

H. B. 4427

(By Delegates Poling, D., Anderson, Border,
Manypenny, Guthrie, Ireland, Ellem
and Swartzmiller)

[Introduced February 6, 2012; referred to the
Committee on Agriculture then the Judiciary.]

A BILL to amend and reenact §7-10-4 of the Code of West Virginia,
1931, as amended, relating to livestock in dire or extreme
condition.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. HUMANE OFFICERS.

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

(a) Subject to the provisions of subsection (h) of this
section, a humane officer shall take possession of any animal,
including birds or wildlife in captivity, known or believed to be
abandoned, neglected, deprived of necessary sustenance, shelter,
medical care or reasonable protection from fatal freezing or heat

1 exhaustion or cruelly treated or used as defined in sections
2 nineteen and nineteen-a, article eight, chapter sixty-one of this
3 code.

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

20 (c) (1) If a hearing is requested and the magistrate finds by
21 a preponderance of the evidence that the owner did abandon, neglect
22 or cruelly treat the animal, or if no hearing is requested and the
23 magistrate finds by a preponderance of the evidence, based upon the
24 affidavit of the humane officer, that the owner did abandon,

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

22 (2) If a bond has been posted in accordance with subdivision
23 (1) of this subsection, the custodial animal care agency may draw
24 from the bond the actual reasonable costs incurred by the agency in

1 providing care, medical treatment and provisions to the impounded
2 animal from the date of the initial impoundment to the date of the
3 final disposition of the animal.

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

21 (e) After the humane officer takes possession of the animal
22 pursuant to a finding by a magistrate that the animal has been
23 abandoned, neglected or cruelly treated and a licensed veterinarian
24 determines that the animal should be humanely destroyed to end its

1 suffering, the veterinarian may order the animal to be humanely
2 destroyed and neither the humane officer, animal euthanasia
3 technician nor the veterinarian is subject to any civil or criminal
4 liability as a result of the action.

5 (f) (1) The term "humanely destroyed" as used in this section
6 means:

7 (A) Humane euthanasia of an animal by hypodermic injection by
8 a licensed veterinarian or by an animal euthanasia technician
9 certified in accordance with the provisions of article ten-a,
10 chapter thirty of this code; or

11 (B) Any other humane euthanasia procedure approved by the
12 American Veterinary Medical Association, the Humane Society of the
13 United States or the American Humane Association.

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

1 twenty-nine-a of this code.

2 (g) In case of an emergency in which an animal cannot be
3 humanely destroyed in an expeditious manner, an animal may be
4 destroyed by shooting if:

5 (1) The shooting is performed by someone trained in the use of
6 firearms with a weapon and ammunition of suitable caliber and other
7 characteristics designed to produce instantaneous death by a single
8 shot; and

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

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

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

22 (A) Each county commission shall establish a livestock
23 committee, to handle complaints of inhumane livestock treatment.
24 The committee shall be appointed by the county commission and shall

1 include three recognized farmers within the county.

2 (B) If during the course of an investigation a humane officer
3 finds livestock in dire or extreme condition, the humane officer
4 shall contact a licensed veterinarian for further examination. If
5 the veterinarian finds that the livestock are in such poor
6 condition to be at imminent risk, the humane officer shall notify
7 the county commission and the livestock committee of the situation
8 and make a recommendation to the county commission and livestock
9 committee.

10 (C) If during the course of an investigation the humane
11 officer finds livestock to be in an unacceptable condition but not
12 in imminent danger and are unable to rectify the situation with the
13 owner without legal action, the humane officer will notify the
14 county commission for assistance. The county commission shall then
15 remedy the situation with the owner. The humane officer shall
16 assist the county commission and follow up to ensure that the
17 problems have been remedied.

18 (i) All persons or entities in the state performing euthanasia
19 under this article shall register with the Board of Veterinary
20 Medicine by December 31, 2009, in a manner to be prescribed by the
21 board. The Board of Veterinary Medicine shall promulgate emergency
22 rules relating to the registration of those performing animal
23 euthanasia, pursuant to section fifteen, article three, chapter
24 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.