

H. B. 2716

(By Delegates Campbell and Canterbury)
[Introduced January 21, 2011; referred to the
Committee on Agriculture then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20C-1, §19-20C-2, §19-20C-3, §19-20C-4, §19-20C-5, §19-20C-6, §19-20C-7 and §19-20C-8, all relating to providing for the Dangerous Dog Act; defining terms; providing for the determination of a potentially dangerous dog; providing for the determination of a dangerous dog; providing exceptions; providing consequences of a dangerous or potentially dangerous dog determination; providing registration and handling requirements for dangerous and potentially dangerous dogs; setting forth responsibilities of owners of dangerous and potentially dangerous dogs; and providing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-20C-1, §19-20C-2,

1 §19-20C-3, §19-20C-4, §19-20C-5, §19-20C-6, §19-20C-7 and §19-20C-
2 8, all to read as follows:

3 **ARTICLE 20C. DANGEROUS DOG ACT.**

4 **§19-20C-1. Definitions.**

5 For purposes of this chapter, the term:

6 (a) "Dangerous dog" means any dog that:

7 (1) Causes a serious injury to a person or domestic animal; or

8 (2) Has been designated as a potentially dangerous dog and

9 engages in behavior that poses a threat to public safety as

10 described in paragraph (f) of this section.

11 (b) "Serious injury" means any physical injury that results in

12 broken bones or lacerations that require multiple sutures or

13 cosmetic surgery.

14 (c) "Proper enclosure" means secure confinement indoors or

15 secure confinement in a locked pen, fenced yard or structure

16 measuring at least six feet in width, twelve feet in length, and

17 six feet in height, capped if there is a dog house inside or if dog

18 can climb fence, with secure sides, which provides proper

19 protection from the elements for the dog, is suitable to prevent

20 the entry of young children, and is designed to prevent the animal

21 from escaping while on the owner's property.

22 (d) "Owner" mean any person, firm, corporation, organization,

23 or department possessing, harboring, keeping, having an interest in

24 or having control or custody of a dog.

1 (e) "Impound" means taken into the custody of the county dog
2 warden.

3 (f) "Potentially dangerous dog" means a dog that may
4 reasonably be assumed to pose a threat to public safety as
5 demonstrated by any of the following behaviors:

6 (1) Causing an injury to a person or domestic animal that is
7 less severe than a serious injury;

8 (2) Without provocation, chasing or menacing a person or
9 domestic animal in an aggressive manner;

10 (3) Running at large and impounded or owners cited by the
11 county dog warden two or more times within any twelve-month period.

12 (4) Acts in a highly aggressively manner within a fenced
13 yard/enclosure and appears to a reasonable person able to jump over
14 or escape.

15 (g) "Responsible person" means a person at least eight years
16 old who is familiar with the dog and has the size and experience to
17 be able to keep the dog under complete control at all times.

18 **§19-20C-2. Determination of a potentially dangerous dog.**

19 (a) After an investigation, which must be initiated within
20 five days after the situation becomes known to the owner, the
21 county dog warden is authorized to make a determination whether a
22 dog is potentially dangerous based on the factors listed in
23 subdivision (f) of section one of this article and shall notify the
24 owner of the dog in writing by certified mail or hand delivery with

1 signature of that status within five days after completion of the
2 investigation.

3 (b) Following notice to the owner, if the county dog warden
4 has probable cause to believe that a dog is a potentially dangerous
5 dog and may pose a threat to public safety, the county dog warden
6 may obtain a search warrant and impound the dog pending
7 disposition of the case or until the dog owner has fulfilled the
8 requirements of section six of this article. The owner of the dog
9 may be liable for the costs and expenses of keeping the dog.

10 (c) Upon notice, the owner may, within five business days
11 after a determination that a dog is a potentially dangerous dog,
12 bring a petition in the circuit court seeking review of the
13 determination. A decision by the court overturning the county dog
14 warden's determination does not affect the county dog warden's
15 right to later declare a dog to be a potentially dangerous dog or
16 a dangerous dog, or to determine that the dog poses a threat to
17 public safety, for the dog's subsequent behavior.

18 **§19-20C-3. Determination of a dangerous dog.**

19 (a) After an investigation, which must be initiated within
20 five days after the situation becomes known to the county dog
21 warden, the county dog warden may make a determination whether a
22 dog is dangerous based on the factors listed in section one of this
23 article and shall notify the owner of the dog in writing by
24 certified mail or hand delivery with signature of that status

1 within five days after completing the investigation.

