

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 742

Introduced by Blood, 3.

Read first time January 08, 2020

Committee:

- 1 A BILL FOR AN ACT relating to offences against animals; to amend sections
- 2 28-1009, 28-1012.01, and 28-1019, Reissue Revised Statutes of
- 3 Nebraska; to change penalty and sentencing provisions as prescribed;
- 4 to change a deadline for filing a hearing application relating to
- 5 seized animals; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1009, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1009 (1) A person who intentionally, knowingly, or recklessly
4 abandons or cruelly neglects an animal is guilty of a Class I misdemeanor
5 unless the abandonment or cruel neglect results in serious injury or
6 illness or death of the animal, in which case it is a Class IV felony.

7 (2)(a) Except as provided in subdivision (b) of this subsection, a
8 person who cruelly mistreats an animal is guilty of a Class I misdemeanor
9 for the first offense and a Class IIIA felony for any subsequent offense.

10 (b) A person who cruelly mistreats an animal is guilty of a Class
11 IIIA felony if such cruel mistreatment involves the knowing and
12 intentional torture, repeated beating, or mutilation of the animal.

13 (3) A person commits harassment of a police animal if he or she
14 knowingly and intentionally teases or harasses a police animal in order
15 to distract, agitate, or harm the police animal for the purpose of
16 preventing such animal from performing its legitimate official duties.
17 Harassment of a police animal is a Class IV misdemeanor unless the
18 harassment is the proximate cause of the death of the police animal, in
19 which case it is a Class IIIA felony.

20 (4) A person convicted of a Class I misdemeanor under this section
21 may also be subject to section 28-1019. A person convicted of a Class
22 IIIA felony or a Class IV felony under this section shall also be subject
23 to section 28-1019.

24 Sec. 2. Section 28-1012.01, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 28-1012.01 (1) Any animal seized under a search warrant or validly
27 seized without a warrant may be kept on the property of the owner or
28 custodian by the law enforcement officer seizing the animal. When a
29 criminal complaint has been filed in connection with a seized animal, the
30 court in which such complaint was filed shall have exclusive jurisdiction
31 for disposition of the animal and to determine any rights therein,

1 including questions respecting the title, possession, control, and
2 disposition thereof as provided in this section.

3 (2) Within ten ~~seven~~ days after the date an animal has been seized
4 pursuant to section 28-1006 or 28-1012, the county attorney of the county
5 where the animal was seized shall file an application with the court
6 having appropriate jurisdiction for a hearing to determine the
7 disposition and the cost for the care of the animal. Notice of such
8 hearing shall be given to the owner or custodian from whom such animal
9 was seized and to any holder of a lien or security interest of record in
10 such animal specifying the date, time, and place of such hearing. Such
11 notice shall be served by personal or residential service or by certified
12 mail. If such notice cannot be served by such methods, service may be
13 made by publication in the county where such animal was seized. Such
14 publication shall be made after application and order of the court. The
15 hearing shall be held as soon as practicable and not more than ten
16 business days after the date of application for the hearing unless
17 otherwise determined and ordered by the court.

18 (3) If the court finds that probable cause exists that an animal has
19 been abandoned or cruelly neglected or mistreated, the court may:

20 (a) Order immediate forfeiture of the animal to the agency that took
21 custody of the animal and authorize appropriate disposition of the animal
22 including adoption, donation to a suitable shelter, humane destruction,
23 or any other manner of disposition approved by the court. The court may
24 consider adoption alternatives through humane societies or comparable
25 institutions and the protection of such animal's welfare. For a humane
26 society or comparable institution to be considered as an adoption
27 alternative under this subsection, it must first be licensed by the
28 Department of Agriculture as having passed the inspection requirements in
29 the Commercial Dog and Cat Operator Inspection Act and paid the fee for
30 inspection under the act. The court may prohibit an adopting or
31 purchasing party from selling such animal for a period not to exceed one

1 year;

