WEST virginia legislature

2021 regular session

ENGROSSED

Committee Substitute

for

House Bill 2095

By Delegates Graves, Rowe, Thompson, Haynes, Zukoff and Kimble

[Introduced February 10, 2021; referred to the Committee on the Judiciary]

A BILL to amend and reenact §7-1-14 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-10-1a and §7-10-6; to amend and reenact §7-10-2 and §7-10-4 of said code; to amend said code by adding thereto two new sections, designated §19-20-12a and §19-20-27; to amend and reenact §19-20-22 and §19-20-26; to amend and reenact §61-8-19 of said code; and to amend said code by adding thereto two new sections, designated §61-8-19d and §61-8-19e, all relating generally to providing increased protections for the welfare of domestic animals; requiring facilities for the care of stray, abandoned, and surrendered animals and providing for access by the public; defining terms; updating the duties of humane officers; specifying standards for the operation of animal shelters; requiring inspections; establishing sanctions for violation of the standards of operation; defining an owner’s duty of care for companion animals; requiring an owner to confine unspayed female dogs in estrus; requiring dog breeders to provide written disclosures to purchasers; specifying minimum levels of care to be provided by dog breeders; defining when a dog is unfit for sale by a dog breeder and providing remedies therefor; increasing the penalty for a second offence of cruelty to animals; defining the criminal offenses of unlawful confinement of domestic animals and hoarding of animals; establishing criminal penalties; and providing for mental health treatment in certain circumstances involving hoarding of animals.

Be it enacted by the Legislature of West Virginia:

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.

(a) The governing body of each county or municipality shall ensure a facility exists to house and care for animals in the custody of the county or municipality, including stray animals, abandoned animals, surrendered animals, and animals removed in response to claims of abuse or neglect, either by:

(1) Maintaining, or causing to be maintained, a public animal shelter;

(2) Contracting with a private group to house and care for animals;

(3) Contracting with another municipality for the housing and care of animals; or

(4) In the case of livestock or other large animals, developing a plan for the custody of livestock or large animals in housing, barns, or fields as is appropriate for the species.

~~(b) Any public animal shelter or shelter contracting with a county or municipality shall be accessible to the public at reasonable hours during the week;~~

~~(c) Any public animal shelter or shelter contracting with a county or municipality must provide care and housing for dogs and may accept any other animals at its discretion.~~

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

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

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

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

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

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

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

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

~~(c)~~ (d) Any such ordinance, rule or regulation may limit the number of animals owned, kept or maintained by an individual, group or organization, whether public or private based on the person’s ability to provide for the animals as set forth in subsection ~~(b)~~ (e) of this section.

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

ARTICLE 10. HUMANE OFFICERS.

§7-10-1a. Definitions.

As used in this article,

(a) “Animal shelter” means a public or private facility which includes a physical structure that provides housing for stray, abandoned, abused, or owner-surrendered dogs or cats and that is operated, owned, or maintained by a county or municipality for animal control purposes or by a duly incorporated humane society, animal welfare society, or other nonprofit organization.

(b) “Humane officer” means a person designated pursuant to §7-10-1 of this code to investigate complaints of cruel or inhumane treatment of animals and enforce laws related to the prevention of cruelty to animals.

(c) “Primary Enclosure” means structure or device used to restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, kennel, or hutch, where an animal will sleep, eat, and spend the majority of its time.

(d) “Temporary Enclosure” means a cage or crate designed for short-term, temporary confinement or travel (e.g., airline crates, transport carriers, etc.); dogs and cats may be housed in temporary enclosures for no longer than 48 hours after being taken into custody by an animal shelter.

§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

(a) Humane officers shall prevent the perpetration or continuance of any act of cruelty upon any animal and investigate and, upon probable cause, cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and, as provided by law, such officers have the right to access and inspect records and property reasonably necessary to any investigation. Humane officers also have the duty to enforce the provisions of §7-10-6 of this code, including the investigation of complaints against, and inspection of, animal shelters.

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds for the suspicion. In the event of suspected child abuse or neglect, the humane officer shall report to the local child protective services agency of the Department of Health and Human Resources in accordance with the provisions of §49-2-809 of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department’s local adult protective services agency in accordance with the provisions of §9-6-11 of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of §48-27-101 *et seq.* of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or confined in jail not more than 30 days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

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

(a) Subject to the provisions of subsection (h) of this section, a humane officer shall take possession of any animal, including birds or wildlife in captivity, known or believed to be abandoned, neglected, deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion or cruelly treated or used as defined in §61-8-19 and §61-8-19a of this code.

