

AN ACT

ENTITLED, An Act to revise certain provisions regarding animal welfare and to provide a felony penalty for cruelty to animals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 40-1-1 be amended to read as follows:

40-1-1. Terms used in chapters 40-1 and 40-2, mean:

- (1) "Abandon," to give up with the intent of never again regaining one's interests in, or rights to, an animal other than placing ownership with a responsible party;
- (2) "Animal," any mammal, bird, reptile, amphibian, or fish, except humans;
- (3) "Board," the South Dakota Animal Industry Board;
- (4) "Cruelty," to intentionally, willfully, and maliciously inflict gross physical abuse on an animal that causes prolonged pain, that causes serious physical injury, or that results in the death of the animal;
- (5) "Dangerous animal," any animal that, by itself or by environmental circumstances, at the determination of the board, any agent or officer of a humane society, or any law enforcement officer, is a threat to the physical well-being of other owned animals or humans;
- (6) "Humane killing," to cause the death of an animal in a manner to limit the pain or suffering of the animal as much as reasonably possible under the circumstances;
- (7) "Impound," to take physical control and custody of an animal;
- (8) "Livestock," any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets;
- (9) "Mistreat," to cause or permit the continuation of unjustifiable physical pain or suffering of an animal;

- (10) "Neglect," to fail to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being consistent with the species, breed, physical condition, and type of animal;
- (11) "Proper enclosure," a secure confinement in an enclosed or locked facility suitable to prevent a dangerous animal from escaping and to prevent any physical threat to the well-being of any other animal or human.

Section 2. That § 40-1-2.2 be repealed.

Section 3. That § 40-1-2.3 be amended to read as follows:

40-1-2.3. No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal. A violation of this section is a Class 1 misdemeanor.

Section 4. That § 40-1-2.4 be amended to read as follows:

40-1-2.4. No person may subject an animal to cruelty. A violation of this section is a Class 6 felony.

Section 5. That § 40-1-2.5 be repealed.

Section 6. That § 40-1-2.6 be repealed.

Section 7. That § 40-1-5 be amended to read as follows:

40-1-5. Any law enforcement officer, agent of the board, or agent or officer of any humane society finding an animal neglected, abandoned, mistreated, or subjected to cruelty, may, pursuant to a warrant or court order, cause the animal to be impounded and properly cared for, and the expenses of such impoundment or care constitute a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary for law enforcement officers if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances

exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

Section 8. That § 40-1-9 be repealed.

Section 9. That § 40-1-10 be repealed.

Section 10. That § 40-1-10.1 be amended to read as follows:

40-1-10.1. No person may:

- (1) Own, possess, keep, or train any animal with the intent to engage the animal in an exhibition of fighting with another animal;
- (2) For amusement or gain cause any animal to fight with another animal or cause any animal to injure another animal; or
- (3) Permit the activity prohibited by this section to be done on any premises under the person's charge or control, or aid, or abet any activity prohibited by this section.

A violation of this section is a Class 6 felony.

It is a Class 1 misdemeanor to be present at any violation of subdivision (2) of this section as a spectator.

Section 11. That § 40-1-11 be amended to read as follows:

40-1-11. Any law enforcement officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest any person there present.

Section 12. That § 40-1-11.1 be amended to read as follows:

40-1-11.1. Any law enforcement officer making an arrest for a violation of § 40-1-10.1 shall take

possession of all animals and all paraphernalia, implements, or other property or things used or employed, or about to be employed, in the violation of any of the provisions of § 40-1-10.1. The provisions of chapters 23A-35 and 23A-37 apply to the search and seizure of violations of § 40-1-10.1 and apply to the disposition of seized paraphernalia, implements, or other property or things used or employed, or about to be employed, in violation of § 40-1-10.1. For the purposes of this section, animals seized pursuant to a violation of § 40-1-10.1 are contraband and property of an illegal nature and may be destroyed pursuant to § 23A-37-9.

Section 13. That § 40-1-13 be amended to read as follows:

40-1-13. Any animal injured or diseased past recovery shall be euthanized within twelve hours in a manner prescribed in rule by the board, by the owner or person in possession of the animal, after having been notified by any law enforcement officer, any agent or officer of any humane society, or any agent of the board to euthanize the animal. A violation of this section is a Class 1 misdemeanor.

