

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 436**

BY SENATORS KIRKENDOLL, BOLEY, MULLINS AND

WALTERS

[Introduced February 1, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating  
2 to animal cruelty; and defining adequate shelter for dogs and cats.

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

1 That §61-8-19 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

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

- 1 (a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,
- 2 (A) Mistreat an animal in cruel manner;
- 3 (B) Abandon an animal;
- 4 (C) Withhold;
- 5 (i) Proper sustenance, including food or water;
- 6 (ii) Shelter that protects from the elements of weather; or
- 7 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the
- 8 suffering of any animal;
- 9 (D) Abandon an animal to die;
- 10 (E) Leave an animal unattended and confined in a motor vehicle when physical injury to
- 11 or death of the animal is likely to result;
- 12 (F) Ride an animal when it is physically unfit;
- 13 (G) Bait or harass an animal for the purpose of making it perform for a person's
- 14 amusement;
- 15 (H) Cruelly chain or tether an animal; or
- 16 (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or
- 17 maltreating any other domesticated animal.
- 18 (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor
- 19 and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined

20 in jail not more than six months, or both.

21 (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or  
22 causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal,  
23 is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less  
24 than one nor more than five years and be fined not less than \$1,000 nor more than \$5,000. For  
25 the purposes of this subsection, "torture" means an action taken for the primary purpose of  
26 inflicting pain.

27 (c) A person, other than a licensed veterinarian or a person acting under the direction or  
28 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to  
29 be administered to any animal participating in any contest any controlled substance or any other  
30 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a  
31 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than  
32 \$2,000.

33 (d) Any person convicted of a violation of this section forfeits his or her interest in any  
34 animal and all interest in the animal vests in the humane society or county pound of the county in  
35 which the conviction was rendered and the person is, in addition to any fine imposed, liable for  
36 any costs incurred or to be incurred by the humane society or county pound as a result.

37 (e) For the purpose of this section:

38 (1) "Controlled substance" has the same meaning ascribed to it by subsection (d), section  
39 one hundred one, article one, chapter sixty-a of this code.

40 (2) "Adequate shelter" for dogs and cats predominantly maintained outdoors is a shelter  
41 that is structurally sound and strong enough to block elements of weather, including protection  
42 from extreme temperatures; constructed of materials that are impervious to moisture including a  
43 floor with a solid surface, such as a resting platform, pad, floor mat, or a similar device, with a  
44 minimum of three sides and a waterproof roof enabling the animal to remain dry and clean,  
45 sufficient space to allow the animal adequate freedom of movement; and properly ventilated

46 and periodically cleaned to minimize health hazards.

47 (f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or  
48 animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game  
49 farms if kept and maintained according to usual and accepted standards of livestock, poultry,  
50 gaming fowl or wildlife or game farm production and management, nor to humane use of animals  
51 or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et seq.*, and  
52 the regulations promulgated thereunder, as both statutes and regulations are in effect on the  
53 effective date of this section.

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

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

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

69 (i) In addition to any other penalty which can be imposed for a violation of this section, a  
70 court shall prohibit any person so convicted from possessing, owning or residing with any animal  
71 or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen

72 years following entry of a felony conviction. A violation under this subsection is a misdemeanor  
73 punishable by a fine not exceeding \$2,000 and forfeiture of the animal.

NOTE: The purpose of this bill is to define adequate shelter for dogs and cats in relation to animal cruelty.

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