

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2168**

BY DELEGATES MCGEEHAN, HAMRICK AND FOLK

[Introduced February 8, 2017;

Referred to Political Subdivisions then the Judiciary.]

1 A BILL to amend and reenact §7-1-14 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §8-12-5 of said code, all relating to prohibiting counties and  
 3 municipalities from adopting ordinances or regulations that base restrictions on the breed  
 4 of a dog.

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

1 That §7-1-14 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that §8-12-5 of said code be amended and reenacted, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-14. Custody and care of animals abandoned, neglected or cruelly treated; animals causing public nuisance, health risk or safety hazard; authority of county commission.**

1 (a) Notwithstanding any provision of this code to the contrary, any county commission may  
 2 adopt ordinances, rules and regulations providing for the custody and care of animals that have  
 3 been abandoned, neglected or cruelly treated for the protection of any such animal and to prevent  
 4 it from becoming a public nuisance or risk to public health or safety or the environment.

5 (b) Any such ordinance, rule or regulation may require each owner to provide for each of  
 6 his or her animals:

7 (1) Adequate food which provides sufficient quantity and nutritive value to maintain each  
 8 animal in good health;

9 (2) Adequate water which provides easy access to clean, fresh, potable water of a  
 10 drinkable temperature in sufficient volume and suitable intervals to maintain normal hydration for  
 11 each animal;

12 (3) Adequate shelter to protect the animal from the elements and other animals;

13 (4) Adequate space in the primary enclosure for the particular animal depending upon its  
 14 age, size, species and weight which is regularly cleaned to prevent an unsanitary accumulation

15 of urine and feces;

16 (5) Adequate exercise to assure that the animal maintains normal muscle tone and mass  
17 for the age, species, size and condition of the animal; and

18 (6) Veterinary care when needed or to prevent suffering or disease transmission.

19 (c) Any such ordinance, rule or regulation may limit the number of animals owned, kept or  
20 maintained by an individual, group or organization, whether public or private based on the  
21 person's ability to provide for the animals as set forth in subsection (b) of this section: Provided,  
22 That no such ordinance, rule or regulation may create restrictions based on the breed of a dog.

23 (d) Any such ordinance, rule or regulation shall provide appropriate penalties for violations  
24 and shall authorize humane officers to take possession of any animal that is not properly cared  
25 for as required by such ordinance, rule or regulation.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED  
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL  
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-5. General powers of every municipality and the governing body thereof.**

1 In addition to the powers and authority granted by: (i) The Constitution of this state; (ii)  
2 other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not  
3 inconsistent or in conflict with any of the foregoing except special legislative charters, every  
4 municipality and the governing body thereof shall have plenary power and authority therein by  
5 ordinance or resolution, as the case may require, and by appropriate action based thereon:

6 (1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in  
7 good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks,  
8 drains and gutters, for the use of the public, and to improve and light the same, and have them  
9 kept free from obstructions on or over them which have not been authorized pursuant to the

10 succeeding provisions of this subdivision; and, subject to such terms and conditions as the  
11 governing body shall prescribe, to permit, without in any way limiting the power and authority  
12 granted by the provisions of article sixteen of this chapter, any person to construct and maintain  
13 a passageway, building or other structure overhanging or crossing the airspace above a public  
14 street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person  
15 to construct and maintain a passageway, building or other structure overhanging or crossing any  
16 airspace is granted, a public hearing thereon shall be held by the governing body after publication  
17 of a notice of the date, time, place and purpose of the public hearing has been published as a  
18 Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of  
19 this code and the publication area for the publication shall be the municipality: *Provided*, That any  
20 permit so granted shall automatically cease and terminate in the event of abandonment and  
21 nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or  
22 thereto shall revert to the municipality for its use and benefit;

23 (2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways,  
24 sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions  
25 under which any such opening may be made;

26 (3) To prevent by proper penalties the throwing, depositing or permitting to remain on any  
27 street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron,  
28 nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of  
29 individuals or animals or the tires of vehicles;

30 (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks  
31 and public places belonging to the municipality, including the naming or renaming thereof, and to  
32 consult with local postal authorities, the Division of Highways and the directors of county  
33 emergency communications centers to assure uniform, nonduplicative addressing on a  
34 permanent basis;

35 (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of  
36 article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved,  
37 repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants  
38 thereof or of the real property next adjacent thereto;

39 (6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels  
40 and ferries and approaches thereto;

41 (7) To provide for the construction and maintenance of water drains, the drainage of  
42 swamps or marshlands and drainage systems;

43 (8) To provide for the construction, maintenance and covering over of watercourses;

44 (9) To control and administer the waterfront and waterways of the municipality and to  
45 acquire, establish, construct, operate and maintain and regulate flood control works, wharves and  
46 public landings, warehouses and all adjuncts and facilities for navigation and commerce and the  
47 utilization of the waterfront and waterways and adjacent property;

