

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2300
(Senators Lyson, Nichols)
(Representatives Onstad, Solberg)

AN ACT to create and enact three new sections to chapter 36-21.1 of the North Dakota Century Code, relating to the custody of abandoned animals; and to amend and reenact sections 36-21.1-01 and 36-21.1-06 of the North Dakota Century Code, relating to the abandonment and exposure of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-21.1-01. Definitions. In this chapter, unless the context or ~~subject matter~~ 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.
2. "Animal" includes every living animal except the human race.
- ~~2.~~ 3. "Commissioner" means the agriculture commissioner ~~of agriculture~~.
- ~~3.~~ 4. "Cruelty" or "torture" includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted.
- ~~4.~~ 5. "Investigator" means any person approved by the board to determine whether there has been a violation of this chapter.

SECTION 2. AMENDMENT. Section 36-21.1-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-21.1-06. Exposure of animals - Authority of officers.

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of, and care for any animal ~~found abandoned~~, 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. ~~In all cases~~ If the owner, ~~if~~ or the owner's agent is known, the individual must be immediately notified, ~~or if~~. If the owner or the owner's agent is unknown, notice must be given by publication in the manner prescribed by law. ~~Such~~ The notice must inform the owner or the owner's agent that ~~such~~ the animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days ~~after receiving from the date of the notice or after publication~~.

- 2- 4. The sheriff, police officer, licensed veterinarian, investigator, or whoever has custody of the animal has a lien ~~thereon~~, on the animal and that lien is superior to any other claim or lien, for its 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 ~~such~~ 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 ~~such~~ the claim may apply to the district court for an order to sell ~~such~~ the animal ~~to~~ and discharge ~~such~~ the lien.
5. Upon order of the court, the animal ~~must~~ may be sold at a public market to pay the charges for its keeping ~~the same~~, 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, ~~and the remainder, if any, must be paid over to the owner, if known, or if the owner 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~~ arrange for the adoption of the animal, or disposed of consistent with this chapter or with any other provision of law 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.

SECTION 3. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Abandoned animals - Assumption of custody.

1. 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 ownership of the abandoned animal.
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.
3. Notice must be given by publication in the official newspaper of the 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.
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 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.
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.

SECTION 4. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Assumption of custody - Immunity from liability. Any sheriff, police officer, licensed veterinarian, investigator, or person who has custody of an animal under this chapter and who is acting in an official or professional capacity and making a good-faith effort to comply with this chapter is immune from any civil or criminal liability for acts taken or omitted while attempting to comply with this chapter.

SECTION 5. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Applicability of chapter. This chapter does not apply to estrays covered under chapter 36-22.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2300.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 91 Nays 5 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State