of animals by exhibitors licensed under the Animal Welfare Act.
6	7 U.S.C. 2131, et seq.;
7	(6) Fishing, hunting, and trapping;
8	(7) Wildlife management:
9	(8) The culinary arts;
10	(9) Lawful research and educational activities; and
11	(10) Pest, vermin, predator, and animal damage control, including the disposition
12	of wild animals that have entered structures or personal property:
13	b. Any action taken by an individual against an animal that is attacking or is about to
14	attack a human, a companion animal, or livestock;
15	c. The humane or swift destruction of an animal for cause; and
16	d. Services provided by or under the direction of a licensed veterinarian.
17	36-21.2-12. Unattended animal in motor vehicle - Penalty.
18	1. A personAn individual may not leave an animal unattended in a motor vehicle without
19	ensuring that the animal's health and safety is not endangered.
20	2. Any person that An individual who violates this section is guilty of an infraction.
21	3. A law enforcement officer may use reasonable means to enter a motor vehicle and
22	remove an animal left in violation of this section.
23	36-21.2-13. Immunity from liability.
24	A veterinarian is immune from civil or criminal liability if the veterinarian, on the
25	veterinarian's own initiative or at the request of a law enforcement officer or other governmental
26	entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity
27	under this section does not apply in the case of negligence.
28	36-21.2-14. Estrays.
29	This chapter does not apply to estrays.

1	36-21.2-15. Collectives Multiple animals - Status Enhancement of offense.
2	If any violation of this chapter involves a band, flock, herd, litter, pack, or other collective of
3	same species animals, the violation is deemed to be a singular incident for purposes of
4	determining the status of the offense. If a violation of this chapter involves multiple animals,
5	whether of the same species or not, the violation is deemed to be a singular offense for
6	purposes of enhancement.
7	SECTION 4. REPRESENTATIVES OF AGRICULTURAL PRODUCTION GROUPS -
8	REPORT TO LEGISLATIVE MANAGEMENT. Before July 1, 2014, representatives of
9	agricultural production groups, including representatives of this state's livestock industry, shall
10	compile information regarding the effects of this Act on the various sectors of the agricultural
11	industry. The compiled information must be presented to the legislative management for review,
12	together with any suggestions for potential statutory changes.
13	SECTION 5. REPEAL. Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
14	36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
15	repealed.