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

(c) (1) If a hearing is requested and the magistrate finds by a preponderance of the evidence that the owner did abandon, neglect or cruelly treat the animal, or if no hearing is requested and the magistrate finds by a preponderance of the evidence, based upon the affidavit of the humane officer, that the owner did abandon, neglect or cruelly treat the animal, the magistrate shall enter an order awarding custody of the animal to any humane officer for further disposition in accordance with reasonable practices for the humane treatment of animals. After hearing the evidence, if the magistrate is not convinced the animal was neglected or cruelly treated, he or she may dismiss the action and order the animal be returned to the owner. If the magistrate finds in favor of the humane officer, the owner of the animal shall post a bond with the court in an amount sufficient to provide for the reasonable costs of care, medical treatment and provisions for the animal for at least 30 days. The bond shall be filed with the court within five days following the court’s finding against the owner. At the end of the time for which expenses are covered by the original bond if the animal remains in the care of the humane officer and the owner desires to prevent disposition of the animal by the humane officer, the owner shall post an additional bond with the court within five days of the expiration of the original bond. During this period the humane officer is authorized to place the animal in a safe private home or other safe private setting in lieu of retaining the animal in an animal shelter. The person whose animal is seized is liable for all costs of the care of the seized animal.

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

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

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

(f) (1) The term “humanely destroyed” as used in this section means:

(A) Humane euthanasia of an animal by hypodermic injection by a licensed veterinarian or by an animal euthanasia technician certified in accordance with the provisions of §30-10A-1 *et seq.* of this code; or

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

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

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

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

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

(h) The provisions of this section do not apply to farm livestock, as defined in §19-10B-2(d) of this code; poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock; poultry, gaming fowl, wildlife or game farm production and management; nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, *et seq.*, and the regulations promulgated thereunder.

(i) All persons or entities in the state performing euthanasia under this article shall register with the board of Veterinary Medicine by December 31, 2009, in a manner to be prescribed by the board. The Board of Veterinary Medicine shall ~~promulgate emergency rules~~ propose rules for legislative approval relating to the registration of those performing animal euthanasia, pursuant to §29A-3-15 of this code.

§7-10-6. Inspection of animal shelters; standards; penalties.

(a)(1) Humane officers shall inspect all animal shelters within the county and shall investigate all complaints about the care and welfare of animals in such facilities. Such inspections shall be unannounced and shall occur within the normal business hours of the animal shelter. Inspections shall be performed at least annually, and up to two routine inspections may be conducted per year. ~~Additional inspections may be performed based on probable cause to believe a shelter might be in violation of these and other applicable standards, pursuant to a proper search warrant.~~ The humane officer shall document the inspection or investigation, or both, and present copies of the report to the animal shelter and to the county commissioners.

(2) If the humane officer operates, is employed by, or is otherwise affiliated with an animal shelter in the county, any inspection or investigation of that facility shall be done by a veterinarian licensed in this state, accompanied by the sheriff or a deputy not appointed as a humane officer. Such veterinarian shall document the inspection or investigation, or both, and present copies of the report to the animal shelter and to the sheriff’s department.

(b) All animal shelters shall:

(1) Separate animals by species in primary enclosures, separate unaltered male and female animals of the same species at all times, and ensure that all animals in the same enclosure at the same time are compatible;

(2) Provide adequate housing, including:

(A) Isolation of sick or injured animals sufficient to protect the health or safety of other animals; ~~animals diagnosed with or suspected of communicable illness must be physically isolated from healthy animals either by permanent or temporary barriers sufficient to prevent the transmission of airborne and physical contaminants, and all appropriate steps must be taken to minimize transmission of disease.~~

(B) Indoor housing facilities with protection from extreme temperatures and weather conditions that may be hazardous to the animals~~, including heated quarters during cold weather; whenever possible, animals’ primary housing should be indoors~~.

