

1 **H. B. 2757**

2
3 (By Delegates Sponaugle, Hartman, Lynch, Skinner,
4 Evans, A., Espinosa, Reynolds, Azinger, Stowers,
5 Phillips R. and Andes)
6

7 [Introduced February 27, 2013; referred to the
8 Committee on the Judiciary.]
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §19-20C-1, §19-20C-2,
12 §19-20C-3 and §19-20C-4, all relating to the creation of a
13 civil cause of action in magistrate court for the purpose of
14 seeking euthanization of a violent dog; elements of action;
15 proceeding; attorney fees; limitations of action; and order of
16 the court.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §19-20C-1, §19-20C-2,
20 §19-20C-3 and §19-20C-4, all to read as follows:

21 **ARTICLE 20C. FELICITY'S LAW.**

22 **§19-20C-1. Short Title.**

23 This article may be known and cited as "Felicity's Law".

24 **§19-20C-2. Purpose.**

25 The purpose of this article is to protect the public by

1 providing a private cause of action seeking euthanasia of a dog in
2 magistrate court to a person who has been attacked and injured by
3 the dog causing damages in the amount of \$1,000 or greater or who
4 has been attacked by the dog and the dog had attacked a person
5 causing injury within the previous twenty-four months.

6 **§19-20C-3. Procedure; petition to magistrate court; elements of**
7 **action; burden of proof; attorney fees; limitation**
8 **of action.**

9 (a) A person seeking relief under this article may apply to
10 the magistrate court in the county where the dog owner resides, or
11 the county where the injury occurred, by verified petition setting
12 forth and affirming the following:

13 (1) That the owner of the dog resides in the county where the
14 petition is filed or the attack giving rise to the action occurred
15 in the county where the petition is filed;

16 (2) That the petitioner was:

17 (A) Attacked by the dog and the attack resulted in injuries
18 and damages in the amount of \$1,000 or greater; or

19 (B) Attacked by the dog and the dog had engaged in a separate
20 attack causing injury within the previous twenty-four months; and

21 (3) That the petitioner was not at fault in the attack.

22 (b) The petition and summons shall be served on the respondent
23 in the manner set forth in Rule 4 of the West Virginia Rules of
24 Civil Procedure.

1 (c) The petitioner must prove the allegations in the petition
2 by clear and convincing evidence.

3 (d) The prevailing party is entitled to an award of reasonable
4 attorney fees and costs.

5 (e) The limitations of the cause of action in this article are
6 as follows:

7 (1) Jurisdiction is exclusively in magistrate court;

8 (2) The magistrate serves as the trier of fact;

9 (3) The disposition by the magistrate court is final and
10 binding;

11 (4) Relief, other than attorney fees and costs in subsection
12 (d) of this article, is limited to an order directing that the
13 owner of the dog have the dog euthanized; and

14 (5) The cause of action provided by this article does not
15 establish statutory liability nor does it supplant a common law
16 negligence cause of action.

17 **§19-20C-4. Order of the magistrate court.**

18 (a) If the court finds by clear and convincing evidence that
19 the dog who is the subject of the action under this article has
20 attacked the petitioner and caused damages in the amount of \$1,000
21 or greater or that the dog attacked the petitioner and within the
22 twenty-four month period prior to the attack had engaged in a
23 separate attack causing injury, then the court shall order the
24 owner of the dog to have the dog euthanized.

1 (b) The magistrate court shall issue and file a written order
2 that sets forth the following:

3 (1) Findings of fact and conclusions of law; and

4 (2) If the court orders euthanasia, a specific date upon which
5 the owner of the dog must have the euthanasia performed and a
6 direction that documentation be mailed to the petitioner and filed
7 with the court by a specific date showing that the procedure was
8 performed.

9 (c) If the court does not order euthanasia, the order shall
10 dismiss the petition with prejudice.

11 (d) The magistrate court may award reasonable attorney fees
12 and costs to the prevailing party.

NOTE: The purpose of this bill is to protect the public by providing a private cause of action seeking euthanasia of a dog that has attacked a person and caused damages in an amount of \$1,000 or greater or has attacked a person and, within the previous twenty-four months, had engaged in a separate attack. The bills also provides a magistrate the discretion to award attorney fees and costs. The bill is titled "Felicity's Law" because Felicity was the two year old victim of a vicious dog attack whose parents sought judicial relief under §19-20-20, a statute providing for the destruction of vicious dogs. The West Virginia Supreme Court, in a 2012 decision, denied the relief sought by Felicity's parents, holding that §19-20-20 allows the destruction of a dog as a result of a criminal proceeding and does not authorize a private cause of action.

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