

1 COMMITTEE SUBSTITUTE

2 FOR

3 H. B. 2757

4
5 (By Delegates Sponaugle, Lynch, A. Evans and Andes)

6 (Originating in the Committee on the Judiciary)

7 [January 17, 1014]

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §19-20D-1, §19-
12 20D-2, §19-20D-3 and §19-20D-4, all relating to the
13 creation of a private cause of action in magistrate court
14 for the purpose of seeking humane destruction of a
15 violent dog; elements of action; proceeding; attorney
16 fees; limitations of action; and order of the court.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §19-20D-1, §19-20D-2,
20 §19-20D-3 and §19-20D-4, all to read as follows:

21 **ARTICLE 20D. FELICITY'S LAW.**

22 **§19-20D-1. Short Title.**

23 This article may be known and cited as "Felicity's Law".

24 **§19-20D-2. Purpose.**

1 The purpose of this article is to protect the public by
2 providing a private cause of action seeking the humane destruction
3 of a dog in magistrate court to a person who has been attacked and
4 injured by the dog causing damages in the amount of \$1,000 or
5 greater, or who has been attacked by the dog and the dog had
6 attacked a person causing injury within the previous twenty-four
7 months.

8 **§19-20D-3. Procedure; petition to magistrate court; elements of**
9 **action; burden of proof; attorney fees; limitation**
10 **of action.**

11 (a) A person seeking relief under this article may apply to
12 the magistrate court in the county where the dog owner resides, or
13 the county where the injury occurred, by verified petition setting
14 forth and affirming the following:

15 (1) That the owner of the dog resides in the county where the
16 petition is filed or the attack giving rise to the action occurred
17 in the county where the petition is filed;

18 (2) That the petitioner was:

19 (A) Attacked by the dog and the attack resulted in injuries
20 and damages in the amount of \$1,000 or greater; or

21 (B) Attacked by the dog and the dog had engaged in a separate
22 attack causing injury requiring medical treatment within the
23 previous twenty-four months; and

24 (3) That the petitioner was not at fault in the attack.

1 (b) The petition and summons shall be served on the respondent
2 in the manner set forth in Rule 4 of the West Virginia Rules of
3 Civil Procedure.

4 (c) The petitioner must prove the allegations in the petition
5 by clear and convincing evidence.

6 (d) The prevailing party is entitled to an award of reasonable
7 attorney fees and costs.

8 (e) The limitations of the cause of action in this article are
9 as follows:

10 (1) Jurisdiction is exclusively in magistrate court;

11 (2) The magistrate serves as the trier of fact;

12 (3) Relief, other than attorney fees and costs in subsection

13 (d) of this article, is limited to an order directing that the
14 owner of the dog have the dog humanely destroyed; and

15 (4) The cause of action provided by this article does not
16 establish statutory liability nor does it supplant a common law
17 negligence cause of action.

18 **§19-20D-4. Order of the magistrate court.**

19 (a) If the court finds by clear and convincing evidence that
20 the dog which is the subject of the action under this article has
21 attacked the petitioner and caused damages in the amount of \$1,000
22 or greater, or that the dog attacked the petitioner and within the
23 twenty-four month period prior to the attack had engaged in a
24 separate attack causing injury requiring medical treatment, then

1 the court shall order the owner of the dog to have the dog humanely
2 destroyed.

3 (b) The magistrate court shall issue and file a written order
4 that sets forth the following:

5 (1) Findings of fact and conclusions of law; and

6 (2) If the court orders humane destruction, the court shall
7 issue a specific date upon which the owner of the dog must have the
8 humane destruction performed and a direction that documentation be
9 mailed to the petitioner and filed with the court by a specific
10 date showing that the procedure was performed.

11 (c) If the court does not order humane destruction, the order
12 shall dismiss the petition with prejudice.

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