(C) Indoor housing facilities which are: Sanitary and in good repair; free of standing water; ~~constructed of fully disinfectable materials (no wood or other porous surfaces); constructed of solid flooring (no mesh, wire, or slatted floors);~~ and sufficiently climate-controlled and ventilated to provide for the animals’ health and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. ~~Ambient temperature must not fall below 50̊ F (10̊ C), or rise above 85̊ F (29.5̊ C) when animals are present unless expressly authorized by a veterinarian~~;

(D) Outdoor housing facilities, if used to house animals, that are ~~must be~~ large enough to accommodate all animals in the enclosure simultaneously and allow the animals to remain dry and protected from extreme temperature or weather conditions that may be hazardous to the animals. ~~Outdoor housing should not be considered suitable primary enclosures for cats and dogs unless no reasonable indoor option is available.~~

(E) Primary enclosures for dogs must be at least six inches higher than the head of the tallest dog in the enclosure when the dog is in a normal standing position and must allow sufficient space for sleeping, eating, and elimination~~, and must ensure that each animal has sufficient room to engage in normal behaviors~~;

(F) Primary enclosures for cats must allow each animal to fully extend its limbs, including its tail, and must allow for sleeping, eating, and elimination areas~~; enclosures ideally should provide two feet of triangulated distance between bedding, litterbox, and food/water bowls~~; and

(G) Primary enclosures for all animals must be large enough for each animal to turn about freely, stand erect, lie down in a natural position, and fully extend their limbs. Primary enclosures must contain a rest board, floormat, or similar device that can be maintained in a sanitary condition.

(3) Clean primary enclosures and housing facilities to remove urine, feces, hair, dirt, debris, and food waste at least daily, or more often if necessary, to prevent accumulation and to reduce disease hazards, insects, pests, and odors. While animals need not necessarily be removed from housing areas during cleaning, they may not be permitted to come into direct contact with disinfectants, cleaning solutions, or other potentially harmful products, nor may they be permitted to become wet during the cleaning process, either directly or indirectly; in no case may high-pressure water systems be used to clean kennels with animals still inside them;

(4) Provide adequate veterinary care for sick or injured animals~~, such that animals suspected of illness or injury receive veterinary care within 24 hours and are provided medication necessary to alleviate pain~~;

(5) Provide continuous access to potable, uncontaminated water that is not frozen and is readily accessible to all animals in the enclosure, unless otherwise directed by a veterinarian for the health of the animal;

(6) Provide palatable, uncontaminated food at least once daily, unless otherwise directed by a veterinarian for the health of the animal;

~~(7) Ensure each animal is individually observed at least twice in every 24-hour period by an animal shelter supervisor tasked with overseeing the welfare and care of the animals;~~

~~(8)~~ (7) Provide all animals with daily enrichment to ensure adequate mental and physical stimulation, either outside or inside the animals’ primary enclosure. ~~Dogs should be removed from their primary enclosures for exercise (walks, playgroup sessions, etc.) at least once per day, unless inclement weather, isolation/quarantine/health restrictions, or staffing limitations prevent their removal; in such cases, shelters must document daily in-kennel enrichment provided to maintain the physical and psychological well-being of dogs not afforded outdoor exercise~~; and

(9) Keep written records of the care of each animal, ~~including, but not limited to, documentation of daily cleanings, individual observation of each animal, and outdoor access, as well as veterinary treatment,~~ and provide these records to the humane officer or other inspector authorized by subsection (a) of this section upon request.

(c) Humane officers or other inspectors authorized by subsection (a) of this section may issue orders to address violations of this section, including, but not limited to, ordering suspension of intake of animals until violations are corrected and permanent closure of the facility.

(d) If the humane officer or other inspector authorized by subsection (a) of this section finds that the animal shelter is not in compliance with the standards established in this section, the humane officer or other authorized inspector shall issue orders as follows:

(1) For the first non-compliant inspection, the animal shelter shall be issued a warning and shall be reinspected 30 days after the date of the first inspection.

(2) If, after the second inspection, the animal shelter remains noncompliant, the animal shelter shall be subject to a fine of not less than $100 nor more than $500 and/or the humane officer or other authorized inspector shall issue an order requiring the animal shelter to suspend intake of animals for a period of 15-30 days, as needed to address the noncompliance. After such period, the animal shelter shall be reinspected.

(3) If, after the third inspection, the animal shelter remains noncompliant, the humane officer or other authorized inspector shall issue an order permanently closing the facility. Such order shall grant the animal shelter a period of 30-90 days, as needed, to transfer all animals in the facility to other animal shelters, organizations, or individuals within the state. Animals from animal shelters subject to a closure order may be transferred out of the state as long as the transfer does not violate laws of this state or of the importing state.

