

FILED

2003 MAR 11 10 45 AM

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 205

(By Senator Kessler, et al)

PASSED February 27, 2003

In Effect ninety days from **Passage**

1777

2003 MAR 11

9

1777

ENROLLED

Senate Bill No. 205

(BY SENATORS KESSLER, MCKENZIE, EDGELL, BOWMAN,
ROWE, PREZIOSO, HUNTER, UNGER, PLYMALE,
SROUSE, MINEAR AND WHITE)

[Passed February 27, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nineteen, article eight, chapter sixty-one of said code, all relating to modifying the criminal intent requirement for animal cruelty crimes; increasing the fine applicable to convicted persons; eliminating the civil recovery limitation of the assessed value of a dog; creating a felony offense for intentionally torturing or maliciously killing animals; and mandating that persons convicted of animal cruelty be prohibited from possessing, owning or residing with animals for varying periods depending on whether the person is convicted of a misdemeanor or felony.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nineteen, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of companion animals.

1 (a) Any dog which is registered, kept and controlled as
2 provided in this article or any dog, cat or other animal or
3 any reptile which is owned, kept and maintained as a
4 companion animal by any person, irrespective of age, is
5 protected by law; and, except as otherwise authorized by
6 law, any person who shall intentionally, knowingly or
7 recklessly kill, injure, poison or in any other manner, cause
8 the death or injury of any dog, cat, other animal or any
9 reptile is guilty of a misdemeanor and, upon conviction
10 thereof, shall be ordered to provide public service for not
11 less than thirty nor more than ninety days or fined not less
12 than three hundred dollars nor more than five hundred
13 dollars, or both. However, this section does not apply to a
14 dog who is killed while attacking a person, a companion
15 animal or livestock. Any person whose dog, cat, other
16 animal or reptile as specified herein is killed or injured
17 wrongfully or unlawfully by any other person shall have a
18 right of action against the person who shall so kill or
19 injure any dog, cat, animal or reptile.

20 (b) Any person who shall intentionally and unlawfully
21 steal a dog, cat, other animal or reptile as specified in
22 subsection (a) of this section is guilty of a misdemeanor
23 and, upon conviction thereof, shall be ordered to provide
24 public service for not less than thirty nor more than ninety
25 days or fined not less than three hundred nor more than

26 five hundred dollars, or both. Any person violating the
27 provisions of this subsection shall, for second or subse-
28 quent offense, be guilty of a misdemeanor and, upon
29 conviction thereof, shall be confined in the county or
30 regional jail for a period of not less than ninety days nor
31 more than six months, or shall be ordered to provide
32 public service for not more than one year, and fined not
33 less than one thousand dollars. In no case can any action
34 or prosecution relating to a dog under the provisions of
35 this section be maintained if the dog concerned shall not
36 have been duly registered pursuant to the provisions of
37 this article or owned and kept pursuant to the provisions
38 of this section or owned and kept pursuant to the provi-
39 sions of this section at the time the cause of action shall
40 have arisen.

41 (c) The commissioner of agriculture is hereby authorized
42 to designate a reasonable number of his present employees
43 as may be necessary to investigate alleged incidents of the
44 unlawful stealing of dogs, other domestic animals or
45 reptiles, alleged incidents of cruelty to animals or reptiles
46 and the alleged incidents of the unlawful stealing of
47 animals or reptiles for the purpose of sale to medical or
48 other research companies. The deputies shall make the
49 results of their investigations known to any
50 law-enforcement officers who have authority to enforce
51 the provisions of this article.

52 (d) It shall be the duty of all members of the West
53 Virginia state police, sheriffs and police officers to aid in
54 the enforcement of the provisions of this article and, for
55 services rendered in the enforcement thereof, such persons
56 shall be entitled to fees in the amounts set forth in section
57 eight of this article. The fees shall be paid by the county
58 commission from the dog and kennel fund.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

1 (a) If any person cruelly mistreats, abandons or with-
2 holds proper sustenance, including food, water, shelter or
3 medical treatment, necessary to sustain normal health and
4 fitness or to end suffering or abandons any animal to die,
5 or uses, trains or possesses any domesticated animal for
6 the purpose of seizing, detaining or mistreating any other
7 domesticated animal, he or she is guilty of a misdemeanor
8 and, upon conviction thereof, shall be fined not less than
9 three hundred nor more than one thousand dollars or
10 confined in the county or regional jail not more than six
11 months, or both so fined and confined.

