

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2399**

4  
5 (By Delegates D. Poling, Anderson, Manypenny, Guthrie, Ireland,  
6 Ellem and Swartzmiller)

7 (Originating in the Committee on the Judiciary)

8 [March 29, 2013]

9  
10 A BILL to amend and reenact §7-10-4 of the Code of West Virginia,  
11 as amended, relating to protecting livestock in dire or  
12 extreme condition; establishing a livestock committee;  
13 providing a process to follow when livestock are in dire or  
14 extreme condition; establishing a procedure where livestock  
15 are found to be in imminent danger; and the circumstances  
16 where action is required by humane officers and county  
17 commissions.

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

19 That §7-10-4 of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted to read as follows:

21 **ARTICLE 10. HUMANE OFFICERS.**

22 **§7-10-4. Custody and care of animals abandoned, neglected or**  
23 **cruelly treated; hearing; bonds; liability for costs;**  
24 **liens; exclusions.**

25 (a) Subject to the provisions of subsection (h) of this  
26 section, a humane officer shall take possession of any animal,  
27 including birds or wildlife in captivity, known or believed to be

1 abandoned, neglected, deprived of necessary sustenance, shelter,  
2 medical care or reasonable protection from fatal freezing or heat  
3 exhaustion or cruelly treated or used ~~as defined~~ in an unlawful way  
4 as described in sections nineteen and nineteen-a, article eight,  
5 chapter sixty-one of this code.

6 (b) The owner or persons in possession, if his or her identity  
7 and residence are known, of any animal seized pursuant to  
8 subsection (a) of this section shall be provided written notice of  
9 the seizure, his or her liability for the cost and care of the  
10 animal seized as provided in this section and the right to request  
11 a hearing in writing before a magistrate in the county where the  
12 animal was seized. The magistrate court shall schedule any hearing  
13 requested within ten working days of the receipt of the request.  
14 The failure of an owner or person in possession to request a  
15 hearing within five working days of the seizure is prima facie  
16 evidence of the abandonment of the animal. At the hearing, if  
17 requested, the magistrate shall determine by a preponderance of the  
18 evidence if the animal was abandoned, neglected or deprived of  
19 necessary sustenance, shelter, medical care or reasonable  
20 protection from fatal freezing or heat exhaustion or otherwise  
21 treated or used cruelly as set forth in this section.

22 (c) (1) If a hearing is requested and the magistrate finds by  
23 a preponderance of the evidence that the owner did abandon, neglect  
24 or cruelly treat the animal, or if no hearing is requested and the  
25 magistrate finds by a preponderance of the evidence, based upon the  
26 affidavit of the humane officer, that the owner did abandon,  
27 neglect or cruelly treat the animal, the magistrate shall enter an

1 order awarding custody of the animal to any humane officer for  
2 further disposition in accordance with reasonable practices for the  
3 humane treatment of animals. After hearing the evidence, if the  
4 magistrate is not convinced the animal was neglected or cruelly  
5 treated, he or she may dismiss the action and order the animal be  
6 returned to the owner. If the magistrate finds in favor of the  
7 humane officer, the owner of the animal shall post a bond with the  
8 court in an amount sufficient to provide for the reasonable costs  
9 of care, medical treatment and provisions for the animal for at  
10 least thirty days. The bond shall be filed with the court within  
11 five days following the court's finding against the owner. At the  
12 end of the time for which expenses are covered by the original bond  
13 if the animal remains in the care of the humane officer and the  
14 owner desires to prevent disposition of the animal by the humane  
15 officer, the owner shall post an additional bond with the court  
16 within five days of the expiration of the original bond. During  
17 this period the humane officer is authorized to place the animal in  
18 a safe private home or other safe private setting in lieu of  
19 retaining the animal in an animal shelter. The person whose animal  
20 is seized is liable for all costs of the care of the seized animal.

21 (2) If a bond has been posted in accordance with subdivision  
22 (1) of this subsection, the custodial animal care agency may draw  
23 from the bond the actual reasonable costs incurred by the agency in  
24 providing care, medical treatment and provisions to the impounded  
25 animal from the date of the initial impoundment to the date of the  
26 final disposition of the animal.