(e) Nothing in this section prevents any local, state, or federal law-enforcement agency from investigating animal cruelty in animal shelters.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-12a. Owner’s duty of care of companion animals.

(a) As used in this section:

(1) “Adequate care” ~~or “care”~~ means the responsible practice of good animal husbandry, handling, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and when necessary, euthanasia, appropriate for the age, species, condition, size, and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health;

(2) “Adequate exercise” ~~or “exercise”~~ means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal, in order to promote good physical and psychological health;

(3) “Adequate feed” means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal, is provided in a clean and sanitary manner; is placed so as to minimize contamination from excrement and pests; and is provided at suitable levels for the species, age and condition of the animal, at least once daily, except as otherwise prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting for that species;

(4) “Adequate shelter” means provision of and access to shelter that is suitable for the species, age, condition, and age of each animal; provides adequate space for each animal, is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, adverse effect of heat or cold, physical suffering, and impairment of health; is properly lighted to provide a regular diurnal cycle and to allow observation of the physical condition of the animal; is properly cleaned by regular removal of excreta and food waste; enables each animal to be clean and dry, except when detrimental to the species; is properly shaded during hot weather and does not readily conduct heat; has a windbreak at its entrance during cold weather and provides a sufficient quantity of bedding material to protect the animal from cold and to promote the retention of body heat; and for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie upon in a normal manner and can be maintained in a sanitary condition;

(5) “Adequate space” means sufficient space to allow each animal to: (1) Easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable, normal position for the animal; and (2) interact safely with other animals in the enclosure. When freedom of movement would endanger the animal, then temporary, appropriate restraints or confinement are permitted within the meaning of “adequate space” according to professionally accepted standard of care and treatment; and

(6) “Adequate water” means provision of and access to clean, fresh, potable water of a drinkable temperature, accessible at all times, and provided in an appropriate manner and amount sufficient to the animal’s needs.

(7) “Companion animal” means an animal that is kept as a pet, and is kept for primarily companionship and enjoyment. The term “companion animal” specifically excludes animals that are kept for other purposes, such as those related to agriculture.

(b) Each owner shall provide the following for each of his or her companion animals:

(1) Adequate feed;

(2) Adequate water;

(3) Adequate shelter that is clean;

(4) Adequate space in the primary enclosure for the particular animal depending upon its age, size, species, and weight;

(5) Adequate exercise;

(6) Adequate care~~, treatment, and transportation~~; and

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

(c) Shelters with wire, grid, or slat floor must not permit the animals’ feet to pass through the openings, sag under the animals’ weight, or otherwise allow the animals’ feet or toes to be injured. Shelters and animal enclosures must have sufficient drainage to remove standing water.

§19-20-22. ~~Confinement of female dogs~~ Confinement of unspayed female dogs in estrus.

Every person owning or harboring a female dog, whether licensed or unlicensed, which has not been spayed shall keep such dog confined in a building or secure enclosure for 25 days during the period of estrus.

§19-20-26. Commercial dog-breeding operations.

(a) As used in this section:

(1) “Advertisement” means any media used to promote the sale of dogs including, but not limited to, the Internet, newspapers, flyers, magazines, radio, television, bulletins and signs.

(2) “Commercial dog breeder” means any person who:

(A) Maintains 11 or more unsterilized dogs over the age of one year for the exclusive purpose of actively breeding;

(B) Is engaged in the business of breeding dogs as household pets for direct or indirect sale or for exchange in return for consideration; and

(C) Commercial dog breeder shall not include:

(i) Any person who keeps or breeds dogs exclusively for the purpose of herding or guarding livestock or farm animals, hunting, tracking or exhibiting in dog shows, performance events or field and obedience trials; and

(ii) With respect to greyhound dogs only, any person who holds an occupational permit from, and has registered a greyhound kennel name with, the West Virginia Racing Commission.

(3) “Class I Commercial Dog Breeder” means a commercial dog breeder that possesses 11 to 30 unsterilized dogs over the age of one year at any one time for the exclusive purpose of actively breeding.

(4) “Class II Commercial Dog Breeder” means a commercial dog breeder that possesses more than 30 unsterilized dogs over the age of one year at any time.

