

COMMITTEE SUBSTITUTE

for

H. B. 2399

(BY DELEGATE(S) D. POLING, ANDERSON, MANYPENNY,
GUTHRIE, IRELAND, ELLEM AND SWARTZMILLER)

(Originating in the Committee on the Judiciary)

[March 29, 2013]

A BILL to amend and reenact §7-10-4 of the Code of West Virginia, as amended, relating to protecting livestock in dire or extreme condition; establishing a livestock committee; providing a process to follow when livestock are in dire or extreme condition; establishing a procedure where livestock are found to be in imminent danger; and the circumstances where action is required by humane officers and county commissions.

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.

1 (a) Subject to the provisions of subsection (h) of this section,
2 a humane officer shall take possession of any animal, including
3 birds or wildlife in captivity, known or believed to be
4 abandoned, neglected, deprived of necessary sustenance, shelter,
5 medical care or reasonable protection from fatal freezing or heat
6 exhaustion or cruelly treated or used ~~as defined~~ in an unlawful
7 way as described in sections nineteen and nineteen-a, article
8 eight, chapter sixty-one of this code.

9 (b) The owner or persons in possession, if his or her identity
10 and residence are known, of any animal seized pursuant to
11 subsection (a) of this section shall be provided written notice of
12 the seizure, his or her liability for the cost and care of the animal
13 seized as provided in this section and the right to request a
14 hearing in writing before a magistrate in the county where the
15 animal was seized. The magistrate court shall schedule any
16 hearing requested within ten working days of the receipt of the
17 request. The failure of an owner or person in possession to
18 request a hearing within five working days of the seizure is
19 prima facie evidence of the abandonment of the animal. At the
20 hearing, if requested, the magistrate shall determine by a
21 preponderance of the evidence if the animal was abandoned,

22 neglected or deprived of necessary sustenance, shelter, medical
23 care or reasonable protection from fatal freezing or heat
24 exhaustion or otherwise treated or used cruelly as set forth in this
25 section.

26 (c) (1) If a hearing is requested and the magistrate finds by
27 a preponderance of the evidence that the owner did abandon,
28 neglect or cruelly treat the animal, or if no hearing is requested
29 and the magistrate finds by a preponderance of the evidence,
30 based upon the affidavit of the humane officer, that the owner
31 did abandon, neglect or cruelly treat the animal, the magistrate
32 shall enter an order awarding custody of the animal to any
33 humane officer for further disposition in accordance with
34 reasonable practices for the humane treatment of animals. After
35 hearing the evidence, if the magistrate is not convinced the
36 animal was neglected or cruelly treated, he or she may dismiss
37 the action and order the animal be returned to the owner. If the
38 magistrate finds in favor of the humane officer, the owner of the
39 animal shall post a bond with the court in an amount sufficient
40 to provide for the reasonable costs of care, medical treatment and
41 provisions for the animal for at least thirty days. The bond shall
42 be filed with the court within five days following the court's
43 finding against the owner. At the end of the time for which
44 expenses are covered by the original bond if the animal remains
45 in the care of the humane officer and the owner desires to

46 prevent disposition of the animal by the humane officer, the
47 owner shall post an additional bond with the court within five
48 days of the expiration of the original bond. During this period
49 the humane officer is authorized to place the animal in a safe
50 private home or other safe private setting in lieu of retaining the
51 animal in an animal shelter. The person whose animal is seized
52 is liable for all costs of the care of the seized animal.

53 (2) If a bond has been posted in accordance with subdivision
54 (1) of this subsection, the custodial animal care agency may
55 draw from the bond the actual reasonable costs incurred by the
56 agency in providing care, medical treatment and provisions to
57 the impounded animal from the date of the initial impoundment
58 to the date of the final disposition of the animal.

59 (d) Any person whose animal is seized and against whom the
60 magistrate enters a finding pursuant to this section is liable
61 during any period it remains in the possession of the humane
62 officer for the reasonable costs of care, medical treatment and
63 provisions for the animal not covered by the posting of the bond
64 as provided in subdivision (1), subsection (c) of this section. The
65 magistrate shall require the person liable for these costs to post
66 bond to provide for the maintenance of the seized animal. This
67 expense, if any, becomes a lien on the animal and must be
68 discharged before the animal is released to the owner. Upon
69 dismissal or withdrawal of the complaint, any unused portion of

70 posted bonds shall be returned to the owner. Upon a finding in
71 favor of the humane officer, all interest in the impounded animal
72 shall transfer to the humane officer for disposition in accordance
73 with reasonable practices for the humane treatment of animals.
74 Any additional expense above the value of the animal may be
75 recovered by the humane officer or custodial agency.