48 (10) To prohibit the accumulation and require the disposal of garbage, refuse, debris,  
49 wastes, ashes, trash and other similar accumulations whether on private or public property:  
50 *Provided*, That in the event the municipality annexes an area which has been receiving solid  
51 waste collection services from a certificated solid waste motor carrier, the municipality and the  
52 solid waste motor carrier may negotiate an agreement for continuation of the private solid waste  
53 motor carrier services for a period of time, not to exceed three years, during which time the  
54 certificated solid waste motor carrier may continue to provide exclusive solid waste collection  
55 services in the annexed territory;

56 (11) To construct, establish, acquire, equip, maintain and operate incinerator plants and  
57 equipment and all other facilities for the efficient removal and destruction of garbage, refuse,  
58 wastes, ashes, trash and other similar matters;

59 (12) To regulate or prohibit the purchase or sale of articles intended for human use or

60 consumption which are unfit for use or consumption, or which may be contaminated or otherwise  
61 unsanitary;

62 (13) To prevent injury or annoyance to the public or individuals from anything dangerous,  
63 offensive or unwholesome;

64 (14) To regulate the keeping of gunpowder and other combustibles;

65 (15) To make regulations guarding against danger or damage by fire;

66 (16) To arrest, convict and punish any individual for carrying about his or her person any  
67 revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or  
68 any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect  
69 to any firearm a municipality may only arrest, convict and punish someone if they are in violation  
70 of an ordinance authorized by subsection five-a of this article, a state law proscribing certain  
71 conduct with a firearm or applicable federal law;

72 (17) To arrest, convict and punish any person for importing, printing, publishing, selling or  
73 distributing any pornographic publications;

74 (18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting  
75 to another person any house or other building for the purpose of being used or kept as a house  
76 of ill fame, or for knowingly permitting any house owned by him or her or under his or her control  
77 to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame,  
78 or frequenting same;

79 (19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd,  
80 obscene and indecent;

81 (20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

82 (21) To arrest, convict and punish any individual for driving or operating a motor vehicle  
83 while intoxicated or under the influence of liquor, drugs or narcotics;

84 (22) To arrest, convict and punish any person for gambling or keeping any gaming tables,

85 commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under  
86 any denomination, whether the gaming table be played with cards, dice or otherwise, or any  
87 person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank,  
88 or keeping or maintaining any gaming house or place, or betting or gambling for money or  
89 anything of value;

90 (23) To provide for the elimination of hazards to public health and safety and to abate or  
91 cause to be abated anything which in the opinion of a majority of the governing body is a public  
92 nuisance;

93 (24) To license, or for good cause to refuse to license in a particular case, or in its  
94 discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for  
95 hire of pool and billiard tables notwithstanding the general law as to state licenses for any such  
96 business and the provisions of section four, article thirteen of this chapter; and when the  
97 municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard  
98 room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly  
99 appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in  
100 the event that the municipality determines to license any business, the municipality has plenary  
101 power and authority and it shall be the duty of its governing body to make and enforce reasonable  
102 ordinances regulating the licensing and operation of the businesses;

103 (25) To protect places of divine worship and to preserve peace and order in and about the  
104 premises where held;

105 (26) To regulate or prohibit the keeping of animals or fowls and to provide for the  
106 impounding, sale or destruction of animals or fowls kept contrary to law or found running at large:  
107 Provided, That an ordinance or regulation may not make restrictions based on the breed of a dog;

108 (27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly  
109 beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of

110 necessary sustenance any domestic animal;

111 (28) To provide for the regular building of houses or other structures, for the making of  
112 division fences by the owners of adjacent premises and for the drainage of lots by proper drains  
113 and ditches;

114 (29) To provide for the protection and conservation of shade or ornamental trees, whether  
115 on public or private property, and for the removal of trees or limbs of trees in a dangerous  
116 condition;

117 (30) To prohibit with or without zoning the location of occupied house trailers or mobile  
118 homes in certain residential areas;

119 (31) To regulate the location and placing of signs, billboards, posters and similar  
120 advertising;

121 (32) To erect, establish, construct, acquire, improve, maintain and operate a gas system,  
122 a waterworks system, an electric system or sewer system and sewage treatment and disposal  
123 system, or any combination of the foregoing (subject to all of the pertinent provisions of articles  
124 nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right  
125 of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits  
126 of the municipality, except that the municipality may not erect any system partly without the  
127 corporate limits of the municipality to serve persons already obtaining service from an existing  
128 system of the character proposed and where the system is by the municipality erected, or has  
129 heretofore been so erected, partly within and partly without the corporate limits of the municipality,  
130 the municipality has the right to lay and collect charges for service rendered to those served within  
131 and those served without the corporate limits of the municipality and to prevent injury to the  
132 system or the pollution of the water thereof and its maintenance in a healthful condition for public  
133 use within the corporate limits of the municipality;

