

SB 501 (veto)

FILED

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WEST VIRGINIA LEGISLATURE VIRGINIA
SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009**



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 501

(SENATORS KESSLER AND
PREZIOSO, *original sponsors*)

[Passed April 10, 2009; in effect ninety days from passage.]

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[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §7-10-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-20-8 of said code, all relating to prohibiting the euthanizing of animals by means of a gas chamber; and setting forth an exception for counties which operated a gas chamber as of the effective date of this section.

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; that §19-20-8 of said code be amended and reenacted; and that §30-10A-4, §30-10A-6 and §30-10A-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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 or
4 believed to be abandoned, neglected, deprived of necessary
5 sustenance, shelter, medical care or reasonable protection
6 from fatal freezing or heat exhaustion or cruelly treated or
7 used as defined in sections nineteen and nineteen-a, article
8 eight, chapter sixty-one of this code.

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

27 (c) (1) If a hearing is requested and the magistrate finds
28 by a preponderance of the evidence that the owner did
29 abandon, neglect or cruelly treat the animal, or if no
30 hearing is requested and the magistrate finds by a prepon-
31 derance of the evidence, based upon the affidavit of the
32 humane officer, that the owner did abandon, neglect or
33 cruelly treat the animal, the magistrate shall enter an
34 order awarding custody of the animal to any humane
35 officer for further disposition in accordance with reason-
36 able practices for the humane treatment of animals. After

37 hearing the evidence, if the magistrate is not convinced the
38 animal was neglected or cruelly treated, he or she may
39 dismiss the action and order the animal be returned to the
40 owner. If the magistrate finds in favor of the humane
41 officer, the owner of the animal shall post a bond with the
42 court in an amount sufficient to provide for the reasonable
43 costs of care, medical treatment and provisions for the
44 animal for at least thirty days. The bond shall be filed
45 with the court within five days following the court's
46 finding against the owner. At the end of the time for
47 which expenses are covered by the original bond if the
48 animal remains in the care of the humane officer and the
49 owner desires to prevent disposition of the animal by the
50 humane officer, the owner shall post an additional bond
51 with the court within five days of the expiration of the
52 original bond. During this period the humane officer is
53 authorized to place the animal in a safe private home or
54 other safe private setting in lieu of retaining the animal in
55 an animal shelter. The person whose animal is seized is
56 liable for all costs of the care of the seized animal.

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

64 (d) Any person whose animal is seized and against
65 whom the magistrate enters a finding pursuant to this
66 section is liable during any period it remains in the
67 possession of the humane officer for the reasonable costs
68 of care, medical treatment and provisions for the animal
69 not covered by the posting of the bond as provided in
70 subdivision (1), subsection (c) of this section. The magis-
71 trate shall require the person liable for these costs to post
72 bond to provide for the maintenance of the seized animal.

73 This expense, if any, becomes a lien on the animal and
74 must be discharged before the animal is released to the
75 owner. Upon dismissal or withdrawal of the complaint,
76 any unused portion of posted bonds shall be returned to
77 the owner. Upon a finding in favor of the humane officer,
78 all interest in the impounded animal shall transfer to the
79 humane officer for disposition in accordance with reason-
80 able practices for the humane treatment of animals. Any
81 additional expense above the value of the animal may be
82 recovered by the humane officer or custodial agency.

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

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

94 (A) Humane euthanasia of an animal by hypodermic
95 injection by a licensed veterinarian or by an animal
96 euthanasia technician certified in accordance with the
97 provisions of article ten-a, chapter thirty of this code; or

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

102 (2) The term "humanely destroyed" does not include
103 euthanizing an animal by means of a gas chamber: *Pro-*
104 *vided*, That any county which has a gas chamber in
105 operation as of the effective date of this section may
106 continue to operate the gas chamber subject to the follow-

107 ing: (1) The gas chamber shall be operated by an animal
108 euthanasia technician certified pursuant to article ten-a,
109 chapter thirty of this code; and (2) the gas chamber shall
110 have been manufactured and installed by a person who
111 regularly manufactures and installs gas chambers. The
112 Board of Veterinary Medicine shall promulgate emergency
113 rules regarding the inspection of gas chambers, pursuant
114 to section fifteen, article three, chapter twenty-nine-a of
115 this code.

