

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4359**

BY DELEGATES WESTFALL, LOVEJOY, BYRD, LANE,

KESSINGER, QUEEN, ATKINSON AND GRAVES

[Introduced January 30, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating  
 2 to the removal of animals left unattended in motor vehicles; defining terms, setting forth  
 3 conditions to rescue and retrieve an animal in danger in an unattended vehicle; providing  
 4 for written notice to the owner of the motor vehicle; providing for payment of fees and costs  
 5 associated with the maintenance, care and medical treatment of an animal; limiting search  
 6 of a motor vehicle during rescue; providing for seizer of items found in certain  
 7 circumstances; providing for civil and criminal immunity to persons, their employees or  
 8 agents who retrieve an animal; and providing for criminal penalties.

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

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

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

1 (a)(1) For the purposes of this section “agent” means any:  
 2 (A) Emergency Medical Service Personal as defined in §16-4C-1 et seq. of this code;  
 3 (B) Humane officer as defined in §7-10-1 et seq. of this code;  
 4 (C) Law-enforcement officer as defined in §30-29-1 et seq. of this code; and  
 5 (D) Member of a paid or volunteer local fire department.  
 6 (2) For purposes of this section an agent does not include members of the general public.  
 7 ~~(a)(1)~~ (b) (1) It is unlawful for any person to intentionally, knowingly or recklessly,  
 8 (A) Mistreat an animal in cruel manner;  
 9 (B) Abandon an animal;  
 10 (C) Withhold;  
 11 (i) Proper sustenance, including food or water;  
 12 (ii) Shelter that protects from the elements of weather; or  
 13 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the  
 14 suffering of any animal;  
 15 (D) Abandon an animal to die;

16           ~~(E) Leave an animal unattended and confined in a motor vehicle when physical injury to,~~  
17 ~~or death of, the animal is likely to result~~ Leave an animal unattended and confined in a motor  
18 vehicle when physical injury to, or death of, the animal is likely to result. The conditions which  
19 may cause injury or death shall include, but are not limited to, exposure to extreme heat or cold  
20 and insufficient ventilation.

21           (i) An agent may take all steps that are reasonably necessary to remove an animal from  
22 a motor vehicle if the animal's health, safety, or wellbeing appears to be in immediate danger from  
23 heat, cold or lack of adequate ventilation and the conditions could reasonably be expected to  
24 cause extreme suffering or death.

25           (ii) An agent may enter the motor vehicle for the sole purpose of assisting the animal and  
26 may not search the vehicle or seize items found in the vehicle unless otherwise permitted by law.

27           (iii) An agent who removes or otherwise retrieves an animal pursuant to this section shall  
28 leave written notice in a secure and conspicuous location on or in the motor vehicle bearing the  
29 officer's name and title and the address of the location where the animal may be retrieved. The  
30 owner may retrieve the animal only after payment of all charges that have accrued for the  
31 maintenance, care, medical treatment and impoundment of the animal have been paid.

32           (iv) An agent who removes or otherwise retrieves an animal from a motor vehicle pursuant  
33 to this article, and the agency or municipality that employs the agent shall be immune from criminal  
34 or civil liability that might otherwise result from the removal of the animal.

35           (F) Ride an animal when it is physically unfit;

36           (G) Bait or harass an animal for the purpose of making it perform for a person's  
37 amusement;

38           (H) Cruelly chain or tether an animal; or

39           (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or  
40 maltreating any other domesticated animal.

41           (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor

42 and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined  
43 in jail not more than six months, or both.

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

50 ~~(c)~~ (d) A person, other than a licensed veterinarian or a person acting under the direction  
51 or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes  
52 to be administered to any animal participating in any contest any controlled substance or any  
53 other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of  
54 a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than  
55 \$2,000.

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

60 ~~(e)~~ (f) For the purpose of this section, the term "controlled substance" has the same  
61 meaning ascribed to it by §60A-1-101(d) of this code.

62 ~~(f)~~ (g) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping  
63 or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed  
64 game farms if kept and maintained according to usual and accepted standards of livestock,  
65 poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of  
66 animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et*  
67 *seq.*, and the regulations promulgated thereunder, as both statutes and regulations are in effect

68 on the effective date of this section.

69 ~~(g)~~ (h) Notwithstanding the provisions of subsection ~~(a)~~ (b) of this section, any person  
70 convicted of a second or subsequent violation of subsection ~~(a)~~ (b) is guilty of a misdemeanor  
71 and, shall be confined in jail for a period of not less than 90 days nor more than one year, fined  
72 not less than \$500 nor more than \$3,000, or both fined and confined. The incarceration set forth  
73 in this subsection is mandatory unless the provisions of subsection ~~(h)~~ (i) of this section are  
74 complied with.

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

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

85 ~~(i)~~ (j) In addition to any other penalty which can be imposed for a violation of this section,  
86 a court shall prohibit any person so convicted from possessing, owning or residing with any animal  
87 or type of animal for a period of five years following entry of a misdemeanor conviction and 15  
88 years following entry of a felony conviction. A violation under this subsection is a misdemeanor  
89 punishable by a fine not exceeding \$2,000 and forfeiture of the animal.

NOTE: The purpose of this bill is to permit removal of animals left unattended in motor vehicles. The bill defines terms. The bill sets forth conditions to rescue and retrieve an animal in danger in an unattended vehicle. The bill provides for written notice to the owner of the motor vehicle. The bill provides for payment of fees and costs associated with the maintenance, care and medical treatment of an animal. The bill limits search of a motor

vehicle during rescue. The bill provides for seizure of items found in certain circumstances. The bill provides for civil and criminal immunity to persons, their employees or agents who retrieve an animal. The bill provides for criminal penalties.

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