(5) “Clinically ill” means an illness that is apparent to a veterinarian based on observation, examination, or testing of the dog, or upon a review of the medical records relating to the dog;

~~(5)~~ (6) “Housing facility” means a structure in which dogs are kept that provides them with shelter, protection from the elements and protection from temperature extremes.

(7) “Nonelective surgical procedure” means a surgical procedure that is necessary to preserve or restore the health of the dog, ~~to prevent the dog from experiencing pain or discomfort,~~ or to correct a condition that would otherwise interfere with the dog’s ability to walk, run, jump, or otherwise function in a normal manner;

~~(6)~~ (8) “Primary enclosure” means a structure that restricts a dog’s ability to move in a limited amount of space, such as a room, cage or compartment.

(b) No commercial dog breeder may breed dogs without a business registration certificate in accordance with §11-12-3 of this code and a valid business license issued by the locality in which the dog breeding operation is located, if the locality so requires.

(c) A commercial dog breeder shall:

(1) Obtain a permit annually to operate, as required by the county commission in which the commercial dog breeding operation is located. County commissions are authorized to charge a fee to commercial dog breeders and shall deposit the fees collected in a specially designated account to be used for animal shelters, animal rescue and spay neuter programs administered by county animal shelters or other humane organizations. The fee for a Class I commercial dog-breeding permit shall be an amount determined by the county commission, not to exceed $250 per year. The fee for a Class II commercial dog breeding permit shall be an amount determined by the county commission, not to exceed $500 per year;

(2) Breed female dogs only after the breeder has obtained an annual certification by a licensed veterinarian that the dog is in suitable health for breeding;

(3) Dispose of dogs only by ~~gift,~~ sale, transfer, ~~barter~~ or euthanasia by a licensed veterinarian;

(4) Maintain current, valid rabies certificates for every dog pursuant to §19-20A-1 *et seq.* of this code;

(5) Include the breeder’s annual permit number on any advertisement for the sale of a dog;

(6) If selling directly to the public, post a conspicuous notice containing the breeder’s name, address and annual permit number on each cage;

(7) Deliver to each purchaser of a dog a written disclosure containing all of the following:

(A) The breeder’s name and address and, if the breeder is a dealer licensed by the United States Department of Agriculture, the federal dealer identification number;

(B) The date of the dog’s birth and the date the breeder received the dog: *Provided*, That if the dog is not advertised or sold as purebred, registered, or registerable, the date of birth may be approximated if not known by the breeder;

(C) The breed, sex, color, and identifying marks at the time of sale, if any, and if the breed is unknown or mixed, the record shall so indicate;

(D) If the dog is from a United States Department of Agriculture licensed source, the individual identifying, tag, tattoo, or collar number for that dog.

(E) If the dog is being sold as capable of registration, the names and registration numbers of the sire and dam and the litter number if known;

(F) A record of inoculations and worming treatments administered, if any, to the dog as of the time of the sale, including dates of administration and the type of vaccine or worming treatment;

(G) A record of any veterinarian treatment or medication received by the dog while in the possession of the breeder and either of the following:

(i) A statement signed by the breeder at the time of sale that the dog has no known disease or illness and that the dog has no congenital or hereditary condition that adversely affects the health of the dog at the time of sale or that is likely to adversely affect the health of the dog in the future; or

(ii) A record of any known disease, illness, or congenital or hereditary condition that adversely affects the health of the dog at the time of sale, or that is likely to adversely affect the health of the dog in the future, along with a statement signed by a veterinarian licensed in the state of West Virginia that authorizes the sale of the dog, recommends necessary treatment, if any, and verifies that the disease, illness, or condition does not require hospitalization or nonelective surgical procedures in the future. A veterinarian statement is not required for intestinal or external parasites unless their presence makes the dog clinically ill or is likely to make the dog clinically ill. The statement is valid for seven days following examination of the dog by the veterinarian; and

(H) The written disclosure made pursuant to this subsection shall be signed by both the breeder certifying the accuracy of the statement and by the purchaser of the dog acknowledging receipt of the statement.

