

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

139M0022 **SENATE AGRICULTURE AND NATURAL RESOURCES**
COMMITTEE ENGROSSED NO. HB 1181 -
02/16/2006

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Jerke, Boomgarden, Davis, Deadrick, Dykstra, Fryslie, Hennies, Hunhoff, Jensen, Koistinen, Kraus, Putnam, and Rave and Senators Koskan, Abdallah, and Broderick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding humane societies.

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

3 Section 1. That § 40-2-1 be amended to read as follows:

4 40-2-1. Any three or more citizens of this state ~~who have heretofore or who shall hereafter~~
5 ~~incorporate as a body corporate under the general laws for incorporation~~ organized as a
6 nonprofit corporation in this state, for the purpose of preventing cruelty to animals, may avail
7 themselves of the privileges of this chapter through an animal control officer subject to the
8 limitations in sections 2 and 3 of this Act. The board of county commissioners in each county
9 may grant authority to exercise the privileges and authority granted by this section to one or
10 more qualified nonprofit corporations for a period of up to three years based upon ability to
11 fulfill the purposes of this chapter.

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



1 The board of directors of a humane society incorporated pursuant to § 40-2-1 may appoint
2 society members to act as animal control officers. The appointment shall be in writing. The
3 appointment is effective in a particular county only if an appointee obtains written authorization
4 from a circuit court judge having jurisdiction in the county in which the appointee seeks to
5 enforce this chapter or chapter 40-1. To obtain judicial authorization, an appointee seeking
6 judicial authorization shall provide evidence satisfactory to the judge that the appointee has
7 experience, education, or training that has prepared the appointee to assume the powers granted
8 to animal control officers pursuant to section 3 of this Act. The board of directors shall review
9 appointments every three years and may revoke an appointment at any time by filing a certified
10 revocation with the circuit court that approved the appointment. Any authorization may not
11 exceed three years or trustee termination, whichever occurs first.

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

14 Any law enforcement agency may enforce the provisions of this chapter or chapter 40-1. An
15 animal care and control agency may enforce the provisions of this chapter or chapter 40-1 in a
16 county or municipality if the legislative authority of the county or municipality has entered into
17 a contract with the agency to enforce the provisions of this chapter and chapter 40-1. An animal
18 control officer enforcing this chapter or chapter 40-1 shall comply with the same constitutional
19 and statutory restrictions concerning the execution of police powers imposed on a law
20 enforcement officer who enforces this chapter, chapter 40-1, and other criminal laws. An animal
21 control officer has the following enforcement powers when enforcing this chapter:

- 22 (1) The power to issue citations based on probable cause to offenders for misdemeanor
23 and felony violations of this chapter or chapter 40-1;
- 24 (2) The power to request that a law enforcement officer arrest and take into custody any

1 person the animal control officer has probable cause to believe has committed or is
2 committing a violation of this chapter or chapter 40-1. An animal control officer may
3 make an oral complaint to a prosecuting attorney or a law enforcement officer to
4 initiate an arrest. The animal control officer causing the arrest shall file with the
5 arresting agency a written complaint within twenty-four hours of the arrest, excluding
6 Sundays and legal holidays, stating the alleged act or acts constituting a violation;

7 (3) The power to carry protective devices, other than firearms, for personal protection;

8 (4) The power to prepare affidavits in support of search warrants and to execute search
9 warrants when accompanied by law enforcement officers to investigate violations of
10 this chapter or chapter 40-1, and to seize evidence of those violations.

11 Section 4. That chapter 40-2 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 For the purposes of this chapter and chapter 40-1, an animal care and control agency is any
14 municipal or county animal control agency or authority authorized to enforce municipal or
15 county ordinances regulating the care, control, licensing, or treatment of animals within the
16 municipality or county, and any nonprofit corporation organized under § 40-2-1 that contracts
17 with a municipality or county to enforce the municipal or county ordinances governing animal
18 care and control.

19 Section 5. That chapter 40-2 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 For the purposes of this chapter and chapter 40-1, an animal control officer is any person
22 employed, contracted, or appointed pursuant to section 3 of this Act by an animal care and
23 control agency or humane society to aid in the enforcement of ordinances or laws regulating the
24 care and control of animals.

1 Section 6. That § 40-2-3 be repealed.

2 ~~40-2-3. Any member, officer, or agent of any such society so incorporated who shall by the~~
3 ~~secretary of such society be duly authorized in writing and confirmed by the board of directors,~~
4 ~~and if within a municipal corporation, approved by the mayor or president of the board of such~~
5 ~~municipality, and if within a county beyond the limits of a municipal corporation, approved by~~
6 ~~the circuit judge and sworn in the same manner as are peace officers, may interfere to prevent~~
7 ~~the inhumane treatment of any animal pursuant to § 40-2-4 and may use such force as may be~~
8 ~~necessary to prevent such inhumane treatment and to that end may summon to his aid any peace~~
9 ~~officer. He may make arrests for the violation of any of the provisions of chapter 40-1, in~~
10 ~~accordance with the provisions of § 40-2-4 in the same manner as other peace officers. Such~~
11 ~~member, officer, or agent shall, when making such arrest, exhibit the badge adopted by the~~
12 ~~society of which he is a member, officer, or agent.~~

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

15 A veterinarian licensed in the State of South Dakota shall be in attendance during any
16 portion of an investigation of a commercial breeding operation that is conducted on the premises
17 of the commercial breeding operation. For purposes of this section the term, commercial
18 breeding operation, means any person engaged in the business of breeding dogs or cats who
19 sells, exchanges, or leases dogs or cats in return for consideration or who offers to do so,
20 whether or not the dogs or cats are bred, raised, trained, groomed, or boarded by the person. Any
21 person who owns or harbors three or fewer unaltered dogs or cats for breeding purposes that are
22 at least six months of age is not a commercial breeding operation. Any person who sells,
23 exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a commercial
24 breeding operation if all such dogs or cats are sold, exchanged, or leased to a final owner rather

1 than for later retail sale or brokered trading. Any person knowingly selling, exchanging, or
2 leasing any dogs or cats for later retail sale or for brokered trading is a commercial breeding
3 operation.

4 Section 8. That § 40-1-5 be amended to read as follows:

5 40-1-5. Any peace officer, agent of the board, or agent or officer of any humane society
6 finding an animal inhumanely treated, as defined in § 40-1-2.4, shall, pursuant to a warrant or
7 court order, cause the animal to be impounded or otherwise properly cared for, and the
8 expenses of such impoundment or care shall be a lien on the animal to be paid before the animal
9 may be lawfully recovered. However, a warrant or court order is not necessary if the animal is
10 severely injured, severely diseased, or suffering and any delay in impounding the animal would
11 continue to cause the animal extreme suffering or if other exigent circumstances exist. If any
12 animal is impounded or subjected to other action under this section without a warrant or court
13 order, the officer or agent shall subsequently show cause for the impoundment or other action
14 to the court, and the court shall issue an order ratifying the impoundment or action; or, if
15 sufficient cause for the impoundment or action is not shown, the court shall order the return of
16 the animal to the owner or other appropriate remedy.