

SB 413 S
(veto)

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 413

(BY SENATORS KESSLER, OLIVERIO, FOSTER, GREEN,
HUNTER, JENKINS, MINARD, STOLLINGS, WELLS,
WHITE, BARNES, CARUTH, HALL AND MCKENZIE)

[Passed March 6, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §7-10-4 of the Code of West Virginia, 1931, as amended, relating to hearings before magistrates involving the seizure of abandoned, neglected or cruelly treated animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. HUMANE OFFICERS.

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

1 (a) Subject to the provisions of subsection (h) of this
2 section, a humane officer shall take possession of any
3 animal, including birds or wildlife in captivity, known
4 or believed to be abandoned, neglected, deprived of
5 necessary sustenance, shelter, medical care or
6 reasonable protection from fatal freezing or heat
7 exhaustion, or cruelly treated or used, as defined in
8 sections nineteen and nineteen-a, article eight, chapter
9 sixty-one of this code.

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

29 (c) (1) If a hearing is requested and the magistrate
30 finds by a preponderance of the evidence that the owner
31 did abandon, neglect or cruelly treat the animal, or if no
32 hearing is requested and the magistrate finds by clear
33 and convincing evidence, based upon the affidavit of the
34 humane officer, that the owner did abandon, neglect or
35 cruelly treat the animal, the magistrate shall enter an
36 order awarding custody of the animal to any humane
37 officer for further disposition in accordance with
38 reasonable practices for the humane treatment of
39 animals. After hearing the evidence, if the magistrate is
40 not convinced the animal was neglected or cruelly
41 treated, he or she may dismiss the action and order the

42 animal be returned to the owner. If the magistrate finds
43 in favor of the humane officer, the owner of the animal
44 shall post a bond with the court in an amount sufficient
45 to provide for the reasonable costs of care, medical
46 treatment and provisions for the animal for at least
47 thirty days. The bond shall be filed with the court
48 within five days following the court's finding against
49 the owner. At the end of the time for which expenses
50 are covered by the original bond if the animal remains
51 in the care of the humane officer and the owner desires
52 to prevent disposition of the animal by the humane
53 officer, the owner shall post an additional bond with the
54 court within five days of the expiration of the original
55 bond. During this period the humane officer is
56 authorized to place the animal in a safe private home or
57 other safe private setting in lieu of retaining the animal
58 in an animal shelter. The person whose animal is seized
59 is liable for all costs of the care of the seized animal.

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

68 (d) Any person whose animal is seized and against
69 whom the magistrate enters a finding pursuant to this
70 section is liable during any period it remains in the
71 possession of the humane officer for the reasonable
72 costs of care, medical treatment and provisions for the
73 animal not covered by the posting of the bond as
74 provided in subdivision (1), subsection (c) of this
75 section. The magistrate shall require the person liable
76 for these costs to post bond to provide for the
77 maintenance of the seized animal. This expense, if any,
78 becomes a lien on the animal and must be discharged
79 before the animal is released to the owner. Upon
80 dismissal or withdrawal of the complaint, any unused
81 portion of posted bonds shall be returned to the owner.
82 Upon a finding in favor of the humane officer, all

83 interest in the impounded animal shall transfer to the
84 humane officer for disposition in accordance with
85 reasonable practices for the humane treatment of
86 animals. Any additional expense above the value of the
87 animal may be recovered by the humane officer or
88 custodial agency.

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

98 (f) The term "humanely destroyed" as used in this
99 section means:

100 (1) Humane euthanasia of an animal by hypodermic
101 injection by a licensed veterinarian or by an animal
102 euthanasia technician certified in accordance with the
103 provisions of article ten-a, chapter thirty of this code; or

104 (2) Any other humane euthanasia procedure approved
105 by the American Veterinary Medical Association, the
106 Humane Society of the United States or the American
107 Humane Association.

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

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

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

118 (h) The provisions of this section do not apply to farm
119 livestock, as defined in subsection (d), section two,
120 article ten-b, chapter nineteen of this code, poultry,
121 gaming fowl or wildlife kept in private or licensed game
122 farms if kept and maintained according to usual and
123 accepted standards of livestock, poultry, gaming fowl,
124 wildlife or game farm production and management, nor
125 to the humane use of animals or activities regulated
126 under and in conformity with the provisions of 7 U. S.
127 C. §2131, *et seq.*, and the regulations promulgated
128 thereunder.

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

C. White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Daniel P. O'Rourke
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

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

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this
the *4th* Day of *April* 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 3:55 P