(8) Maintain a written record on the health, status, and disposition of each dog for a period of not less than one year after disposition of the dog, which record shall include all information that the breeder is required to disclose pursuant to subdivision (c)(7) of this section;

~~(7)~~ (9) Provide for the humane treatment of dogs in accordance with §61-8-19 of this code;

~~(8)~~ (10) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be ~~regularly~~ cleaned and sanitized daily. All enclosures must contain potable water that is not frozen, is substantially free from debris and is readily accessible to all dogs in the enclosure at all times unless otherwise directed by a veterinarian for the health of the dog;

~~(9)~~ (11) Provide veterinary care without delay when necessary;

~~(10)~~ (12) Maintain adequate staffing levels to ensure compliance with this section; and

~~(11)~~ (13) Maintain adequate housing facilities and primary enclosures that meet the following minimum requirements:

(A) Housing facilities and primary enclosures must be kept in a sanitary condition and in good repair; must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels and to prevent moisture condensation; must have a means of fire suppression, such as functioning fire extinguishers or a sprinkler system on the premises; and must have sufficient lighting to allow for observation of the dogs at any time of day or night;

(B) Housing facilities and primary enclosures must enable all dogs to remain dry and clean;

(C) Housing facilities must provide shelter and protection from ~~extreme~~ adverse temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

(D) Housing facilities must provide sufficient shade to simultaneously shelter all of the dogs housed therein;

(E) A primary enclosure must have solid floors that are constructed in a manner that protects the dogs’ feet and legs from injury;

(F) Primary enclosures must provide sufficient space to allow each animal to make normal postural adjustments, to turn freely and to easily stand, sit, stretch, move its head without touching the top of the enclosure, lie in a comfortable position with limbs extended, move about and assume a comfortable posture for feeding, drinking, urinating and defecating. A primary enclosure shall allow animals to sit, sleep, and eat away from where they defecate and urinate. For animals housed long-term, primary enclosures shall include opportunities for hiding, playing, resting, feeding, and eliminating. Dogs must be provided with a rest board, floormat, or similar device that can be maintained in a sanitary condition.

~~(F)~~ (G) Primary enclosures must be placed no higher than 42 inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;

~~(G)~~ (H) Feces, hair, dirt, debris and food waste must be removed from primary enclosures and housing facilities ~~at least daily or more often, if necessary~~ sufficiently often to prevent accumulation and to reduce disease hazards, insects, pests and odors;

(I) All dogs shall be provided regular social contact, mental stimulation, and physical activity, including ~~positive~~ daily social interactions with humans.

~~(H)~~ (J) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under 12 weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision. Dogs which are fearful or aggressive toward other animals, are stressed by the presence of other animals, require individual monitoring, or are ill and require treatment that cannot be provided in group housing shall be separated from other dogs and provided with individual enrichment; and

~~(I)~~ (K) Sick dogs shall be isolated sufficiently so as not to endanger the health of other dogs and protocols shall be in place to control parasites and prevent transmission of contagious diseases.

(d) To ensure compliance with state animal care laws and regulations, commercial dog breeding locations are subject to biannual inspections by animal control officers or law-enforcement officers.

(e) It is unlawful for a commercial dog breeder to operate if he or she has been convicted of animal cruelty in any local, state, or federal jurisdiction.

(f) Any commercial dog breeder who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 per violation. In any proceeding brought pursuant to the provisions of this section, a circuit judge or magistrate may grant a person accused of violating this section an improvement period not to exceed one year upon such terms and conditions as the judge or magistrate may determine. Upon successful completion of the improvement period the judge or magistrate shall dismiss the charges.

(g) Nothing in this section exempts a facility licensed by the United States Department of Agriculture from compliance.

(h) Nothing in this section prevents any local, state or federal law-enforcement agency from investigating animal cruelty in commercial dog breeding operations.

§19-20-27. Dogs unfit for sale and purchaser’s remedies.

(a) A dog shall be considered unfit for sale if:

(1) Within 15 days after a purchaser has taken physical possession of a dog following the sale by a breeder, the purchaser discovers that the dog has become ill and the purchaser obtains written verification from a licensed veterinarian that this is due to an illness or disease that existed in the dog on or before delivery of the dog;

(2) Within one year after the purchaser has taken physical possession of the dog after the sale by a breeder, the purchaser discovers that the dog has a congenital or hereditary condition and the purchaser obtains written verification from a licensed veterinarian that the condition adversely affects the health of the dog or that it requires, or is likely in the future to require, hospitalization or nonelective surgical procedures and that such condition should have been known to the breeder at the time of purchase.

(b) There is a rebuttable presumption that an illness existed at the time of sale if the dog dies within 15 days of delivery to the purchaser.