27 (d) Any person whose animal is seized and against whom the

1 magistrate enters a finding pursuant to this section is liable  
2 during any period it remains in the possession of the humane  
3 officer for the reasonable costs of care, medical treatment and  
4 provisions for the animal not covered by the posting of the bond as  
5 provided in subdivision (1), subsection (c) of this section. The  
6 magistrate shall require the person liable for these costs to post  
7 bond to provide for the maintenance of the seized animal. This  
8 expense, if any, becomes a lien on the animal and must be  
9 discharged before the animal is released to the owner. Upon  
10 dismissal or withdrawal of the complaint, any unused portion of  
11 posted bonds shall be returned to the owner. Upon a finding in  
12 favor of the humane officer, all interest in the impounded animal  
13 shall transfer to the humane officer for disposition in accordance  
14 with reasonable practices for the humane treatment of animals. Any  
15 additional expense above the value of the animal may be recovered  
16 by the humane officer or custodial agency.

17 (e) After the humane officer takes possession of the animal  
18 pursuant to a finding by a magistrate that the animal has been  
19 abandoned, neglected or cruelly treated and a licensed veterinarian  
20 determines that the animal should be humanely destroyed to end its  
21 suffering, the veterinarian may order the animal to be humanely  
22 destroyed and neither the humane officer, animal euthanasia  
23 technician nor the veterinarian is subject to any civil or criminal  
24 liability as a result of the action.

25 (f) (1) The term "humanely destroyed" as used in this section  
26 means:

27 (A) Humane euthanasia of an animal by hypodermic injection by

1 a licensed veterinarian or by an animal euthanasia technician  
2 certified in accordance with the provisions of article ten-a,  
3 chapter thirty of this code; or

4 (B) Any other humane euthanasia procedure approved by the  
5 American Veterinary Medical Association, the Humane Society of the  
6 United States or the American Humane Association.

7 (2) The term "humanely destroyed" does not include euthanizing  
8 an animal by means of a gas chamber: *Provided*, That any county  
9 which has a gas chamber in operation as of ~~the effective date of~~  
10 ~~this section~~ August 27, 2009, may continue to operate the gas  
11 chamber subject to the following: (1) The gas chamber ~~shall be~~ is  
12 operated by an animal euthanasia technician certified pursuant to  
13 article ten-a, chapter thirty of this code; and (2) the gas chamber  
14 ~~shall have been~~ was manufactured and installed by a person who  
15 regularly manufactures and installs gas chambers. The Board of  
16 Veterinary Medicine shall promulgate emergency rules regarding the  
17 inspection of gas chambers, pursuant to section fifteen, article  
18 three, chapter twenty-nine-a of this code.

19 (g) In case of an emergency in which an animal cannot be  
20 humanely destroyed in an expeditious manner, an animal may be  
21 destroyed by shooting if:

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

26 (2) Maximum precaution is taken to minimize the animal's  
27 suffering and to protect other persons and animals.

1       (h) (1) Except as provided by subdivision (2) of this  
2 subsection, the provisions of this section do not apply to farm  
3 livestock, as defined in subsection (d), section two, article  
4 ten-b, chapter nineteen of this code; poultry, gaming fowl or  
5 wildlife kept in private or licensed game farms if kept and  
6 maintained according to usual and accepted standards of livestock;  
7 poultry, gaming fowl, wildlife or game farm production and  
8 management; nor to the humane use of animals or activities  
9 regulated under and in conformity with the provisions of 7 U.S.C.  
10 §2131, *et seq.*, and the regulations promulgated thereunder.

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

13       (A) Each county commission shall establish a livestock  
14 committee, to handle complaints of inhumane livestock treatment.  
15 The committee shall be appointed by the county commission and shall  
16 consist of three recognized farmers or livestock breeders within  
17 the county. Livestock committee members shall serve at the will and  
18 pleasure of the county commission.

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

22       (C) If during the course of an investigation the humane  
23 officer and livestock committee find that the livestock are in such  
24 poor condition to be at imminent risk, they may involve the  
25 services of a licensed veterinarian. The humane officer and the  
26 livestock committee shall notify and make recommendation to the  
27 county commission.

1        (D) If during the course of an investigation the humane  
2 officer and livestock committee find livestock to be in an  
3 unacceptable condition but not in imminent danger and are unable to  
4 rectify the situation with the owner without legal action, the  
5 humane officer and the livestock committee shall notify the county  
6 commission for assistance. The county commission shall then remedy  
7 the situation with the owner. The humane officer and livestock  
8 committee shall assist the county commission and follow up to  
9 ensure that the problems have been remedied.

10        (i) All persons or entities in the state performing euthanasia  
11 under this article shall register with the Board of Veterinary  
12 Medicine by December 31, 2009, in a manner to be prescribed by the  
13 board. The Board of Veterinary Medicine shall promulgate emergency  
14 rules relating to the registration of those performing animal  
15 euthanasia, pursuant to section fifteen, article three, chapter  
twenty-nine-a of this code.