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

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

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

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

136 (i) All persons or entities in the State performing
137 euthanasia under this article of the code shall register with
138 the Board of Veterinary Medicine by December 31, 2009,
139 in a manner to be prescribed by the board. The Board of
140 Veterinary Medicine shall promulgate emergency rules

141 relating to the registration of those performing animal
142 euthanasia, pursuant to section fifteen, article three,
143 chapter twenty-nine-a of this code.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

1 (a) All dogs seized and impounded as provided in this
2 article, except dogs taken into custody under section two
3 of this article, shall be kept housed and fed in the county
4 or municipal shelter for five days after notice of seizure
5 and impounding has been given or posted as required by
6 this article, at the expiration of which time all dogs which
7 have not previously been redeemed by their owners as
8 provided in this article, shall be sold or humanely de-
9 stroyed. No dog sold as provided in this section may be
10 discharged from the pound until the dog has been regis-
11 tered and provided with a valid registration tag.

12 (b) (1) The term "humanely destroyed" as used in this
13 section means:

14 (A) Humane euthanasia of an animal by hypodermic
15 injection by a licensed veterinarian or by an animal
16 euthanasia technician certified in accordance with the
17 provisions of article ten-a, chapter thirty of this code; or

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

22 (2) The term "humanely destroyed" does not include
23 euthanizing a dog or cat by means of a gas chamber:
24 *Provided*, That any county which has a gas chamber in
25 operation as of the effective date of this section may
26 continue to operate the gas chamber subject to the follow-

27 ing: (1) The gas chamber shall be operated by an animal
28 euthanasia technician certified pursuant to article ten-a,
29 chapter thirty of this code; and (2) the gas chamber shall
30 have been manufactured and installed by a person who
31 regularly manufactures and installs gas chambers. The
32 Board of Veterinary Medicine shall promulgate emergency
33 rules regarding the inspection of gas chambers, pursuant
34 to section fifteen, article three, chapter twenty-nine-a of
35 this code.

36 (c) In an emergency or in a situation in which a dog
37 cannot be humanely destroyed in an expeditious manner,
38 a dog may be destroyed by shooting if:

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

43 (2) Maximum precaution is taken to minimize the dog's
44 suffering and to protect other persons and animals.

45 (d) The owner, keeper or harbinger of any dog seized and
46 impounded under the provisions of this article may, at any
47 time prior to the expiration of five days from the time that
48 notice of the seizure and impounding of the dog has been
49 given or posted as required by this article, redeem the dog
50 by paying to the dog warden or his or her authorized agent
51 or deputy all of the costs assessed against the dog and by
52 providing a valid certificate of registration and registra-
53 tion tag for the dog.

54 (e) Reasonable costs and fees, in an amount to be
55 determined, from time to time, by the county commission,
56 shall be assessed against every dog seized and impounded
57 under the provisions of this article, except dogs taken into
58 custody under section two of this article. The cost shall be
59 a valid claim in favor of the county against the owner,
60 keeper or harbinger of any dog seized and impounded under

61 the provisions of this article and not redeemed or sold as
62 provided in this section and the costs shall be recovered by
63 the sheriff in a civil action against the owner, keeper or
64 harborer.

65 (f) A record of all dogs impounded, the disposition of
66 the dogs and a statement of costs assessed against each
67 dog shall be kept by the dog warden and a transcript
68 thereof shall be furnished to the sheriff quarterly.

69 (g) All persons or entities in the State performing
70 euthanasia under this article of the code shall register with
71 the Board of Veterinary Medicine by December 31, 2009,
72 in a manner to be prescribed by the board. The Board of
73 Veterinary Medicine shall promulgate emergency rules
74 relating to the registration of those performing animal
75 euthanasia, pursuant to section fifteen, article three,
76 chapter twenty-nine-a of this code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 10A. ANIMAL EUTHANASIA TECHNICIANS.

§30-10A-4. Scope of practice.