(c) If a dog is deemed unfit for sale pursuant to the provisions of subsection (a) of this section, the purchaser shall be allowed, at the purchaser’s election, any of the following remedies:

(1) Return of the dog to the breeder for a refund of the purchase prices, plus sales tax, and reimbursement for reasonable veterinary fees for diagnosis and treating the dog in an amount not to exceed the original purchase price of the dog including sales tax;

(2) Exchange the dog for another dog of the purchaser’s choice of equivalent value, providing that a replacement dog is available, and reimburse the purchaser for reasonable veterinary fees for diagnosis and treatment of the dog in an amount not to exceed the original purchase price of the dog including sales tax;

(3) Reimbursement to the purchaser for veterinary fees for diagnosis and treatment of the dog in an amount not to exceed 100 percent of the original purchase price of the dog including sales tax; or

(4) In the event of the death of the dog, the purchaser may obtain a refund for the purchase price of the dog plus sales tax or a replacement dog of the purchaser’s choice of equivalent value and reimbursement of reasonable veterinary fees for the diagnosis and treatment of the dog in an amount not to exceed the purchase price of the dog plus sales tax.

(d) To be eligible to claim the remedies provided in this section, the purchaser shall:

(1) Notify the breeder as soon as possible, but no later than five days after the diagnosis by a veterinarian of a qualifying medical or health problem, including a congenital or hereditary condition, and provide the name and telephone number of the veterinarian providing the diagnosis; and

(2) Return the dog, if alive, to the breeder along with the written statement of the licensed veterinarian made to the purchaser; or

(3) Provide the breeder, in the event of the dog’s death, with a written statement of a licensed veterinarian attesting that the dog died from an illness that existed on or before delivery of the dog to the purchaser.

(e) No refund, replacement, or reimbursement of veterinary fees shall be made if any of the following conditions exist:

(1) The illness, condition, or death resulted from maltreatment or neglect occurring, or from an injury sustained, or an illness or condition contracted, subsequent to the delivery of the dog to the purchaser;

(2) The purchaser fails to carry out the treatment recommended by the examining veterinarian who made the initial diagnosis;

(3) The disease, illness, or condition was disclosed in a written statement from the breeder to the purchaser made pursuant to §19-20-26(c)(7) of this code.

(f) For purposes of this section, the value of veterinary services shall be deemed reasonable if the services rendered are appropriate for the presenting condition of the dog, and for the diagnosis and treatment of the identified illness, disease, or condition and the charges of the services are comparable to similar services rendered by other licensed veterinarians in the surrounding community.

(g) To receive reimbursement for reasonable veterinary expenses, the purchaser must submit an itemized statement of all veterinary services performed and medications provided to the dog.

(h) In the event that the breeder wishes to contest a demand for any of the remedies provided in this section, the breeder may, except in the case of the death of the dog, require the purchaser to produce the dog for examination by a licensed veterinarian selected by the breeder. This examination shall be conducted at the expense of the breeder.

(i) If the purchaser and the breeder are unable to reach resolution within 10 days following the breeder’s receipt of the purchaser’s demand and presentation of a veterinarian’s statement, the purchaser may initiate a civil action in a court of competent jurisdiction to resolve the dispute. The prevailing party in the dispute may also claim and receive reasonable attorney’s fees if the opposing party is found to have acted in bad faith in the purchase or in pursuit of or opposition to the remedies provided in this section.

(j) Nothing in this section shall, in any way, limit the rights or remedies that are otherwise available to a consumer under any other law. Nor shall this section limit the breeder and purchaser from agreeing between themselves upon terms and conditions that are not inconsistent with this section. However, any agreement or contract by a purchaser to waive any rights provided in this section shall be void and unenforceable.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

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

(a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,

(A) Mistreat an animal in cruel manner;

(B) Abandon an animal;

(C) Withhold:

(i) Proper sustenance, including food or water;

(ii) Shelter that protects from the elements of weather; or

(iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;

(D) Abandon an animal to die;

(E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;

(F) Ride an animal when it is physically unfit;

(G) Bait or harass an animal for the purpose of making it perform for a person’s amusement;

(H) Allow the use of cocaine, fentanyl, heroin, methadone, methamphetamine, morphine, oxycodone, oxymorphone, or any anabolic steroid on any animal participating in any contest;