2 (b) Following notice to the owner and prior to the hearing, if
3 the county dog warden has probable cause and believes the dog to be
4 a dangerous dog and that the animal poses an imminent threat to
5 public safety, the county dog warden may impound the dog pending
6 disposition of the case or until the dog owner has fulfilled the
7 requirements set forth in section six of this article. The owner
8 of the dog is liable for the costs and expenses of keeping the dog
9 if the dog is determined to be a dangerous dog.

10 (c) The owner may, within five business days after a
11 determination that a dog is dangerous, petition the circuit court
12 for any relief he or she considers appropriate. A decision by the
13 circuit court overturning the county dog warden's determination
14 does not affect the county dog warden's right to later declare a
15 dog to be a dangerous dog or to determine that the dog poses a
16 threat to public safety, for the dog's subsequent behavior.

17 **§19-20C-4. Exceptions.**

18 A dog may not be declared a dangerous or potentially dangerous
19 dog if:

20 (a) The dog was used by a law-enforcement official for
21 legitimate law enforcement purposes.

22 (b) The threat, injury or damage was sustained by a person:

23 (1) Who was committing, at the time, willful trespass or other
24 wrongful or criminal act upon the premises lawfully occupied by the

1 owner of the dog.

2 (2) Who was provoking, tormenting, abusing or assaulting the
3 dog or who can be shown to have repeatedly, in the past, provoked,
4 tormented, abused or assaulted the dog; or

5 (3) Who was committing or attempting to commit a crime; or

6 (c) The dog was:

7 (1) Responding to pain or injury, or was protecting itself,
8 its offspring; or

9 (2) Protecting or defending a human being within the immediate
10 vicinity of the dog from an attack or assault.

11 **§19-20C-5. Consequences of a dangerous or potentially dangerous**
12 **dog determination.**

13 (a) If the county dog warden or his or her designee determines
14 that a dog is a potentially dangerous dog under the provision of
15 section two of this article, the owner shall comply with the
16 provisions of sections six and seven of this article and any other
17 special security or care requirements the county dog warden may
18 establish.

19 (b) If the county dog warden determines that a dog is a
20 dangerous dog under section three of this article, the owner shall
21 comply with the provisions of sections five and six of this article
22 and any other special security or care requirements the county dog
23 warden may establish.

24 (c) The county dog warden may require impoundment of the dog

1 until the owner of the dog has satisfied all the requirements of
2 the certificate of registration holding permit. The requirements
3 must be met within thirty days. If, after thirty days, the owner
4 has not satisfied all the requirements of the holding permit, the
5 animal may be humanely destroyed on the thirty-first day.

6 **§19-20C-6. Dangerous dog and potentially dog registration and**
7 **handling requirements.**

8 (a) The county dog warden shall issue a certificate of
9 registration to the owner of a potentially dangerous dog if the
10 owner established to the satisfaction of the county dog warden
11 that:

12 (1) The owner of the potentially dangerous dog is twenty-one
13 years of age or older;

14 (2) A valid license has been issued for the potentially
15 dangerous dog pursuant to jurisdiction;

16 (3) The potentially dangerous dog has a current rabies
17 vaccination;

18 (4) The owner has a proper enclosure to prevent the entry of
19 any person or animal and the escape of the potentially dangerous
20 dog;

21 (5) The owner has paid to the county dog warden an annual fee
22 of \$15 in addition to regular dog licensing fees, to register the
23 potentially dangerous dog.

24 (6) The potentially dangerous dog has been spayed or neutered;

1 (7) The potentially dangerous dog has been implanted with a
2 microchip containing owner identification information. The
3 microchip information must be registered with the county dog
4 warden.

5 (8) The potentially dangerous dog owner shall enter the dog in
6 a socialization, behavior program approved or offered by the county
7 dog warden.

8 (b) The county dog warden shall issue a certificate of
9 registration to the owner of a dangerous dog if the owner, in
10 addition to satisfying the requirements for registration of a
11 potentially dangerous dog establishes to the satisfaction of the
12 county dog warden that:

13 (1) The owner of the dangerous dog has written permission of
14 the property owner or homeowner's association where the dangerous
15 dog will be kept if applicable;

16 (2) The owner will maintain the dangerous dog exclusively on
17 the owner's property except for medical treatment of examination;
18 and

19 (3) The owner of the dangerous dog has posted on the premises
20 a clearly visible written warning sign that there is a dangerous
21 dog on the property with a conspicuous warning symbol that informs
22 children of the presence of a dangerous dog. The sign shall be
23 visible from the public roadway for a distance of fifty feet.

