

Senate Bill No. 303

(By Senators Williams, Miller, Wills, Sypolt and Klempa)

[Introduced January 27, 2011; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §19-20-14, §19-20-15, §19-20-16, §19-20-17 and §19-20-18 of the Code of West Virginia, 1931, as amended, all relating to adding captive cervids to the list of animals protected from dogs which can result in the authorized killing of a dog by one observing a dog chasing or harming the identified animal.

Be it enacted by the Legislature of West Virginia:

That §19-20-14, §19-20-15, §19-20-16, §19-20-17 and §19-20-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20. DOGS AND CATS.

§19-20-14. Dog killing, wounding or worrying livestock or poultry
-- Recovery of damages.

If any dog has killed or assisted in killing, wounding or worrying any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, captive cervids or poultry out of the enclosure of the owner of the dog, the owner or keeper of the dog shall be liable for the sheep, lambs, goats, kids, calves,

1 cattle, swine, show or breeding rabbits, horses, colts, captive
 2 cervids or poultry in the amount of the damages sustained, to be
 3 recovered in an action before any court or magistrate having
 4 jurisdiction of the action. It shall not be necessary to sustain
 5 the action to prove that the owner of the dog knew the dog was
 6 accustomed to worrying, killing or wounding. A recovery under this
 7 section ~~shall bar and preclude~~ bars the owner of the sheep, lambs,
 8 goats, kids, calves, cattle, swine, show or breeding rabbits,
 9 horses, colts, captive cervids or poultry from obtaining
 10 compensation from the county commission under the provisions of
 11 this article. If the person suffering the loss or damage cannot
 12 ascertain the owner or keeper of the dog, or if the owner or keeper
 13 is not financially responsible, then the person suffering the loss
 14 or damage may file his or her claim with and prove the same before
 15 the county commission of the county in which the loss or damage is
 16 sustained, in the manner provided in this article, and the
 17 commission shall pay the loss or damage out of the fund provided
 18 for such purposes and according to the provisions of this article.
 19 When compensation is so obtained from the county commission, the
 20 county commission is authorized to sue under this section and
 21 recover as the owner of the sheep, lambs, goats, kids, calves,
 22 cattle, swine, show or breeding rabbits, horses, colts, captive
 23 cervids or poultry. The amount ~~so~~ recovered shall be paid into the
 24 county treasury but no suit ~~shall~~ may be commenced unless
 25 authorized by the county commission.

26 **§19-20-15. Same -- Assessment of damages; appraisers.**

27 Authority is ~~hereby~~ given to magistrates and notaries public

1 within this state, and within their respective jurisdictions, to
2 summon three substantial, upright and worthy bona fide residents,
3 citizens and taxpayers of his or her county to assess the damages
4 suffered by ~~any~~ a person on account of the destruction, loss or
5 injury of any sheep, lambs, goats, kids, calves, cattle, swine,
6 show or breeding rabbits, horses, colts, captive cervids or poultry
7 by dogs within the county. The appraisers shall be appointed upon
8 the request of a person suffering damages on account of such
9 destruction, loss or injury. The appraisers shall go upon the
10 ground and investigate fully the extent of the destruction, loss or
11 injury, taking all the evidence deemed necessary to arrive at the
12 facts to be passed upon in arriving at the amount of damage, if
13 any, suffered by the party making the complaint. Before the
14 appraisers may be summoned by the magistrate or notary public, the
15 complainant ~~shall be~~ is required to make a sworn complaint before
16 the magistrate or notary public, setting out in plain, easily
17 comprehensible terms the facts concerning his or her damages to the
18 best of his or her knowledge. After making a full investigation of
19 the facts involved, the appraisers, with the assistance of the
20 magistrate or notary public, shall make a sworn statement and
21 report the facts ascertained and the damages suffered. The report
22 and statement shall be filed with the county commission or the
23 clerk thereof in vacation. The fees and mileage for services
24 allowed in such cases shall be the same as are allowed magistrates,
25 witnesses and arbitrators in magistrates' courts in this state for
26 similar services. ~~In the event that~~ If the appraisers find that
27 the complainant has suffered no damage, ~~then~~ the complainant ~~shall~~