(I)~~(H)~~ Cruelly chain or tether an animal; or

(J)~~(I)~~ Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

(2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 nor more than $2,000, or confined in jail not more than six months, or both fined and confined. ~~A person who has a second or subsequent conviction for a violation of subdivision (1) of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than five years and be fined not less than $1,000 nor more than $5,000. As used in this section, “bodily injury” means substantial physical pain, illness, or any impairment of physical condition.~~

(b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal, or inflicts serious bodily injury, meaning substantial physical pain, illness or impairment of physical condition, is guilty of a felony and, upon conviction thereof, shall be ~~confined~~ imprisoned in a correctional facility not less than one nor more than five years and be fined not less than $1,000 nor more than $5,000. For the purposes of this subsection, “torture” means an action taken for the primary purpose of inflicting pain.

(c) A person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal’s performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $2,000.

(d) Any person convicted of a violation of this section forfeits his or her interest in any animal that was mistreated, abandoned, abused or neglected pursuant to this section, and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs incurred or to be incurred by the humane society, the ~~or~~ county pound, or other responding state or local agency as a result.

(e) For the purpose of this section, the term “controlled substance” has the same meaning ascribed to it by §60A-1-101(d) of this code.

(f) The provisions of this section do not apply to:

(1) ~~lawful~~ Lawful acts of hunting, fishing, trapping or animal training;

(2) ~~or farm~~ Farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to either usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, including any standards established by the commissioner of agriculture the Division of Natural Resources; or

(3) ~~nor to humane~~ Humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et seq.* and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and, shall be confined in jail for a period of not less than 90 days nor more than one year, fined not less than $500 nor more than $3,000, or both. The incarceration set forth in this subsection is mandatory unless the provisions of subsection (h) of this section are complied with.

(h)(1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the evaluation.

(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

(i) In addition to any other penalty which can be imposed for a violation of this section, a court ~~shall~~ may prohibit any person so convicted from possessing, owning or residing with any animal or type of animal ~~for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction~~. A violation under this subsection is a misdemeanor punishable by a fine not exceeding $2,000 and forfeiture of the animal.

§61-8-19d. Unlawful confinement of companion animals.

(a) It is unlawful for a person to chain, tether, cage, or stake out a companion animal that is in the person’s custody and:

(1) With a tether that is not a reasonable length or not attached to a collar that is designed to reduce the risk of harm to the animal given the size of the animal and available space;

~~(2) With a tether that allows the animal to become entangled in a manner that risks the health and safety of the animal;~~

~~(3)~~ (2) In such manner that the animal is not able to easily stand, sit, lie, turn around, and make all other, normal body movements in a comfortable, normal position for the animal;

~~(4)~~ (3) In such a manner that the animal may go beyond the property line of the owner or custodian of the animal unless the person has obtained permission from the owner of the affected property; or

~~(5)~~ (4) Leave outside during extreme weather conditions, including, but not limited to, extreme heat, freezing or near-freezing temperatures, thunderstorms, tornadoes, or floods, unless adequate food, potable water, shade, shelter, and protection is provided, based on the breed, age, general health of the dog and its ability to handle the environment.

(b) Unlawful confinement of a companion animal does not include:

(1) Using a handheld leash for the purposes of walking a dog, cat, or other companion animal;

(2) Securing a dog pursuant to the requirements of a campground, recreational area, or other public area; or

(3) Securing a dog or other companion animal for transportation.

(c) For purposes of this section, the term “companion animal” has the same meaning given to that term in §19-20-12(a).

(d) Any person in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500.

§61-8-19e. Hoarding of animals.

(a) The hoarding of animals is unlawful and is prohibited. A person is guilty of hoarding animals when he or she possesses a large number of companion animals, and:

(1) Fails to, or is unable to provide food and water, adequate shelter and protection from weather, veterinary care, and humane care and treatment, and

(2) Displays an inability to recognize or understand the nature of, or has a reckless disregard for, the conditions under which the companion animals are living and the deleterious impact they have on the companion animals and the owner’s health and well-being. A person who is found to be hoarding animals is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500.

(b) Animals found to be living under the conditions outlined in this section shall be taken from the hoarder and turned over to an animal shelter for proper care and relocation.

(c) For purposes of this section, the term “companion animal” has the same meaning given to that term in §19-20-12(a).

NOTE: The purpose of this bill is to provide increased protections for the welfare of domestic animals in the care of animal shelters, breeders, and private individuals.

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