1 (a) A certified animal euthanasia technician may
2 sedate, tranquilize and euthanize animals assigned to the
3 care of a legally operated humane society, animal shelter
4 or animal control facility within this state. A certified
5 animal euthanasia technician shall practice sedation,
6 tranquilization and euthanasia under the authority of a
7 licensed veterinarian as defined in article ten of this
8 chapter or a county humane officer as defined in article
9 ten, chapter seven of this code within the limitations
10 imposed by this article and rules promulgated by the
11 board under this article.

12 (b) For the purposes of this article, controlled substance
13 permits issued by the state board of pharmacy and the
14 federal drug enforcement administration shall be issued to

15 a municipal or county run animal control facility, or a
16 humane society or animal shelter incorporated and
17 organized under the laws of the state, with one or more
18 duly appointed agents. The humane society or animal
19 shelter shall possess a tax exempt charitable or tax exempt
20 governmental determination under the Internal Revenue
21 Code of 1986, as amended.

22 (c) A certified animal euthanasia technician may not
23 practice or offer to practice his or her profession outside
24 the direct authority of the humane society, animal shelter
25 or animal control facility which employs him or her or
26 otherwise contracts for his or her services. A certified
27 animal euthanasia technician is not qualified and may not
28 indicate that he or she is qualified to act in any capacity
29 relative to animals beyond his or her specified and regu-
30 lated authority to sedate, tranquilize and euthanize
31 animals at the instruction of the humane society, animal
32 shelter or animal control facility by which he or she is
33 employed and under the supervision of a humane officer
34 or licensed veterinarian.

§30-10A-6. Recordkeeping.

1 A humane society, animal shelter or animal control
2 facility which was issued a controlled substances permit
3 by the board of pharmacy and an identification number by
4 the federal drug enforcement administration is responsible
5 for insuring that certified animal euthanasia technicians
6 in its employ maintain proper records regarding the
7 inventory, storage and administration of controlled
8 substances and any other drugs which he or she is autho-
9 rized to administer. The proper completion and retention
10 of these records is the joint responsibility of the humane
11 society, animal shelter or animal control facility and the
12 certified animal euthanasia technician. The humane
13 society, animal shelter or animal control facility and the
14 certified animal euthanasia technicians are subject to

15 inspection and audit by the board, the West Virginia board
16 of pharmacy and any other appropriate state or federal
17 agency with authority regarding the recordkeeping,
18 inventory, storage and administration of controlled
19 substances and other drugs authorized for use by animal
20 euthanasia technicians under authority of this article.

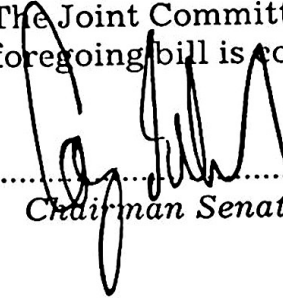
§30-10A-8. Drug selection.

1 (a) In the event that sodium pentobarbital is no longer
2 approved as the euthanasia “drug of choice” for animals
3 by either state or federal mandate, the board shall deter-
4 mine the replacement “drug of choice” for sodium
5 pentobarbital for use by certified animal euthanasia
6 technicians by legislative rule. The replacement “drug of
7 choice” shall be administered, controlled, stored and
8 secured by a humane society, animal shelter or animal
9 control facility which meets the qualifications in section
10 one of this article in accordance with legislative rules
11 promulgated by the board.

12 (b) The board may replace sodium pentobarbital as the
13 “drug of choice” at any time by legislative rule promul-
14 gated pursuant to article three, chapter twenty-nine-a of
15 this code. The determined “drug of choice” for animal
16 euthanasia as specified by the board shall be used by
17 animal euthanasia technicians certified under the provi-
18 sions of this article.

19 (c) The board shall promulgate emergency rules pursu-
20 ant to section fifteen, article three, chapter twenty-nine-a
21 of this code to allow the use of sedatives and tranquilizers
22 by euthanasia technicians, as defined in section one of this
23 article.


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


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is disapproved this the 4th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 1 2009

Time 2:50 pm