2 (b) Issue an order to the owner or custodian setting forth the
3 conditions under which custody of the animal shall be returned to the
4 owner or custodian from whom the animal was seized or to any other person
5 claiming an interest in the animal. Such order may include any management
6 actions deemed necessary and prudent by the court, including reducing the
7 number of animals harbored or owned by the owner or custodian by humane
8 destruction or forfeiture and securing necessary care, including
9 veterinary care, sufficient for the maintenance of any remaining animals;
10 or

11 (c) Order the owner or custodian from whom the animal was seized to
12 post a bond or other security or to otherwise order payment in an amount
13 that is sufficient to reimburse all reasonable expenses, as determined by
14 the court, for the care of the animal including veterinary care incurred
15 by the agency from the date of seizure and necessitated by the possession
16 of the animal. Payments shall be for a succeeding thirty-day period with
17 the first payment due on or before the tenth day following the hearing.
18 Payments for each subsequent thirty-day period, if any, shall be due on
19 or before the tenth day of such period. The bond or security shall be
20 placed with, or payments ordered under this subdivision shall be paid to,
21 the agency that took custody of the animal. The agency shall provide an
22 accounting of expenses to the court when the animal is no longer in the
23 custody of the agency or upon request by the court. The county attorney
24 of the county where the animal was seized may apply to the court for a
25 subsequent hearing under this section at any time. The hearing shall be
26 held as soon as practicable and not more than ten business days after the
27 date of application for the hearing unless otherwise determined and
28 ordered by the court. When all expenses covered by the bond or security
29 are exhausted and subsequent bond or security has not been posted, or if
30 a person becomes delinquent in his or her payments for the expenses of
31 the animal, the animal shall be forfeited to the agency.

1 (4) If custody of an animal is returned to the owner or custodian
2 prior to seizure, any proceeds of a bond or security or any payment or
3 portion of payment ordered under this section not used for the care of
4 the animal during the time the animal was held by the agency shall be
5 returned to the owner or custodian.

6 (5) Nothing in this section shall prevent the humane destruction of
7 a seized animal at any time as determined necessary by a licensed
8 veterinarian or as authorized by court order.

9 (6) An appeal may be filed within ten days after a hearing held
10 under this section. Any person filing an appeal shall post a bond or
11 security sufficient to pay reasonable costs of care of the animal for
12 thirty days. Such bond or surety shall be required for each succeeding
13 thirty-day period until the appeal is final.

14 (7) If the owner or custodian from whom the animal was seized is
15 found not guilty in an associated criminal proceeding, all funds paid for
16 the expenses of the animal remaining after the actual expenses incurred
17 by the agency have been paid shall be returned to the owner or custodian.

18 (8) This section shall not preempt any ordinance of a city of the
19 metropolitan or primary class.

20 Sec. 3. Section 28-1019, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-1019 (1)(a) If a person is convicted of a Class ~~IIIA~~ IV felony
23 under section 28-1005 or a Class IIIA felony or a Class IV felony under
24 section 28-1009, the sentencing court shall order such person not to own,
25 possess, or reside with any animal for at least five years after the date
26 of conviction, but such time restriction shall not exceed fifteen years.
27 Any person violating such court order shall be guilty of a Class I
28 misdemeanor.

29 (b) If a person is convicted of a Class I misdemeanor under section
30 28-1005.01 or 28-1009 or a Class III misdemeanor under section 28-1010,
31 the sentencing court may order such person not to own, possess, or reside

1 with any animal after the date of conviction, but such time restriction,
2 if any, shall not exceed five years. Any person violating such court
3 order shall be guilty of a Class IV misdemeanor.

4 (c) Any animal involved in a violation of a court order under
5 subdivision (a) or (b) of this subsection shall be subject to seizure by
6 law enforcement. Distribution or disposition shall be made under section
7 28-1012.01.

8 (2) This section shall not apply to any person convicted under
9 section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms
10 in writing that ownership or possession of or residence with an animal is
11 essential to the health of such person.

12 Sec. 4. Original sections 28-1009, 28-1012.01, and 28-1019, Reissue
13 Revised Statutes of Nebraska, are repealed.