

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 303

(By Senators Williams, Miller, Wills, Sypolt and Klempa)

[Originating in the Committee on the Judiciary;
reported February 10, 2011.]

A BILL to amend and reenact §19-20-14, §19-20-15, §19-20-16, §19-20-17 and §19-20-18 of the Code of West Virginia, 1931, as amended, all relating to adding captive cervids to the list of animals protected from dogs which have killed, wounded or worried any of the listed animals; recovering damages; assessing damages by appraisers; killing a dog lawfully; harboring a dog unlawfully; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §19-20-14, §19-20-15, §19-20-16, §19-20-17 and §19-20-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20. DOGS AND CATS.

§19-20-14. Dog killing, wounding or worrying livestock; captive cervids or poultry; recovery of damages.

1 If any dog has killed or assisted in killing, wounding or
2 worrying any sheep, lambs, goats, kids, calves, cattle, swine,
3 show or breeding rabbits, horses, colts, captive cervids or
4 poultry out of the enclosure of the owner of the dog, the
5 owner or keeper of the dog shall be liable for the sheep,
6 lambs, goats, kids, calves, cattle, swine, show or breeding
7 rabbits, horses, colts, captive cervids or poultry in the
8 amount of the damages sustained, to be recovered in an
9 action before any court or magistrate having jurisdiction of
10 the action. It shall not be necessary to sustain the action to
11 prove that the owner of the dog knew the dog was accus-
12 tomed to worrying, killing or wounding. A recovery under
13 this section ~~shall bar and preclude~~ bars the owner of the
14 sheep, lambs, goats, kids, calves, cattle, swine, show or
15 breeding rabbits, horses, colts, captive cervids or poultry
16 from obtaining compensation from the county commission
17 under the provisions of this article. If the person suffering
18 the loss or damage cannot ascertain the owner or keeper of
19 the dog, or if the owner or keeper is not financially responsi-

20 ble, then the person suffering the loss or damage may file his
 21 or her claim with and prove the same before the county
 22 commission of the county in which the loss or damage is
 23 sustained, in the manner provided in this article, and the
 24 commission shall pay the loss or damage out of the fund
 25 provided for such purposes and according to the provisions
 26 of this article. When compensation is so obtained from the
 27 county commission, the county commission is authorized to
 28 sue under this section and recover as the owner of the sheep,
 29 lambs, goats, kids, calves, cattle, swine, show or breeding
 30 rabbits, horses, colts, captive cervids or poultry. The amount
 31 ~~so~~ recovered shall be paid into the county treasury but no
 32 suit ~~shall~~ may be commenced unless authorized by the
 33 county commission.

**§19-20-15. Dog killing, wounding or worrying livestock; captive
 cervids or poultry; assessment of damages; appraisers.**

1 Authority is ~~hereby~~ given to magistrates and notaries
 2 public within this state, and within their respective jurisdic-
 3 tions, to summon three substantial, upright and worthy bona
 4 fide residents, citizens and taxpayers of his or her county to
 5 assess the damages suffered by ~~any~~ a person on account of

6 the destruction, loss or injury of any sheep, lambs, goats,
7 kids, calves, cattle, swine, show or breeding rabbits, horses,
8 colts, captive cervids or poultry by dogs within the county.
9 The appraisers shall be appointed upon the request of a
10 person suffering damages on account of such destruction,
11 loss or injury. The appraisers shall go upon the ground and
12 investigate fully the extent of the destruction, loss or injury,
13 taking all the evidence deemed necessary to arrive at the
14 facts to be passed upon in arriving at the amount of damage,
15 if any, suffered by the party making the complaint. Before
16 the appraisers may be summoned by the magistrate or notary
17 public, the complainant ~~shall be~~ is required to make a sworn
18 complaint before the magistrate or notary public, setting out
19 in plain, easily comprehensible terms the facts concerning
20 his or her damages to the best of his or her knowledge. After
21 making a full investigation of the facts involved, the apprais-
22 ers, with the assistance of the magistrate or notary public,
23 shall make a sworn statement and report the facts ascer-
24 tained and the damages suffered. The report and statement
25 shall be filed with the county commission or the clerk thereof
26 in vacation. The fees and mileage for services allowed in such
27 cases shall be the same as are allowed magistrates, witnesses

