

SENATE BILL NO. 2211

Introduced by

Senators Flakoll, J. Lee, O'Connell

Representatives Anderson, Delmore, D. Johnson

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

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

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

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

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

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

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

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

- 1 3. a. For purposes of this chapter, "adequately caring for an animal" means providing it
2 with:
3 (1) Sufficient food and water;
4 (2) Shelter from the elements, as appropriate for the species, the breed, and
5 the animal's age and physical condition; and
6 (3) Necessary medical attention.
7 b. In addition to the requirements of subdivision a, a person having custody or
8 control of the animal shall ensure that the animal's environment is appropriately
9 ventilated, appropriately cleaned, and free of conditions likely to cause injury or
10 death.
11 4. The following do not constitute violations of this section:
12 a. Any usual and customary practice in production agriculture, including all aspects
13 of the livestock industry;
14 b. Any usual and customary practice in the breeding, raising, showing, and
15 competition of animals;
16 c. Any usual and customary practice in the sport of rodeo and in animal racing;
17 d. Any usual and customary practice in livestock exhibitions and competitions;
18 e. Lawful fishing, hunting, and trapping;
19 f. Lawful wildlife management practices;
20 g. Lawful research and educational activities involving the use of animals;
21 h. Lawful control of pests, rodents, and predators;
22 i. Lawful animal damage control activities;
23 j. Services provided by or under the direction of a licensed veterinarian; and
24 k. The humane destruction of an animal for cause.

25 **36-21.2-02. Animal abuse - Definition - Exemptions - Penalty.**

- 26 1. Any person that engages in animal abuse is guilty of a class A misdemeanor for a first
27 offense and a class C felony for a second or subsequent offense occurring within five
28 years.
29 2. For purposes of this chapter, "animal abuse" means the physical abuse of an animal,
30 but does not include any act or omission that falls within the definition of animal
31 cruelty, as set forth in section 36-21.2-03.

- 1 3. The following do not constitute violations of this section:
- 2 a. Any usual and customary practice in production agriculture, including all aspects
- 3 of the livestock industry;
- 4 b. Any usual and customary practice in the breeding, raising, showing, and
- 5 competition of animals;
- 6 c. Any usual and customary practice in the sport of rodeo and in animal racing;
- 7 d. Any usual and customary practice in livestock exhibitions and competitions;
- 8 e. Lawful fishing, hunting, and trapping;
- 9 f. Lawful wildlife management practices;
- 10 g. Lawful research and educational activities involving the use of animals;
- 11 h. Lawful control of pests, rodents, and predators;
- 12 i. Lawful animal damage control activities;
- 13 j. 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 k. Services provided by or under the direction of a licensed veterinarian; and
- 16 l. The humane destruction of an animal for cause.

17 **36-21.2-03. Animal cruelty - Definition - Exemptions - Penalty.**

- 18 1. Any person that engages in animal cruelty is guilty of a class C felony.
- 19 2. For purposes of this chapter, "animal cruelty" means:
 - 20 a. Any willful act or omission that causes an animal unjustifiable pain, suffering, or
 - 21 death, including the infliction of any injury that results in a substantial risk of
 - 22 death, leaves an animal significantly disfigured, results in broken bones, or
 - 23 causes prolonged impairment of an animal's health; and
 - 24 b. Any willful 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 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, showing, and
 - 30 competition of animals;
 - 31 c. Any usual and customary practice in the sport of rodeo and in animal racing;

- 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 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 l. The humane destruction of an animal for cause.

11 **36-21.2-04. Animal abandonment - Definition - Exemptions - Penalty.**

- 12 1. A person having custody or control of an animal may not willfully abandon the animal.
- 13 2. Any person that willfully abandons an animal is guilty of a class A misdemeanor for a
- 14 first offense and a class C felony for a second or subsequent offense occurring within
- 15 five years.
- 16 3. For purposes of this chapter, "abandonment" means the relinquishment of a person's
- 17 custody or control, with no intention of reclaiming that custody or control, and without
- 18 placing the animal into the custody or control of another person that is able to
- 19 adequately care for the animal and who knowingly and willingly accepts that
- 20 responsibility. The term includes:
- 21 a. The desertion of an animal; and
- 22 b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
- 23 conclusion of a boarding contract or other service contract, other than that
- 24 specified in section 43-29-16.1.
- 25 4. 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, 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. Services provided by or under the direction of a licensed veterinarian; and
- 7 k. The humane destruction of an animal for cause.