12 (b) If any person intentionally tortures or maliciously
13 kills an animal, or causes, procures or authorizes any other
14 person to torture or maliciously kill an animal, he or she is
15 guilty of a felony and, upon conviction thereof, shall be
16 confined in a correctional facility not less than one nor
17 more than three years and be fined not less than one
18 thousand dollars nor more than five thousand dollars. For
19 the purposes of this subsection, "torture" means an action
20 taken for the primary purpose of inflicting pain.

21 (c) Any person, other than a licensed veterinarian or a
22 person acting under the direction or with the approval of
23 a licensed veterinarian, who knowingly and willfully
24 administers or causes to be administered to any animal
25 participating in any contest any controlled substance or
26 any other drug for the purpose of altering or otherwise
27 affecting said animal's performance is guilty of a misde-
28 meanor and, upon conviction thereof, shall be fined not
29 less than one hundred nor more than one thousand dollars.

30 (d) Any person convicted of a violation of this section
31 shall forfeit his or her interest in any animal and all
32 interest in the animal shall vest in the humane society or
33 county pound of the county in which said conviction was
34 rendered and the person shall, in addition to any fine
35 imposed, be liable for any costs incurred or to be incurred
36 by the humane society or county pound as a result.

37 (e) For the purpose of this section, the term “controlled
38 substance” shall have the same meaning ascribed to it by
39 subsection (d), section one hundred one, article one,
40 chapter sixty-a of this code.

41 (f) The provisions of this section do not apply to lawful
42 acts of hunting, fishing, trapping or animal training or
43 farm livestock, poultry, gaming fowl or wildlife kept in
44 private or licensed game farms if kept and maintained
45 according to usual and accepted standards of livestock,
46 poultry, gaming fowl or wildlife or game farm production
47 and management, nor to humane use of animals or activi-
48 ties regulated under and in conformity with the provisions
49 of 7 U. S. C. §2131 et seq. and the regulations promul-
50 gated thereunder, as both statutes and regulations are in
51 effect on the effective date of this section.

52 (g) Notwithstanding the provisions of subsection (a) of
53 this section, any person convicted of a second or subse-
54 quent violation of said subsection is guilty of a misde-
55 meanor and shall be confined in the county or regional jail
56 for a period of not less than ninety days nor more than one
57 year, fined not less than five hundred dollars nor more
58 than two thousand dollars, or both. The incarceration set
59 forth in this subsection shall be mandatory unless the
60 provisions of subsection (h) are complied with.

61 (h) Notwithstanding any provision of this code to the
62 contrary, no person who has been convicted of a violation
63 of the provisions of subsection (a) or (b) of this section may
64 be granted probation until the defendant has undergone a
65 complete psychiatric or psychological evaluation and the
66 court has reviewed the evaluation. Unless the defendant
67 is determined by the court to be indigent, he or she shall be
68 responsible for the cost of said evaluation.

69 (i) In addition to any other penalty which can be imposed
70 for a violation of this section, a court shall prohibit any
71 person so convicted from possessing, owning or residing
72 with any animal or type of animal for a period of five

73 years following entry of a misdemeanor conviction and
74 fifteen years following entry of a felony conviction. A
75 violation under this subsection is a misdemeanor punish-
76 able by a fine not exceeding two thousand dollars and
77 forfeiture of the animal.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Camille
.....
Chairman Senate Committee

Sharon Spencer
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David Holmes
.....
Clerk of the Senate

Buzgey M. Smith
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert
.....
Speaker House of Delegates

The within is approved this the 11th
Day of March, 2003.

Bill
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/6/03

Time 3:25 pm