

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2752

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[Introduced March 1, 2017; Referred
to the Committee on Agriculture and Natural
Resources then the Judiciary.]

1 A BILL to amend and reenact §7-10-4 of the Code of West Virginia, 1931, as amended, relating
2 to abuse and neglect of livestock.

Be it enacted by the Legislature of West Virginia:

1 That §7-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 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 section, a humane officer shall take
2 possession of any animal, including birds or wildlife in captivity, known or believed to be
3 abandoned, neglected, deprived of necessary sustenance, shelter, medical care or reasonable
4 protection from fatal freezing or heat exhaustion or cruelly treated or used as defined in sections
5 nineteen and nineteen-a, article eight, chapter sixty-one of this code.

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

17 (c) (1) If a hearing is requested and the magistrate finds by a preponderance of the
18 evidence that the owner did abandon, neglect or cruelly treat the animal, or if no hearing is

19 requested and the magistrate finds by a preponderance of the evidence, based upon the affidavit
20 of the humane officer, that the owner did abandon, neglect or cruelly treat the animal, the
21 magistrate shall enter an order awarding custody of the animal to any humane officer for further
22 disposition in accordance with reasonable practices for the humane treatment of animals. After
23 hearing the evidence, if the magistrate is not convinced the animal was neglected or cruelly
24 treated, he or she may dismiss the action and order the animal be returned to the owner. If the
25 magistrate finds in favor of the humane officer, the owner of the animal shall post a bond with the
26 court in an amount sufficient to provide for the reasonable costs of care, medical treatment and
27 provisions for the animal for at least thirty days. The bond shall be filed with the court within five
28 days following the courts finding against the owner. At the end of the time for which expenses are
29 covered by the original bond if the animal remains in the care of the humane officer and the owner
30 desires to prevent disposition of the animal by the humane officer, the owner shall post an
31 additional bond with the court within five days of the expiration of the original bond. During this
32 period the humane officer is authorized to place the animal in a safe private home or other safe
33 private setting in lieu of retaining the animal in an animal shelter. The person whose animal is
34 seized is liable for all costs of the care of the seized animal.

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

39 (d) Any person whose animal is seized and against whom the magistrate enters a finding
40 pursuant to this section is liable during any period it remains in the possession of the humane
41 officer for the reasonable costs of care, medical treatment and provisions for the animal not
42 covered by the posting of the bond as provided in subdivision (1), subsection (c) of this section.
43 The magistrate shall require the person liable for these costs to post bond to provide for the
44 maintenance of the seized animal. This expense, if any, becomes a lien on the animal and must

45 be discharged before the animal is released to the owner. Upon dismissal or withdrawal of the
46 complaint, any unused portion of posted bonds shall be returned to the owner. Upon a finding in
47 favor of the humane officer, all interest in the impounded animal shall transfer to the humane
48 officer for disposition in accordance with reasonable practices for the humane treatment of
49 animals. Any additional expense above the value of the animal may be recovered by the humane
50 officer or custodial agency.

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

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

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

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

64 (2) The term "humanely destroyed" does not include euthanizing an animal by means of
65 a gas chamber: *Provided*, That any county which has a gas chamber in operation as of the
66 effective date of this section may continue to operate the gas chamber subject to the following:

67 (1) The gas chamber shall be operated by an animal euthanasia technician certified pursuant to
68 article ten-a, chapter thirty of this code; and (2) the gas chamber shall have been manufactured
69 and installed by a person who regularly manufactures and installs gas chambers. The Board of
70 Veterinary Medicine shall promulgate emergency rules regarding the inspection of gas chambers,

71 pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

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

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

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

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

85 (i) All persons or entities in the state performing euthanasia under this article shall register
86 with the Board of Veterinary Medicine by December 31, 2009, in a manner to be prescribed by
87 the board. The Board of Veterinary Medicine shall promulgate emergency rules relating to the
88 registration of those performing animal euthanasia, pursuant to section fifteen, article three,
89 chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to permit counties to recover certain costs from the owners of livestock seized due to abuse and neglect.

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