

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

723C0129

HOUSE BILL NO. 1082

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
15 different from wild individuals of its kind;
- 16 (6) "Exotic animal," any animal not occurring naturally in the United States either

1 currently or historically;

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

3 (7A) "Kennel," any establishment where dogs or cats, for commercial purposes, are kept
4 for a period longer than twelve consecutive hours for breeding, grooming, training,
5 sale, or sporting purposes or for the provision of shelter, food, and water. Kennel
6 does not include a pound owned and operated by any political subdivision of the state
7 or a person's home where dogs or cats are kept as pets;

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

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

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

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

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

15 Any kennel in this state shall be operated in accordance with the standards specified in 9 CFR
16 Chapter 1, Part 3, Subpart A, Sections 3.1 to 3.12, inclusive, as amended to January 1, 1999.

17 The board, any law enforcement officer, or any agent or officer of a humane society may enter
18 and inspect any premises necessary to ensure compliance with this section, as provided in §§ 40-
19 1-28 and 40-1-29. If the inspection reveals a violation of this section, the board, law enforcement
20 officer, or agent or officer of a humane society may impound the affected animals as provided
21 in § 40-1-5; or, if the circumstances warrant, the board, law enforcement officer, or agent or
22 officer of the humane society may issue a written warning to the owner or operator of the kennel.

23 The warning shall state that the owner or operator has ten days to bring the kennel into
24 compliance with the provisions of this section. At the end of the ten-day period, the warning
25 period may be extended if, in the judgement of the board, law enforcement officer, or agent or

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

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

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

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

22 If any animal has been impounded pursuant to this chapter, the impounding jurisdiction may
23 file a petition with the circuit court requesting the owner or custodian of the animal to post a
24 bond to cover the costs of care of the animal while it is impounded. The petition shall be
25 accompanied by an affidavit or statement by the impounding jurisdiction setting forth an estimate

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

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

9 The court in which a petition is filed pursuant to section 4 of this Act shall hold a hearing on
10 the petition. At the hearing the impounding jurisdiction has the burden of proof that there is
11 probable cause to find that the animal was the subject of a violation of this chapter. If the court
12 finds that probable cause exists the court shall order the owner or custodian of the animal to post
13 a bond to cover the cost of the care of the animal for a minimum of thirty days. The bond shall
14 be posted within a maximum of three business days following the bond hearing judgement. If
15 bond has not been posted within the allotted three business days, the animal immediately
16 becomes the property of the impounding jurisdiction. If, at the end of thirty days, the matter for
17 holding the animal has not been adjudicated, another bond shall be posted. The renewal bond
18 shall be paid no later than the close of business on the thirtieth day. If the thirtieth day falls on
19 a weekend or holiday, the bond shall be posted by the close of business on the last regular
20 business day before the weekend or holiday. The bond shall be renewed every thirty days
21 thereafter until the matter is adjudicated by the court having jurisdiction. Failure to repost a bond
22 by the end of any thirty day period constitutes voluntary relinquishment of the animal. Upon
23 conviction of the accused, the court may order any remaining bond money or the animal or both
24 forfeited to the impounding jurisdiction. If the accused is acquitted or discharged without
25 conviction, the court shall direct the delivery of the animal and any bond posted, less any

1 reasonable medical, housing, and administrative costs.

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

4 The bond authorized in sections 4 and 5 of this Act is intended to cover housing, feeding,
5 emergency medical care, immunizations, and routine medical care for the animal. Any animal
6 displaying signs of illness at the time of the impoundment shall be treated at the expense of the
7 owner or custodian. Any impounded animal that has not been inoculated or is not current in its
8 inoculations for ailments common to its species shall be inoculated at the expense of the owner
9 or custodian. Any impounded animal displaying symptoms of illness or injury that in the opinion
10 of a licensed veterinarian would cause undue suffering to the animal or pose a substantial health
11 risk to other animals shall be humanely euthanized immediately.