134 (33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any



135 and all other property and appurtenances necessary, appropriate, useful, convenient or incidental  
136 to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all  
137 of the pertinent provisions of articles nineteen and twenty of this chapter;

138 (34) To establish, construct, acquire, maintain and operate and regulate markets and  
139 prescribe the time of holding the same;

140 (35) To regulate and provide for the weighing of articles sold or for sale;

141 (36) To establish, construct, acquire, maintain and operate public buildings, municipal  
142 buildings or city halls, Auditoriums, arenas, jails, juvenile detention centers or homes, motor  
143 vehicle parking lots or any other public works;

144 (37) To establish, construct, acquire, provide, equip, maintain and operate recreational  
145 parks, playgrounds and other recreational facilities for public use and in this connection also to  
146 proceed in accordance with the provisions of article two, chapter ten of this code;

147 (38) To establish, construct, acquire, maintain and operate a public library or museum or  
148 both for public use;

149 (39) To provide for the appointment and financial support of a library board in accordance  
150 with the provisions of article one, chapter ten of this code;

151 (40) To establish and maintain a public health unit in accordance with the provisions of  
152 section two, article two, chapter sixteen of this code, which unit shall exercise its powers and  
153 perform its duties subject to the supervision and control of the West Virginia Board of Health and  
154 State Bureau for Public Health;

155 (41) To establish, construct, acquire, maintain and operate hospitals, sanitarians and  
156 dispensaries;

157 (42) To acquire, by purchase, condemnation or otherwise, land within or near the  
158 corporate limits of the municipality for providing and maintaining proper places for the burial of  
159 the dead and to maintain and operate the same and regulate interments therein upon terms and

160 conditions as to price and otherwise as may be determined by the governing body and, in order  
161 to carry into effect the authority, the governing body may acquire any cemetery or cemeteries  
162 already established;

163 (43) To exercise general police jurisdiction over any territory without the corporate limits  
164 owned by the municipality or over which it has a right-of-way;

165 (44) To protect and promote the public morals, safety, health, welfare and good order;

166 (45) To adopt rules for the transaction of business and the government and regulation of  
167 its governing body;

168 (46) Except as otherwise provided, to require and take bonds from any officers, when  
169 considered necessary, payable to the municipality, in its corporate name, with such sureties and  
170 in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their  
171 duties;

172 (47) To require and take from the employees and contractors such bonds in a penalty,  
173 with such sureties and with such conditions, as the governing body may see fit;

174 (48) To investigate and inquire into all matters of concern to the municipality or its  
175 inhabitants;

176 (49) To establish, construct, require, maintain and operate such instrumentalities, other  
177 than free public schools, for the instruction, enlightenment, improvement, entertainment,  
178 recreation and welfare of the municipality's inhabitants as the governing body may consider  
179 necessary or appropriate for the public interest;

180 (50) To create, maintain and operate a system for the enumeration, identification and  
181 registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes  
182 thereof as may be considered advisable;

183 (51) To require owners, residents or occupants of factory-built homes situated in a factory-  
184 built rental home community with at least ten factory-built homes, to visibly post the specific

185 numeric portion of the address of each factory-built home on the immediate premises of the  
186 factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the  
187 event no numeric or other specific designation of an address exists for a factory-built home subject  
188 to the authorization granted by this subdivision, the municipality has the authority to provide a  
189 numeric or other specific designation of an address for the factory-built home and require that it  
190 be posted in accordance with the authority otherwise granted by this section.

191 (52) To appropriate and expend not exceeding twenty-five cents per capita per annum for  
192 advertising the municipality and the entertainment of visitors;

193 (53) To conduct programs to improve community relations and public relations generally  
194 and to expend municipal revenue for such purposes;

195 (54) To reimburse applicants for employment by the municipality for travel and other  
196 reasonable and necessary expenses actually incurred by the applicants in traveling to and from  
197 the municipality to be interviewed;

198 (55) To provide revenue for the municipality and appropriate the same to its expenses;

199 (56) To create and maintain an employee benefits fund which may not exceed one tenth  
200 of one percent of the annual payroll budget for general employee benefits and which is set up for  
201 the purpose of stimulating and encouraging employees to develop and implement cost-saving  
202 ideas and programs and to expend moneys from the fund for these purposes;

203 (57) To enter into reciprocal agreements with governmental subdivisions or agencies of  
204 any state sharing a common border for the protection of people and property from fire and for  
205 emergency medical services and for the reciprocal use of equipment and personnel for these  
206 purposes;

207 (58) To provide penalties for the offenses and violations of law mentioned in this section,  
208 subject to the provisions of section one, article eleven of this chapter, and such penalties may not  
209 exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses

210 and violations; and

211 (59) To participate in a purchasing card program for local governments authorized and

212 administered by the State Auditor as an alternative payment method.

NOTE: The purpose of this bill is to prohibit municipalities and counties from enacting ordinances or regulations that base restrictions on the breed of a dog.

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