

1 **H. B. 3095**

2
3 (By Delegates D. Poling, Anderson, Border,
4 Manypenny, Guthrie, Ireland and Ellem)
5
6 [Introduced February 10, 2011; referred to the
7 Committee on Agriculture then the Judiciary.]
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10 A BILL to amend and reenact §7-10-4 of the Code of West Virginia,
11 1931, as amended, relating to livestock in dire or extreme
12 condition.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §7-10-4 of the Code of West Virginia, 1931, as amended,
15 be amended and reenacted to read as follows:

16 **ARTICLE 10. HUMANE OFFICERS.**

17 **§7-10-4. Custody and care of animals abandoned, neglected or**
18 **cruelly treated; hearing; bonds; liability for costs;**
19 **liens; exclusions.**

20 (a) Subject to the provisions of subsection (h) of this
21 section, a humane officer shall take possession of any animal,
22 including birds or wildlife in captivity, known or believed to be
23 abandoned, neglected, deprived of necessary sustenance, shelter,
24 medical care or reasonable protection from fatal freezing or heat
25 exhaustion or cruelly treated or used as defined in sections
26 nineteen and nineteen-a, article eight, chapter sixty-one of this

1 code.

2 (b) The owner or persons in possession, if his or her identity
3 and residence are known, of any animal seized pursuant to
4 subsection (a) of this section shall be provided written notice of
5 the seizure, his or her liability for the cost and care of the
6 animal seized as provided in this section and the right to request
7 a hearing in writing before a magistrate in the county where the
8 animal was seized. The magistrate court shall schedule any hearing
9 requested within ten working days of the receipt of the request.
10 The failure of an owner or person in possession to request a
11 hearing within five working days of the seizure is prima facie
12 evidence of the abandonment of the animal. At the hearing, if
13 requested, the magistrate shall determine by a preponderance of the
14 evidence if the animal was abandoned, neglected or deprived of
15 necessary sustenance, shelter, medical care or reasonable
16 protection from fatal freezing or heat exhaustion or otherwise
17 treated or used cruelly as set forth in this section.

18 (c) (1) If a hearing is requested and the magistrate finds by
19 a preponderance of the evidence that the owner did abandon, neglect
20 or cruelly treat the animal, or if no hearing is requested and the
21 magistrate finds by a preponderance of the evidence, based upon the
22 affidavit of the humane officer, that the owner did abandon,
23 neglect or cruelly treat the animal, the magistrate shall enter an
24 order awarding custody of the animal to any humane officer for
25 further disposition in accordance with reasonable practices for the

1 humane treatment of animals. After hearing the evidence, if the
2 magistrate is not convinced the animal was neglected or cruelly
3 treated, he or she may dismiss the action and order the animal be
4 returned to the owner. If the magistrate finds in favor of the
5 humane officer, the owner of the animal shall post a bond with the
6 court in an amount sufficient to provide for the reasonable costs
7 of care, medical treatment and provisions for the animal for at
8 least thirty days. The bond shall be filed with the court within
9 five days following the court's finding against the owner. At the
10 end of the time for which expenses are covered by the original bond
11 if the animal remains in the care of the humane officer and the
12 owner desires to prevent disposition of the animal by the humane
13 officer, the owner shall post an additional bond with the court
14 within five days of the expiration of the original bond. During
15 this period the humane officer is authorized to place the animal in
16 a safe private home or other safe private setting in lieu of
17 retaining the animal in an animal shelter. The person whose animal
18 is seized is liable for all costs of the care of the seized animal.

19 (2) If a bond has been posted in accordance with subdivision
20 (1) of this subsection, the custodial animal care agency may draw
21 from the bond the actual reasonable costs incurred by the agency in
22 providing care, medical treatment and provisions to the impounded
23 animal from the date of the initial impoundment to the date of the
24 final disposition of the animal.

25 (d) Any person whose animal is seized and against whom the

1 magistrate enters a finding pursuant to this section is liable
2 during any period it remains in the possession of the humane
3 officer for the reasonable costs of care, medical treatment and
4 provisions for the animal not covered by the posting of the bond as
5 provided in subdivision (1), subsection (c) of this section. The
6 magistrate shall require the person liable for these costs to post
7 bond to provide for the maintenance of the seized animal. This
8 expense, if any, becomes a lien on the animal and must be
9 discharged before the animal is released to the owner. Upon
10 dismissal or withdrawal of the complaint, any unused portion of
11 posted bonds shall be returned to the owner. Upon a finding in
12 favor of the humane officer, all interest in the impounded animal
13 shall transfer to the humane officer for disposition in accordance
14 with reasonable practices for the humane treatment of animals. Any
15 additional expense above the value of the animal may be recovered
16 by the humane officer or custodial agency.

