

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 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. Neglect - Definition - Exemptions - Penalty.**

- 19 1. Any person that willfully engages in animal neglect is guilty of a class A misdemeanor
20 for a first or a second offense and a class C felony for a third or subsequent offense
21 occurring within ten years.
22 2. For purposes of this chapter, "neglect" means the failure to provide an animal with:
23 a. Food and water, as appropriate for the species, the breed, and the animal's age
24 and physical condition;

- 1 b. Shelter from the elements, as appropriate for the species, the breed, and the
2 animal's age and physical condition;
3 c. Necessary medical attention; and
4 d. An environment that is:
5 (1) Ventilated in a manner appropriate for the species, the breed, and the
6 animal's age and physical condition;
7 (2) Cleaned in a manner appropriate for the species, the breed, and the
8 animal's age and physical condition; and
9 (3) Free of conditions likely to cause injury or death to an animal of that
10 species, breed, age, and physical condition.
11 3. 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, training, 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 willfully engages in animal abuse is guilty of a class A misdemeanor
27 for a first or a second offense and a class C felony for a third or subsequent offense
28 occurring within ten 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, training, 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 willfully engages in animal cruelty is guilty of a class C 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 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 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. Any person that willfully engages in the abandonment of an animal is guilty of a
- 13 class A misdemeanor for a first or a second offense and a class C felony for a third or
- 14 subsequent offense occurring within ten years.
- 15 2. For purposes of this chapter, "abandonment" means the relinquishment of a person's
- 16 custody or control, with no intention of reclaiming that custody or control, and without
- 17 placing the animal into the custody or control of another person that is able to provide
- 18 care for the animal and who knowingly and willingly accepts that responsibility. The
- 19 term includes:
 - 20 a. The desertion of an animal; and
 - 21 b. The failure to retrieve an animal within forty-eight hours after the agreed-upon
 - 22 conclusion of a boarding contract or other service contract, other than that
 - 23 specified in section 43-29-16.1.
- 24 3. The following do not constitute violations of this section:
 - 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **36-21.2-08. Abandoned animal - Law enforcement officer - Duties.**

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

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

1 veterinarian determines that the animal's condition justifies its destruction, the
2 veterinarian shall humanely destroy the animal. The law enforcement agency shall
3 reimburse the veterinarian for the cost of the animal's destruction.

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

7 **36-21.2-09. Title of animal - Sale or adoption.**

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

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

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

15 **36-21.2-11. Caged animals - Public display - Exemptions - Penalty.**

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

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

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

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

24 3. This section does not apply to:

25 a. The North Dakota state fair association;

26 b. Agricultural fair associations;

27 c. Livestock exhibitions and competitions;

28 d. Political subdivisions;

29 e. Educational exhibitions; or

30 f. Exhibitors licensed by the United States department of agriculture.

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

13 **36-21.2-12. Unattended animal in motor vehicle - Penalty.**

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

19 **36-21.2-13. Immunity from liability.**

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

24 **36-21.2-14. Estrays.**

25 This chapter does not apply to estrays.

26 **36-21.2-15. Collectives - Status of offense.**

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

1 **SECTION 3. REPEAL.** Sections 36-21.1-01, 36-21.1-02, 36-21.1-03, 36-21.1-03.1,
2 36-21.1-04, 36-21.1-06, 36-21.1-12, and 36-21.1-13 of the North Dakota Century Code are
3 repealed.