24 (c) The county dog warden may order the immediate impoundment

1 or humane destruction of a dangerous dog if the owner fails to
2 abide by the conditions for registration or confinement or handling
3 of a dangerous dog.

4 (d) If any dog previously determined to be a potentially
5 dangerous dog has not exhibited any dangerous behaviors within the
6 thirty-six months since the date of the potentially dangerous dog
7 determination, then that dog is eligible for a review of the
8 determination with the potential for lifting the requirements of
9 this section: *Provided*, That same dog may again be declared a
10 dangerous or potentially dangerous dog if it again exhibits any
11 dangerous behaviors.

12 **§19-20C-7. Dangerous or potentially dangerous dog owner**
13 **responsibility.**

14 It is unlawful to:

15 (a) Keep a dog determined to be dangerous or potentially
16 dangerous without a valid certificate or registration issued under
17 section six of this article:

18 (b) Permit a potentially dangerous dog to be outside a proper
19 enclosure unless the potentially dangerous dog is under the control
20 of a responsible person, muzzled and restrained by a leash not
21 exceeding four feet in length. The muzzle shall be made in a
22 manner that will not cause injury to the dog or interfere with its
23 vision or respiration but shall prevent it from biting any human
24 being or animal;

1 (c) Fail to maintain a dangerous dog exclusively on the
2 owner's property as required except for medical treatment or
3 examination. When removed from the owner's property for medical
4 treatment or examination, the dangerous dog shall be caged or under
5 the control of a responsible person, muzzled and restrained with a
6 leash not exceeding four feet in length. The muzzle shall be made
7 in a manner that will not cause injury to the dog or interfere with
8 its vision or respiration but shall prevent it from biting any
9 human being or animal;

10 (d) Fail to notify the county dog warden immediately upon
11 escape if a dangerous or potentially dangerous dog is on the loose,
12 is unconfined, has attacked another domestic animal, has attacked
13 a human being; within five business days if the dog has died;
14 within twenty-four hours if the dog has been sold, or has been
15 given away. If the dangerous or potentially dangerous dog has been
16 sold or given away the owner shall also provide the county dog
17 warden with the name, address, and telephone number of the new
18 owner of the dangerous or potentially dangerous dog;

19 (e) Fail to surrender a dangerous or potentially dangerous dog
20 to the county dog warden for safe confinement pending a disposition
21 of the case when there is a reason to believe that the dangerous or
22 potentially dangerous dog poses an imminent threat to public
23 safety; or

24 (f) Fail to comply with any special security or care

1 requirements for a dangerous or potentially dangerous dog the
2 county dog warden may have established.

3 **§19-20C-8. Penalties.**

4 (a) An owner of a dangerous or potentially dangerous dog who
5 violates the provisions of sections six and seven of this article
6 is guilty of a misdemeanor and, upon conviction thereof, shall be
7 finned not more than \$500 or confined in jail not more than ninety
8 days, or both fined and confined for a first offense and for a
9 second offense fined not more than \$1,000 or confined to jail for
10 not more than ninety days, or both fined and confined.

11 (b) An owner of a dangerous or potentially dangerous dog that
12 causes serious injury to or kills a human being or a domestic
13 animal without provocation shall be fined up to \$10,000.

14 (c) Civil fines, penalties and fees may be imposed as
15 alternative sanctions for any infraction of the provisions of this
16 article.

NOTE: The purpose of this bill is to address the regulation by counties of dangerous dogs and potentially dangerous dogs. Toward this end the bill contains provisions which address the following: (1)Defining terms; (2)providing for the determination of a potentially dangerous dog; (3)providing for the determination of a dangerous dog; (4)providing exceptions; (5)providing consequences of a dangerous or potentially dangerous dog determination; (6) providing registration and handling requirements for dangerous and potentially dangerous dogs; (7)setting forth responsibilities of owners of dangerous and potentially dangerous dogs; and (8) providing criminal and civil penalties.

This article is new; therefore, it has been completely underscored.