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## **States' Animal Cruelty Statutes**

**State of South Dakota**

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UNIVERSITY of ARKANSAS  
SCHOOL of LAW

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### STATE OF SOUTH DAKOTA

*Current through the 2009 Regular Session and Supreme Court Rule 09-09*

#### **SDCL § 40-1-1 Definitions**

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

- (1) "Abandonment," giving 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) "Captive wild animal," any wild animal held in man-made confinement or physically altered to limit movement and facilitate capture;
- (5) "Domestic animal," any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation, or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind;
- (6) "Exotic animal," any animal not occurring naturally in the United States either currently or historically;
- (7) "Impoundment," taking physical control and custody of an animal;
- (8) "Non-domestic animal," any animal that is not domestic;
- (9) "Other livestock," any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets;
- (10) "Wild animal," any animal not in captivity, other than a domestic animal; and
- (11) "Zoological animal," any animal in any zoo or intended to be used in a zoo.

#### **40-1-2.2. Mistreatment, torture, or cruelty of animals defined**

For the purposes of this chapter and chapter 40-2, the mistreatment, torture, or cruelty of an animal is any act or omission whereby unnecessary, unjustifiable, or unreasonable physical pain or suffering is caused, permitted, or allowed to continue including acts of mutilation.

#### **40-1-2.3. Neglect defined**

For the purposes of this chapter and chapter 40-2, the neglect of an animal is the failure 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.

#### **40-1-2.4. Inhumane treatment defined**

For the purposes of this chapter and chapter 40-2, the inhumane treatment of an animal is any act of mistreatment, torture, cruelty, neglect, abandonment, mutilation, or inhumane slaughter

of an animal that is not consistent with generally accepted training, use and husbandry procedures for the species, breed, physical condition, and type of animal.

#### **40-1-2.5. Dangerous animal defined**

For the purposes of this chapter and chapter 40-2, a dangerous animal is 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 peace officer after investigation, is a threat to the physical well-being of other owned animals or humans.

#### **40-1-2.6. Proper enclosure defined**

For the purposes of this chapter and chapter 40-2, a proper enclosure is a secure confinement, as determined by the board, any agent or officer of a humane society, or any peace officer indoors or in a securely 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, while not constituting inhumane treatment.

#### **40-1-5. Officer or agent to take custody of inhumanely treated animal pursuant to warrant or court order--Exception--Expenses of care as lien**

Any peace officer, agent of the board, or agent or officer of any humane society finding an animal inhumanely treated, as defined in § 40-1-2.4, shall, pursuant to a warrant or court order, cause the animal to be impounded or otherwise properly cared for, and the expenses of such impoundment or care shall be a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary 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 or agent 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.

#### **40-1-9. Instigation, permitting or viewing animal fight prohibited-- Spectating as misdemeanor**

No person, for amusement purposes or for wager, may cause any animal to fight or injure another.

No person may knowingly permit any animal fighting or injuring on any premises under his charge or control.

It is a Class 1 misdemeanor to be present at any animal fighting as a spectator.

#### **40-1-10. Training of animal for exhibition of fighting prohibited**

No person may have or train any animal with the intent that it be used in an exhibition of fighting.

#### **40-1-10.1. Dog fighting and possession of dogs for fighting prohibited-- Felony**

Notwithstanding §§ 40-1-9 and 40-1-10, no person may:

- (1) Own, possess, keep, or train any dog with the intent to engage the dog in an exhibition of fighting with another dog;
- (2) For amusement or gain cause any dog to fight with another dog or cause any dog to injure another dog; or
- (3) Permit the activity prohibited by this section or § 40-1-11.1 to be done on any premises under his charge or control, or aid, or abet any activity prohibited by this section or § 40-1-11.1.

A violation of this section or § 40-1-11.1 is a Class 6 felony.

#### **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. Notice by officer to euthanize fatally injured or diseased animal-- Court order-- Violation as misdemeanor**

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

Any court having jurisdiction of a penal charge under the provisions of this chapter may order the euthanasia of any such animal.

#### **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. Scientific experiments not prohibited--Guidelines**

Nothing in this chapter may be construed to interfere with any properly conducted scientific experiments or investigations, which experiments or investigations are performed by personnel following guidelines established by the National Institute of Health and the United States Department of Agriculture. Any experiments or scientific investigation and facilities used under this section shall be open to inspection by the board.

#### **40-1-17. Exemptions from chapter--Destruction of dangerous animals**

The acts and conduct of persons who are lawfully engaged in any of the activities authorized by Title 41 or laws for the destruction or control of certain animals known to be dangerous or injurious to life, limb, or property, and persons who properly kill any animal used for food and sport hunting, trapping, and fishing as authorized by the South Dakota Department of Game, Fish and Parks, are exempt from the provisions of this chapter.

#### **40-1-20. Poisoning animal of another as misdemeanor**

Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal which 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, separately or through contract with a humane society, in accordance with chapters 36-12 and 34-20B.

#### **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.

#### **40-1-26. Proper care for impounded animals--Livestock excepted**

No person may impound or permit any animal to be in any building, enclosure, lane, street, square, or lot without proper care and attention for more than twelve consecutive hours. This section does not apply to cattle, horses, sheep, swine, or other livestock.

#### **40-1-27. Inhumane treatment as misdemeanor**

No person owning or responsible for the care of an animal may inhumanely treat such animal. A violation of this section is a Class 1 misdemeanor.

#### **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.

#### **40-1-33. Noninterference with veterinarian or accepted agricultural pursuits**

Nothing in this chapter and 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.

#### **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.

#### **40-1-41. Inspection of commercial breeding operation for dogs and cats**

A veterinarian licensed in the State of South Dakota shall be in attendance during any portion of an investigation of a commercial breeding operation that is conducted on the premises of the commercial breeding operation. For purposes of this section the term, commercial breeding operation, means any person engaged in the business of breeding dogs or cats who sells, exchanges, or leases dogs or cats in return for consideration or who offers to do so, whether or not the dogs or cats are bred, raised, trained, groomed, or boarded by the person. Any person who owns or harbors three or fewer unaltered dogs or cats for breeding purposes that are at

least six months of age is not a commercial breeding operation. Any person who sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a commercial breeding operation if all such dogs or cats are sold, exchanged, or leased to a final owner rather than for later retail sale or brokered trading. Any person knowingly selling, exchanging, or leasing any dogs or cats for later retail sale or for brokered trading is a commercial breeding operation.