1 ~~be is~~ responsible for ~~and pay~~ all the costs and expenses of the
 2 proceeding. ~~In the event that~~ If the complainant has suffered
 3 damages on account of the destruction, loss or injury of his or her
 4 domestic animals, according to the finding of the appraisers, the
 5 owner, keeper or person permitting the dog or dogs causing the
 6 damage to remain upon the premises under his or her control ~~shall~~
 7 ~~be is~~ liable for all damages sustained by the complainant,
 8 including all costs and necessary expenses. All of the damages
 9 shall be collectible by an action at law before any court or
 10 magistrate having jurisdiction of the matter. All papers in
 11 connection with ~~any a~~ a claim shall be filed and preserved in the
 12 office of the clerk of the county commission.

13 **§19-20-16. Same -- When lawful to kill dog.**

14 A person may kill a dog that he or she ~~may see~~ observes
 15 chasing, worrying, wounding or killing any sheep, lambs, goats,
 16 kids, calves, cattle, swine, show or breeding rabbits, horses,
 17 colts, captive cervids or poultry outside of the enclosure of the
 18 owner of the dog, unless the chasing or worrying be done by the
 19 direction of the owner of the sheep, lambs, goats, kids, calves,
 20 cattle, swine, show or breeding rabbits or horses and colts,
 21 captive cervids or poultry.

22 **§19-20-17. Same -- Unlawful to harbor dog; penalty.**

23 A person who ~~shall harbor or secrete or aid~~ harbors, secretes
 24 or aids in secreting a dog which he or she knows or has reasons to
 25 believe has worried, chased or killed any sheep, lambs, goats,
 26 kids, calves, cattle, swine, show or breeding rabbits, horses,
 27 colts, captive cervids or poultry not the property of the owner of

1 the dog, out of his or her enclosure, or knowingly permits the same
2 to be done on any premises under his or her control, is guilty of
3 a misdemeanor and, upon conviction thereof, before any court or
4 magistrate having jurisdiction thereof in the county in which the
5 offense is committed, shall be fined not less than ~~ten dollars~~ \$10
6 nor more than ~~fifty dollars,~~ \$50, and, at the discretion of the
7 court or magistrate, imprisoned in ~~the county~~ jail not more than
8 thirty days. Each day that the dog is harbored, kept or secreted
9 ~~shall constitute~~ constitutes a separate offense.

10 **§19-20-18. Same -- Duty of owner to kill dog; proceeding before**
11 **magistrate on failure of owner to kill.**

12 The owner or keeper of a dog that has been worrying, wounding,
13 chasing or killing any sheep, lambs, goats, kids, calves, cattle,
14 swine, show or breeding rabbits, horses, colts, captive cervids or
15 poultry not the property of the owner or keeper, out of his or her
16 enclosure, shall, within forty-eight hours after having received
17 notice thereof in writing from a reliable and trustworthy source,
18 under oath, kill the dog or direct that the dog be killed. If the
19 owner or keeper refuses to kill the dog as hereinbefore provided,
20 the magistrate, upon information, shall summon the owner or keeper
21 of the dog, and, after receiving satisfactory proof that this dog
22 did the mischief, shall issue a warrant on application being made
23 by the owner of the sheep, lambs, goats, kids, calves, cattle,
24 swine, show or breeding rabbits, horses, or colts, captive cervids
25 or poultry killed and give it ~~into the hands of~~ to the sheriff, who
26 shall kill the dog forthwith or dispose of by other available
27 methods. The cost of the proceedings shall be paid by the owner or

1 keeper of the dog so killed, including a fee of ~~fifty cents~~ 50¢ to
2 the officer killing the dog. The owner or keeper of the dog, ~~so~~
3 ~~killed shall, in addition to the costs, be~~ in addition to the
4 costs, is liable to the owner of the sheep, lambs, goats, kids,
5 calves, cattle, swine, show or breeding rabbits, horses, colts,
6 captive cervids or poultry or to the county commission for the
7 value of the sheep, lambs, goats, kids, calves, cattle, swine, show
8 or breeding rabbits, horses or colts, captive cervids or poultry so
9 killed or injured.

NOTE: The purpose of this bill is to add captive cervids to the list of animals for whom one may kill a dog if observing a dog chasing or harming the animal.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.