

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

723C0129

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **HB1082** - 2/10/99

Introduced by: Representatives Brooks, Crisp, Fiegen, Haley, Jaspers, Juhnke, Kooistra,
Patterson, Slaughter, and Sutton (Daniel) and Senators Lange, Albers,
Hutmacher, Madden, and Munson (David)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the impoundment of
2 animals and the regulation of certain kennels.

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

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

5 40-1-1. Terms used in chapters 40-1 and 40-2, mean:

6 (1) "Abandonment," giving up with the intent of never again regaining one's interests in,
7 or rights to, an animal other than placing ownership with a responsible party;

8 (2) "Animal," any mammal, bird, reptile, amphibian or fish, except humans;

9 (3) "Board," the South Dakota animal industry board;

10 (4) "Captive wild animal," any wild animal held in man-made confinement or physically
11 altered to limit movement and facilitate capture;

12 (5) "Domestic animal," any animal that through long association with man, has been bred
13 to a degree which has resulted in genetic changes affecting the temperament, color,
14 conformation or other attributes of the species to an extent that makes it unique and

1 different from wild individuals of its kind;

2 (6) "Exotic animal," any animal not occurring naturally in the United States either
3 currently or historically;

4 (7) "Impoundment," taking physical control and custody of an animal;

5 (7A) "Kennel," any establishment where dogs or cats, for commercial purposes, are kept
6 for a period longer than twelve consecutive hours for breeding, grooming, training,
7 sale, or sporting purposes or for the provision of shelter, food, and water. Kennel
8 does not include a pound owned and operated by any political subdivision of the state
9 or a person's home where dogs or cats are kept as pets;

10 (8) "Non-domestic animal," any animal that is not domestic;

11 (9) "Other livestock," any agricultural or commercial animal owned, bred or raised for
12 profit, but not including dogs, cats, rabbits or other household pets;

13 (10) "Wild animal," any animal not in captivity, other than a domestic animal; and

14 (11) "Zoological animal," any animal in any zoo or intended to be used in a zoo.

15 Section 2. That chapter 40-1 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Any kennel in this state shall be operated in accordance with the standards specified in 9 CFR
18 Chapter 1, Part 3, Subpart A, Sections 3.1 to 3.12, inclusive, as amended to January 1, 1999.
19 The board, any law enforcement officer, or any agent or officer of a humane society may enter
20 and inspect any premises necessary to ensure compliance with this section, as provided in §§ 40-
21 1-28 and 40-1-29. If the inspection reveals a violation of this section, the board, law enforcement
22 officer, or agent or officer of a humane society may impound the affected animals as provided
23 in § 40-1-5; or, if the circumstances warrant, the board, law enforcement officer, or agent or
24 officer of the humane society may issue a written warning to the owner or operator of the kennel.
25 The warning shall state that the owner or operator has ten days to bring the kennel into

1 compliance with the provisions of this section. At the end of the ten-day period, the warning
2 period may be extended if, in the judgement of the board, law enforcement officer, or agent or
3 officer of the humane society, progress toward substantial compliance with the provisions of this
4 section is being made. If the board, law enforcement officer, or agent or officer of the humane
5 society determines that sufficient progress is not being made or if the circumstances otherwise
6 warrant, the affected animals may be impounded pursuant to § 40-1-5. The provisions of this
7 section do not preclude other actions authorized by this chapter or any other provision of law
8 for the protection of animals.

9 Section 3. That chapter 40-1 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any animal impounded pursuant to this chapter shall be held at the designated facility until
12 the violator is in compliance with this chapter or for a period not to exceed ten days. After ten
13 days of impoundment, the animal becomes the property of the jurisdiction that impounded the
14 animal, unless an extension is necessary for the impounding jurisdiction to have sufficient time
15 to prepare a court case if prosecution is warranted, or unless a bond is posted as provided in this
16 Act. Any animal impounded for reasons beyond the control of the owner shall be held for ten
17 days, during which time a reasonable effort shall be made to contact the owner or the owner's
18 representative. After the tenth day of impoundment in such circumstances, the animal becomes
19 the property of the impounding jurisdiction. Any animal awaiting disposition by the courts shall
20 remain in the custody of the impounding jurisdiction unless such disposition is made or the
21 animal is placed in a foster home until legal arrangements have been completed.