Section 14. That § 40-1-16 be amended to read as follows:

40-1-16. Nothing in this chapter may be construed to interfere with any properly conducted scientific experiments or investigations performed by personnel following guidelines, regulations, or requirements established by the United States Department of Agriculture and the United States Department of Health and Human Services. Any experiments or scientific investigation and facilities used under this section shall be open to inspection by the board.

Section 15. That § 40-1-17 be amended to read as follows:

40-1-17. Nothing in this chapter or chapter 40-2 may be construed to interfere with an animal under the direct and proper care of a licensed veterinarian or with persons engaged in standard and accepted agricultural pursuits or animal husbandry practices.

In addition, the following are exempt from the provisions of this chapter and chapter 40-2:

- (1) Any usual and customary practice;

- (a) In the production of food, feed, or fiber, including all aspects of the livestock industry;
 - (b) In the boarding, breeding, competition, exhibition, feeding, raising, service work, showing, training, transportation, and use of animals; or
 - (c) In the harvesting of animals for food or byproducts;
- (2) Any humane killing of an animal;
 - (3) Any lawful hunting, trapping, fishing, or other activity authorized by the South Dakota Department of Game, Fish and Parks;
 - (4) Any lawful pest, vermin, predator, and animal damage control, including the disposition of wild animals;
 - (5) Any reasonable action taken by a person for the destruction or control of an animal known to be dangerous, a threat, or injurious to life, limb, or property; and
 - (6) Any actions taken by personnel or agents of the board, the Department of Agriculture, Department of Game, Fish and Parks, or the United States Department of Agriculture in the performance of duties as prescribed by law.

Section 16. That § 40-1-20 be amended to read as follows:

40-1-20. Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal that belongs to another, nor intentionally expose any poisonous substance so that it may be taken by an animal which belongs to another. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prevent animal control activities conducted by municipalities or counties.

Section 17. That § 40-1-21 be amended to read as follows:

40-1-21. No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure or mistreat any such animal. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prohibit euthanasia conducted by the municipality or under a municipality's animal control activities. This section may not be construed to prohibit activities conducted under chapter 40-34.

Section 18. That § 40-1-25 be amended to read as follows:

40-1-25. The board shall administer and enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock. In addition, the board may address situations involving dangerous animals, including nonlivestock animals, under the provisions of §§ 40-1-23 and 40-1-24. The board may issue orders for the execution of the powers conferred upon it by this chapter. The board may promulgate rules, pursuant to chapter 1-26, which may address cattle, horses, sheep, swine, and other livestock and dangerous animals, and which shall include:

- (1) Procedures for filing complaints;
- (2) Reasons for and methods of euthanizing animals;
- (3) Specific standards and accepted food, water, protection from the elements, sanitation facilities, and care;
- (4) Procedures and methods for impoundment;
- (5) Methods for transferring ownership of impounded animals;
- (6) Methods of investigating reported inhumane treatment;
- (7) Methods for contracting with law enforcement officers, humane societies, or others to serve as agents for the board;
- (8) Methods for certifying the proper training for agents of the board;

(9) Procedures and criteria for the euthanasia of animals pursuant to § 40-1-13; and

(10) Procedures for dealing with dangerous animals.

Section 19. That § 40-1-26 be repealed.

Section 20. That § 40-1-27 be repealed.

Section 21. That § 40-1-33 be repealed.

Section 22. That § 40-2-1 be amended to read as follows:

40-2-1. Any three or more citizens of this state organized pursuant to chapter 47-22 as a nonprofit corporation in this state, for the purpose of preventing cruelty to animals, may avail themselves of the privileges of this chapter through an animal control officer subject to the limitations in §§ 40-2-6 and 40-2-7. The board of county commissioners in each county may grant authority to exercise the privileges and authority granted by this section to one or more qualified nonprofit corporations for a period of up to three years based upon ability to fulfill the purposes of this chapter.

Section 23. That § 40-2-2 be repealed.

Section 24. That § 40-2-4 be amended to read as follows:

40-2-4. Except as provided in chapter 40-1, the activities of any humane society incorporated pursuant to this chapter for the prevention of neglect, abandonment, mistreatment, or cruelty to animals, as provided in chapter 40-1 or this chapter, are limited to animals other than cattle, horses, sheep, swine, and other livestock.

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I certify that the attached Act originated in the

SENATE as Bill No. 46

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 46
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State