

States' Animal Cruelty Statutes: South Dakota

Current through 2020 Session Laws, General Election results, Executive Order 20-31 and Supreme Court Rule 20-06.

§ 40-1-1 Definitions

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.

40-1-2.3. Neglect, abandonment, or mistreatment of animal--Misdemeanor

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.

40-1-2.4. Cruelty to animals--Felony

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

40-1-5. Impoundment of neglected, abandoned, mistreated, or cruelly treated animal--Expenses of care as lien--Warrant or court order

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.

40-1-5.1. Liability of owner or caretaker for impounded animal

The owner or caretaker of an animal impounded or cared for pursuant to § 40-1-5 is liable for the expense of services rendered. The governing body of the county or municipality that has rendered such services may recover such sums for services pursuant to § 40-1-5 as it deems reasonable. The payment shall be on vouchers, as other claims against the county or municipality are paid. Expenses may be recovered in a civil action against the owner unless the expenses are paid within thirty days after notice and demand.

40-1-10.1. Animal fighting exhibitions or for amusement or gain prohibited--Felony or misdemeanor

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.

40-1-11. Entry by officer of place where animal fight conducted--Arrest of persons present

Any peace 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 all persons there present.

40-1-11.1. Seizure of fighting dogs and related paraphernalia—Disposition

Any law enforcement officer making an arrest for a violation of § 40-1-10.1 shall take possession of all dogs 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 shall apply to the search and seizure of violations of § 40-1-10.1 and shall 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, dogs seized pursuant to a violation of § 40-1-10.1 are contraband and property of an illegal nature and shall be destroyed pursuant to § 23A-37-9.

40-1-12. Allowing fatally injured or diseased animal to suffer needlessly prohibited--Violation as misdemeanor

No person may keep any animal which is injured or diseased, past recovery, or unfit for any useful purpose and in suffering, or intentionally abandon to die any sick or disabled animal. A violation of this section is a Class 1 misdemeanor.

40-1-13. Euthanasia of fatally injured or diseased animal--Notice to euthanize--Violation as misdemeanor

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.

40-1-14. Corporate responsibility for knowledge and acts of agents

For the purposes of §§ 40-1-1 to 40-1-17, inclusive, knowledge and acts of agents of, and persons employed by, any corporation in regard to animals transported,

owned, or employed by or in custody of such corporation, shall be held to be the knowledge and acts of such corporation as well as such agents or employees.

40-1-16. Regulated scientific experiments permitted--Inspection

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.

40-1-17. Exemptions from chapters 40-1 and 40-2

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.

40-1-20. Intentionally poisoning animal of another--Misdemeanor--Exceptions

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.

40-1-21. Killing or injuring animal of another as misdemeanor--Authorized euthanasia excepted

No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure 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.

40-1-23. Potentially dangerous animal--Enclosure--Accompaniment by owner or caretaker--Restraint--Violation as misdemeanor

The owner or caretaker of a potentially dangerous animal shall keep such animal in a proper enclosure. If a potentially dangerous animal is not in a proper enclosure, it shall be directly accompanied by its owner or caretaker and confined or restrained in such a manner that, after investigation by the board, any peace officer, or any officer or agent of a humane society, it is not a dangerous animal. The ownership or possession of a dangerous animal in violation of this section is a Class 1 misdemeanor.

40-1-24. Authority of officer or agent to control dangerous animal--Seizure, impoundment, or euthanasia authorized

Any peace officer, officer or agent of a humane society, or agent of the board may use all necessary means to control a dangerous animal so as not to immediately jeopardize the health or safety of themselves or others. Any officer or agent of a humane society, agent of the board, or peace officer may enter, search, and investigate premises, take testimony from owner and witnesses and seize, impound, or euthanize a dangerous animal.

40-1-25. Administration and enforcement of livestock provisions-- Promulgation of rules

The South Dakota Animal Industry 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- 2.5, 40-1-2.6, 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 peace 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.

40-1-28. Inspection of premises authorized

The board, any peace officer, or any agent or officer of a humane society may enter and inspect any premises necessary to carry out the provisions of this chapter.