22 Section 4. That chapter 40-1 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 If any animal has been impounded pursuant to this chapter, the impounding jurisdiction may
25 file a petition with the circuit court requesting the owner or custodian of the animal to post a

1 bond to cover the costs of care of the animal while it is impounded. The petition shall be
2 accompanied by an affidavit or statement by the impounding jurisdiction setting forth an estimate
3 of the reasonable expenses the jurisdiction expects to incur in providing care for the animal,
4 including veterinary care, food, board, and other expenses necessary for the care of the animal.
5 The owner or custodian of the animal shall be provided written notice of the petition by personal
6 service or certified mail. Any such mail shall be sent to the last known address, or if the address
7 is not known, the notice shall be sent to the address from which the animal was seized. Refusal
8 to accept certified mail or failure to receive mail due to other delays does not negate this section.

9 Section 5. That chapter 40-1 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The court in which a petition is filed pursuant to section 4 of this Act shall hold a hearing on
12 the petition. At the hearing the impounding jurisdiction has the burden of proof that there is
13 probable cause to find that the animal was the subject of a violation of this chapter. If the court
14 finds that probable cause exists the court shall order the owner or custodian of the animal to post
15 a bond to cover the cost of the care of the animal for a minimum of thirty days. The bond shall
16 be posted within a maximum of three business days following the bond hearing judgement. If
17 bond has not been posted within the allotted three business days, the animal immediately
18 becomes the property of the impounding jurisdiction. If, at the end of thirty days, the matter for
19 holding the animal has not been adjudicated, another bond shall be posted. The renewal bond
20 shall be paid no later than the close of business on the thirtieth day. If the thirtieth day falls on
21 a weekend or holiday, the bond shall be posted by the close of business on the last regular
22 business day before the weekend or holiday. The bond shall be renewed every thirty days
23 thereafter until the matter is adjudicated by the court having jurisdiction. Failure to repost a bond
24 by the end of any thirty day period constitutes voluntary relinquishment of the animal. Upon
25 conviction of the accused, the court may order any remaining bond money or the animal or both

1 forfeited to the impounding jurisdiction. If the accused is acquitted or discharged without
2 conviction, the court shall direct the delivery of the animal and any bond posted, less any
3 reasonable medical, housing, and administrative costs.

4 Section 6. That chapter 40-1 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The bond authorized in sections 4 and 5 of this Act is intended to cover housing, feeding,
7 emergency medical care, immunizations, and routine medical care for the animal. Any animal
8 displaying signs of illness at the time of the impoundment shall be treated at the expense of the
9 owner or custodian. Any impounded animal that has not been inoculated or is not current in its
10 inoculations for ailments common to its species shall be inoculated at the expense of the owner
11 or custodian. Any impounded animal displaying symptoms of illness or injury that in the opinion
12 of a licensed veterinarian would cause undue suffering to the animal or pose a substantial health
13 risk to other animals shall be humanely euthanized immediately. However, in a case involving an
14 animal that has not become property of the impounding jurisdiction under this Act, the
15 impounding jurisdiction shall provide written notice via certified mail to the owner or custodian
16 of the animal of its intention to euthanize the animal. The impounding authority shall then wait
17 seventy-two hours after sending the notice before euthanization of the animal, unless the owner
18 or custodian agrees to have the animal euthanized. No veterinarian licensed pursuant to chapter
19 36-12 or any person assisting a veterinarian licensed pursuant to chapter 36-12 is liable for any
20 civil damages arising out of the euthanization of the impounded animal.

1 **BILL HISTORY**

2 1/20/99 First read in House and referred to Agriculture and Natural Resources. H.J. 94

3 2/9/99 Scheduled for Committee hearing on this date.

4 2/9/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 9, NAYS 4.

5 H.J. 428

6 2/9/99 Scheduled for Committee hearing on this date.