76 (e) After the humane officer takes possession of the animal
77 pursuant to a finding by a magistrate that the animal has been
78 abandoned, neglected or cruelly treated and a licensed
79 veterinarian determines that the animal should be humanely
80 destroyed to end its suffering, the veterinarian may order the
81 animal to be humanely destroyed and neither the humane officer,
82 animal euthanasia technician nor the veterinarian is subject to
83 any civil or criminal liability as a result of the action.

84 (f) (1) The term “humanely destroyed” as used in this section
85 means:

86 (A) Humane euthanasia of an animal by hypodermic
87 injection by a licensed veterinarian or by an animal euthanasia
88 technician certified in accordance with the provisions of article
89 ten-a, chapter thirty of this code; or

90 (B) Any other humane euthanasia procedure approved by the
91 American Veterinary Medical Association, the Humane Society
92 of the United States or the American Humane Association.

93 (2) The term “humanely destroyed” does not include
94 euthanizing an animal by means of a gas chamber: *Provided*,
95 That any county which has a gas chamber in operation as of ~~the~~
96 ~~effective date of this section~~ August 27, 2009, may continue to
97 operate the gas chamber subject to the following: (1) The gas
98 chamber ~~shall be~~ is operated by an animal euthanasia technician
99 certified pursuant to article ten-a, chapter thirty of this code; and
100 (2) the gas chamber ~~shall have been~~ was manufactured and
101 installed by a person who regularly manufactures and installs gas
102 chambers. The Board of Veterinary Medicine shall promulgate
103 emergency rules regarding the inspection of gas chambers,
104 pursuant to section fifteen, article three, chapter twenty-nine-a
105 of this code.

106 (g) In case of an emergency in which an animal cannot be
107 humanely destroyed in an expeditious manner, an animal may be
108 destroyed by shooting if:

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

113 (2) Maximum precaution is taken to minimize the animal’s
114 suffering and to protect other persons and animals.

115 (h) (1) Except as provided by subdivision (2) of this
116 subsection, the provisions of this section do not apply to farm

117 livestock, as defined in subsection (d), section two, article ten-b,
118 chapter nineteen of this code; poultry, gaming fowl or wildlife
119 kept in private or licensed game farms if kept and maintained
120 according to usual and accepted standards of livestock; poultry,
121 gaming fowl, wildlife or game farm production and
122 management; nor to the humane use of animals or activities
123 regulated under and in conformity with the provisions of
124 7 U.S.C. §2131, *et seq.*, and the regulations promulgated
125 thereunder.

126 (2) In the case of livestock, as defined in section two, article
127 ten-b of chapter nineteen:

128 (A) Each county commission shall establish a livestock
129 committee, to handle complaints of inhumane livestock
130 treatment. The committee shall be appointed by the county
131 commission and shall consist of three recognized farmers or
132 livestock breeders within the county. Livestock committee
133 members shall serve at the will and pleasure of the county
134 commission.

135 (B) If during the course of an investigation a humane officer
136 finds livestock in dire or extreme condition, the humane officer
137 shall contact the livestock committee for further examination.

138 (C) If during the course of an investigation the humane
139 officer and livestock committee find that the livestock are in

140 such poor condition to be at imminent risk, they may involve the
141 services of a licensed veterinarian. The humane officer and the
142 livestock committee shall notify and make recommendation to
143 the county commission.

144 (D) If during the course of an investigation the humane
145 officer and livestock committee find livestock to be in an
146 unacceptable condition but not in imminent danger and are
147 unable to rectify the situation with the owner without legal
148 action, the humane officer and the livestock committee shall
149 notify the county commission for assistance. The county
150 commission shall then remedy the situation with the owner. The
151 humane officer and livestock committee shall assist the county
152 commission and follow up to ensure that the problems have been
153 remedied.

154 (i) All persons or entities in the state performing euthanasia
155 under this article shall register with the Board of Veterinary
156 Medicine by December 31, 2009, in a manner to be prescribed
157 by the board. The Board of Veterinary Medicine shall
158 promulgate emergency rules relating to the registration of those
159 performing animal euthanasia, pursuant to section fifteen, article
160 three, chapter twenty-nine-a of this code.