28 and arbitrators in magistrates' courts in this state for similar
 29 services. ~~In the event that~~ If the appraisers find that the
 30 complainant has suffered no damage, ~~then~~ the complainant
 31 ~~shall be~~ is responsible for ~~and pay~~ all the costs and expenses
 32 of the proceeding. ~~In the event that~~ If the complainant has
 33 suffered damages on account of the destruction, loss or
 34 injury of his or her domestic animals, according to the
 35 finding of the appraisers, the owner, keeper or person
 36 permitting the dog or dogs causing the damage to remain
 37 upon the premises under his or her control ~~shall be~~ is liable
 38 for all damages sustained by the complainant, including all
 39 costs and necessary expenses. All of the damages shall be
 40 collectible by an action at law before any court or magistrate
 41 having jurisdiction of the matter. All papers in connection
 42 with ~~any~~ a claim shall be filed and preserved in the office of
 43 the clerk of the county commission.

**§19-20-16. Dog killing, wounding or worrying livestock; captive
 cervids or poultry; when lawful to kill dog.**

1 A person may kill a dog that he or she ~~may see~~ observes
 2 chasing, worrying, wounding or killing any sheep, lambs,
 3 goats, kids, calves, cattle, swine, show or breeding rabbits,
 4 horses, colts, captive cervids or poultry outside of the

5 enclosure of the owner of the dog, unless the chasing or
6 worrying be done by the direction of the owner of the sheep,
7 lambs, goats, kids, calves, cattle, swine, show or breeding
8 rabbits or horses and colts, captive cervids or poultry.

**§19-20-17. Dog killing, wounding or worrying livestock; captive
cervids or poultry; unlawful to harbor dog; penalty.**

1 A person who ~~shall harbor or secrete or aid~~ harbors,
2 secretes or aids in secreting a dog which he or she knows or
3 has reasons to believe has worried, chased or killed any
4 sheep, lambs, goats, kids, calves, cattle, swine, show or
5 breeding rabbits, horses, colts, captive cervids or poultry not
6 the property of the owner of the dog, out of his or her
7 enclosure, or knowingly permits the same to be done on any
8 premises under his or her control, is guilty of a misdemeanor
9 and, upon conviction thereof, before any court or magistrate
10 having jurisdiction thereof in the county in which the offense
11 is committed, shall be fined not less than ~~ten dollars~~ \$10 nor
12 more than ~~fifty dollars,~~ \$50, and, at the discretion of the
13 court or magistrate, imprisoned in ~~the county~~ jail not more
14 than thirty days. Each day that the dog is harbored, kept or
15 secreted ~~shall constitute~~ constitutes a separate offense.

§19-20-18. Dog killing, wounding or worrying livestock; captive cervids or poultry; duty of owner to kill dog; proceeding before magistrate on failure of owner to kill.

1 The owner or keeper of a dog that has been worrying,
2 wounding, chasing or killing any sheep, lambs, goats, kids,
3 calves, cattle, swine, show or breeding rabbits, horses, colts,
4 captive cervids or poultry not the property of the owner or
5 keeper, out of his or her enclosure, shall, within forty-eight
6 hours after having received notice thereof in writing from a
7 reliable and trustworthy source, under oath, kill the dog or
8 direct that the dog be killed. If the owner or keeper refuses
9 to kill the dog as hereinbefore provided, the magistrate, upon
10 information, shall summon the owner or keeper of the dog,
11 and, after receiving satisfactory proof that this dog did the
12 mischief, shall issue a warrant on application being made by
13 the owner of the sheep, lambs, goats, kids, calves, cattle,
14 swine, show or breeding rabbits, horses, or colts, captive
15 cervids or poultry killed and give it ~~into the hands of~~ to the
16 sheriff, who shall kill the dog forthwith or dispose of by
17 other available methods. The cost of the proceedings shall be
18 paid by the owner or keeper of the dog so killed, including a

19 fee of ~~fifty cents~~ 50¢ to the officer killing the dog. The owner
20 or keeper of the dog, ~~so killed shall, in addition to the costs,~~
21 ~~be in addition to the costs, is~~ liable to the owner of the sheep,
22 lambs, goats, kids, calves, cattle, swine, show or breeding
23 rabbits, horses, colts, captive cervids or poultry or to the
24 county commission for the value of the sheep, lambs, goats,
25 kids, calves, cattle, swine, show or breeding rabbits, horses
26 or colts, captive cervids or poultry so killed or injured.