17 (e) After the humane officer takes possession of the animal
18 pursuant to a finding by a magistrate that the animal has been
19 abandoned, neglected or cruelly treated and a licensed veterinarian
20 determines that the animal should be humanely destroyed to end its
21 suffering, the veterinarian may order the animal to be humanely
22 destroyed and neither the humane officer, animal euthanasia
23 technician nor the veterinarian is subject to any civil or criminal
24 liability as a result of the action.

25 (f) (1) The term "humanely destroyed" as used in this section

1 means:

2 (A) Humane euthanasia of an animal by hypodermic injection by
3 a licensed veterinarian or by an animal euthanasia technician
4 certified in accordance with the provisions of article ten-a,
5 chapter thirty of this code; or

6 (B) Any other humane euthanasia procedure approved by the
7 American Veterinary Medical Association, the Humane Society of the
8 United States or the American Humane Association.

9 (2) The term "humanely destroyed" does not include euthanizing
10 an animal by means of a gas chamber: *Provided*, That any county
11 which has a gas chamber in operation as of the effective date of
12 this section may continue to operate the gas chamber subject to the
13 following: (1) The gas chamber shall be operated by an animal
14 euthanasia technician certified pursuant to article ten-a, chapter
15 thirty of this code; and (2) the gas chamber shall have been
16 manufactured and installed by a person who regularly manufactures
17 and installs gas chambers. The Board of Veterinary Medicine shall
18 promulgate emergency rules regarding the inspection of gas
19 chambers, pursuant to section fifteen, article three, chapter
20 twenty-nine-a of this code.

21 (g) In case of an emergency in which an animal cannot be
22 humanely destroyed in an expeditious manner, an animal may be
23 destroyed by shooting if:

24 (1) The shooting is performed by someone trained in the use of
25 firearms with a weapon and ammunition of suitable caliber and other

1 characteristics designed to produce instantaneous death by a single
2 shot; and

3 (2) Maximum precaution is taken to minimize the animal's
4 suffering and to protect other persons and animals.

5 (h) (1) The provisions of this section do not apply to farm
6 livestock, as defined in subsection (d), section two, article ten-
7 b, chapter nineteen of this code; poultry, gaming fowl or wildlife
8 kept in private or licensed game farms if kept and maintained
9 according to usual and accepted standards of livestock; poultry,
10 gaming fowl, wildlife or game farm production and management; nor
11 to the humane use of animals or activities regulated under and in
12 conformity with the provisions of 7 U.S.C. §2131, *et seq.*, and the
13 regulations promulgated thereunder.

14 (2) In the case of livestock, as defined in subsection (d),
15 section two, article ten-b of chapter nineteen:

16 (A) Each county commission shall establish a livestock
17 committee, to handle complaints of inhumane livestock treatment.

18 The committee shall be appointed by the county commission and shall
19 include three recognized farmers within the county;

20 (B) If during the course of an investigation a humane officer
21 finds livestock in dire or extreme condition, the humane officer
22 shall contact a licensed veterinarian for further examination. If
23 the veterinarian finds that the livestock are in such poor
24 condition to be at imminent risk, the humane officer shall notify
25 the county commission and the livestock committee of the situation

1 and make a recommendation to the county commission and livestock
2 committee;

3 (C) If during the course of an investigation the humane
4 officer finds livestock to be in an unacceptable condition but not
5 in imminent danger and are unable to rectify the situation with the
6 owner without legal action, the humane officer will notify the
7 county commission for assistance. The county commission shall then
8 remedy the situation with the owner. The humane officer shall
9 assist the county commission and follow up to ensure that the
10 problems have been remedied.

11 (i) All persons or entities in the state performing euthanasia
12 under this article shall register with the Board of Veterinary
13 Medicine by December 31, 2009, in a manner to be prescribed by the
14 board. The Board of Veterinary Medicine shall promulgate emergency
15 rules relating to the registration of those performing animal
16 euthanasia, pursuant to section fifteen, article three, chapter
17 twenty-nine-a of this code.

NOTE: The purpose of this bill is to provide a procedure to address livestock that are in dire or extreme condition.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.