8 **36-21.2-05. Seizure of animal - Court order.**

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

19 **36-21.2-06. Law enforcement - Duty upon seizure - Notification.**

- 20 1. Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement
21 officer shall provide the animal with adequate care, either directly or through a
22 contractual arrangement with another person.
 - 23 a. If the owner and the person having custody or control at the time of the seizure
24 are known to the officer, the officer shall:
 - 25 (1) Provide notice of the seizure to the owner and the person having custody or
26 control of the animal; and
 - 27 (2) Petition the court for an order directing the animal's disposition.
 - 28 b. If the animal's owner is not known to the law enforcement officer, the officer shall
29 publish notice of the animal's seizure in the official newspaper of the county and
30 indicate that if the owner does not claim the animal within five days, the animal

1 will be sold, placed for adoption, or humanely destroyed, at the direction of the
2 law enforcement officer.

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

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

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

11 **36-21.2-07. Costs of seizure and care - Responsibility of owner - Lien.**

12 1. The owner of an animal seized under section 36-21.2-05 is responsible for all costs
13 related to the animal's seizure, including required notifications, attorney's fees, court
14 costs, and any costs incurred in providing the animal with adequate care or in
15 providing for its destruction in accordance with section 36-21.2-06.

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

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

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

26 **36-21.2-08. Abandoned animal - Law enforcement officer - Duties.**

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

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

- 1 (1) Provide the animal with adequate care, either directly or through a
2 contractual arrangement with another person; and
- 3 (2) (a) Notify the owner, if known to the officer; or
4 (b) If the owner is not known to the officer, provide notice of the animal's
5 custody, indicate that if the owner does not lay claim to the animal
6 within five days, the animal will be sold, placed for adoption, or
7 humanely destroyed, at the direction of the law enforcement officer,
8 and include the officer's contact information.
- 9 b. For purposes of this subdivision, notice may be provided by:
- 10 (1) Publication in the official newspaper of the county if the newspaper is
11 published daily or in a daily newspaper serving the county;
- 12 (2) Any electronic means; or
- 13 (3) Posting a description and a photograph at the local law enforcement center.
- 14 3. If the owner is identified within the five-day period, the law enforcement officer shall
15 return the animal to the owner only if:
- 16 a. The owner demonstrates that the animal was not abandoned in violation of this
17 chapter; and
- 18 b. The owner pays for all costs associated with the animal's care while in custody,
19 including any costs of notifications under this section.
- 20 4. If the law enforcement officer refuses to return the animal to its owner, the owner may
21 petition the court for an order directing its return. In ruling on a petition under this
22 subsection, a court may direct that the animal be sold, placed for adoption, humanely
23 destroyed, or returned to its owner with or without conditions.
- 24 5. If the owner does not lay claim to the animal within five days, the law enforcement
25 officer shall sell the animal, place it for adoption, or humanely destroy it.
- 26 6. Any proceeds from the sale or adoption of an animal under this section must be
27 deposited in the county general fund.
- 28 7. Notwithstanding the requirements of this section, if upon examining an animal taken
29 into custody by a law enforcement officer in accordance with this section a licensed
30 veterinarian determines that the animal's condition justifies its destruction, the

1 veterinarian shall humanely destroy the animal. The law enforcement agency shall
2 reimburse the veterinarian for the cost of the animal's destruction.

3 **36-21.2-09. Title of animal - Sale or adoption.**

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

6 **36-21.2-10. Veterinarian.**

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

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

- 12 1. In addition to any other requirements set forth in this chapter, a person placing a
13 caged animal on public display shall ensure that:
- 14 a. The size of the cage allows the animal to stand up, lie down, and turn or move
15 about; and
 - 16 b. The cage provides the animal with protection from the elements, as appropriate
17 for the species, the breed, and the animal's age and physical condition.
- 18 2. Any person that willfully fails to meet the requirements of this section is guilty of a
19 class A misdemeanor.
- 20 3. This section does not apply to:
- 21 a. The North Dakota state fair association;
 - 22 b. Agricultural fair associations;
 - 23 c. Livestock exhibitions and competitions;
 - 24 d. Political subdivisions;
 - 25 e. Educational exhibitions; or
 - 26 f. Exhibitors licensed by the United States department of agriculture.
- 27 4. 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, showing, and
31 competition of animals;

- 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; and
- 8 j. Services provided by or under the direction of a licensed veterinarian.

9 **36-21.2-12. Unattended animal in motor vehicle - Penalty.**

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

15 **36-21.2-13. Immunity from liability.**

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

20 **36-21.2-14. Estrays.**

21 This chapter does not apply to estrays.

22 **SECTION 3. REPEAL.** Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
23 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
24 repealed.