40-1-29. Investigation procedure

The board, any peace officer, or any agent or officer of a humane society may administer oaths, take statements, access memoranda, papers, and other documents, articles, and instruments, and may compel the disclosure by witnesses of all facts known to them relative to the matters under investigation pursuant to § 40-1-28.

40-1-30. Records of complaints--Public inspection

Complaints of record made to the board, any peace officer, or any agent or officer of a humane society and results of investigations may be closed to public inspection except as provided by court order during investigatory and administrative process.

40-1-31. Liability of officer or agent

No agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken pursuant to this chapter.

40-1-32. Liability of parent or guardian for violation by minor

A parent or guardian is civilly liable for any violation of this chapter committed by a minor in their custody.

40-1-34. Disposition of impounded animals

An animal impounded under this chapter shall, within reasonable time at the direction of the board, any agent or officer of a humane society, or any peace officer be disposed of by:

- (1) Returning to the owner or caretaker;
- (2) Transferring ownership to a humane society as described in chapter 40-2;
- (3) Euthanizing;
- (4) Sold through public auction;
- (5) Transferring ownership to a suitable caretaker or facility as prescribed in rule by the board; or
- (6) Any other disposition as determined by the board, any agent or officer of a humane society, or any peace officer in accordance with rules promulgated pursuant to § 40-1-25.

40-1-35. Contract to enforce livestock provisions

The board may contract with a humane society incorporated pursuant to chapter 40-2 to enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock.

40-1-36. Unattended animals in standing or parked vehicles--Authority to remove--Liability for removal

No owner or caretaker may leave a dog, cat, or other small animal unattended in a standing or parked vehicle in a manner that endangers the health or safety of such animal. Reasonable force may be used to remove such animal by any peace officer or agent or officer of any humane society. No such person may be held civilly or criminally liable for any damage caused by removing such animal from a vehicle.

40-1-37. Use of weapons or tranquilizing agents to control dangerous animals

Any agent of the board, any peace officer, or any agent or officer of a humane society may use weapons, tranquilizing agents, or similar items in controlling dangerous animals, impounding animals, or handling animal problems if such use is in accordance with the provisions of this chapter.

40-1-38. Harassment of service animal accompanying disabled person prohibited

No person may maliciously beat, injure, attempt to injure, harass, intimidate, entice, distract, or otherwise interfere with any service animal accompanying a person with a disability if the service animal is being controlled by the person and the service animal is wearing a harness or other control device normally used for service animals accompanying or leading persons with disabilities. A violation of this section is a Class 2 misdemeanor.

40-1-39. Rebuttable presumption of maliciousness

In a prosecution for a violation of § 40-1-38, evidence that the defendant initiated or continued conduct as described in § 40-1-38 after being requested to discontinue that conduct or similar conduct by a person with a disability being served or assisted by the service animal gives rise to a rebuttable presumption that the conduct was initiated or continued maliciously. A conviction and

imposition of a sentence under §§ 40-1-38 to 40-1-40, inclusive, does not prevent a conviction and imposition of a sentence under any other applicable provision of law.

40-1-40. Harassment defined--Malicious act defined

For purposes of §§ 40-1-38 to 40-1-40, inclusive, harass means to engage in any conduct directed toward a service animal that is likely to impede or interfere with the animal's performance of its duties or that places the person with a disability who is being served or assisted by the animal in danger of injury. For purposes of §§ 40-1-38 to 40-1-40, inclusive, maliciously means actions conducted with the intent to assault, beat, harass, or injure a service animal; actions conducted with the intent to impede or interfere with duties performed by a service animal; actions conducted with the intent to disturb, endanger, or cause emotional distress to a person being served or assisted by a service animal; actions conducted with knowledge that the actions will, or are likely to, harass or injure a service animal; actions conducted with knowledge that the actions will, or are likely to, impede or interfere with duties performed by a service animal; and actions conducted with the knowledge that the actions will, or are likely to, disturb, endanger, or cause emotional distress to a person with a disability being served or assisted by a service animal.