

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE FOR**

3 **H. B. 2757**

4  
5 (By Delegates Sponaugle, Lynch, A. Evans and Andes)

6  
7  
8 [Passed March 8, 2014; in effect ninety days from passage.]

9  
10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §19-20D-1, §19-20D-2  
12 and §19-20D-3, all relating to the creation of a private cause  
13 of action in magistrate court for the purpose of seeking  
14 humane destruction of a dog which has attacked a person;  
15 providing the elements of the cause of action and contents of  
16 the verified petition; allowing attorney fees; providing for  
17 limitations of the cause of action; requiring the court to  
18 issue a written order; providing for contents of order;  
19 requiring proof of euthansia; and requiring dismissal of  
20 petition if euthansia not ordered.

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

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

1 **ARTICLE 20D. PRIVATE CAUSE OF ACTION FOR THE HUMANE DESTRUCTION OF**  
2 **A DOG.**

3 **§19-20D-1. Purpose.**

4 The purpose of this article is to protect the public by  
5 providing a private cause of action seeking euthanasia of a dog in  
6 magistrate court to a person who has been attacked by a dog  
7 resulting in personal injuries requiring medical treatment which  
8 cost \$2,000 or more, or who has been attacked by the dog and the  
9 dog had attacked a person causing personal injury which required  
10 medical treatment within the previous twelve months.

11 **§19-20D-2. Procedure; petition to magistrate court; elements of**  
12 **action; burden of proof; attorney fees; limitation**  
13 **of action.**

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

18 (1) That the owner of the dog resides in the county where the  
19 petition is filed or the attack giving rise to the action occurred  
20 in the county where the petition is filed;

21 (2) That the petitioner was:

22 (A) Attacked by the dog and the attack resulted in personal  
23 injuries requiring medical treatment in the amount of \$2,000 or

1 more; or

2 (B) Attacked by the dog and the dog had engaged in a separate  
3 attack on a person causing personal injury requiring medical  
4 treatment within the previous twelve months; and

5 (3) That the petitioner did nothing to provoke the dog.

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

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

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

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

15 (1) Relief, other than attorney fees and costs in subsection  
16 (d) of this section, is limited to an order directing that the  
17 owner of the dog have the dog euthanized; and

18 (2) The cause of action provided by this article does not  
19 establish statutory liability nor does it supplant a common law  
20 negligence cause of action.

21 **§19-20D-3. Order of the magistrate court.**

22 (a) If the trier of fact finds by clear and convincing  
23 evidence that the dog which is the subject of the action under this  
24 article has attacked the petitioner and caused personal injuries

1 requiring medical treatment in the amount of \$2,000 or more or that  
2 the dog attacked the petitioner and within the twelve month period  
3 prior to the attack had engaged in a separate attack causing  
4 personal injury requiring medical treatment, then the court shall  
5 order the owner of the dog to have the dog euthanized.

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

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

9 (2) If the court orders euthanasia, a specific date upon which  
10 the owner of the dog must have the euthanasia performed and a  
11 direction that documentation be mailed to the petitioner and filed  
12 with the court by a specific date showing that the procedure was  
13 performed.

14 (c) If the court does not order euthanasia, the court shall  
15 order that the petition be dismissed with prejudice.

16 (d) The court may award reasonable attorney fees and costs to  
17 the prevailing party.