

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2461

BY DELEGATE WILLIAMS, BYRD AND PYLES

[INTRODUCED JANUARY 16, 2019; REFERRED

TO THE COMMITTEE ON AGRICULTURE AND NATURAL

RESOURCES THEN THE JUDICIARY.]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating
 2 to cruelty to animals; defining food, water, shelter and treatment; providing specifics for
 3 tethering an animal; providing for seizure of an animal for violations; increasing criminal
 4 penalties; and providing that a person in violation of this statute for a second time shall be
 5 added to a state-wide, publicly available, do not adopt or sell, registry.

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) It is unlawful for any person to intentionally, knowingly or recklessly:

2 (A) Mistreat an animal in a cruel manner;

3 (B) Abandon an animal;

4 (C) Withhold;

5 (i) Proper sustenance, including food or water. “Food” as used in this section means being
 6 of sufficient quantity and quality to allow for normal growth or the maintenance of body weight.
 7 Animal food shall meet or exceed National Research Council Standards and American
 8 Association of Feed Company Officials, Inc., (AAFCO) processing standards. Animals shall be
 9 provided wholesome food suitable for the species at a frequency and amount appropriate for the
 10 species and age. Animals over the age of 20 weeks shall be offered food at least once every 12
 11 hours. Animals under the age of 20 weeks shall be offered food at least once every eight hours.

12 “Water” as used in this section means being clean, fresh, potable, and in a liquid state.
 13 Animals shall be provided access to water at least once every four hours in an amount appropriate
 14 for the species and age. Snow and ice are not acceptable water sources;

15 (ii) Shelter ~~that protects from the elements of weather; or~~ for a tethered animal or an animal
 16 roaming free: Shelter shall consist of a four sided structure, with a roof and one opening only wide
 17 enough for the animal to enter into the structure unimpeded, and it shall be a suitable size to
 18 accommodate the animal in both standing and lying positions; It shall be moisture-proof,

19 windproof, ventilated, and in cold temperatures, it shall promote the retention of body heat; It shall
20 be made of solid, durable material with a solid, moisture-proof floor raised at least two inches from
21 the ground;

22 It shall have a sufficient quantity of suitable clean bedding material consisting of hay,
23 straw, cedar shavings, or the equivalent to provide insulation and protection against cold and
24 dampness. Blankets that can retain moisture and freeze are not an acceptable bedding. The
25 structure and the surrounding area shall be free from excessive waste, dirt, and trash. Each
26 animal tethered or roaming free shall have their own individual shelter. For an animal in a
27 confinement area (including, but not limited to, outdoor pens or any other area used to house an
28 animal: There shall be at least 100 square feet of floor space in such area for each animal over
29 four months of age kept in the area. The same requirements for shelter applies for tethered or
30 roaming free animals. Examples of inadequate shelters include, but are not limited to, lean-tos,
31 metal drums, plastic drums, cardboard or other disposable boxes, vehicles, or the area on or
32 beneath exposed porches or exposed decks;

33 (iii) Exercise appropriate for the species and age;

34 ~~(iii)~~ (iv) Medical treatment Veterinary care by a licensed doctor of veterinary medicine,
35 established and maintained for rabies and disease control prevention as well as for treatment
36 necessary to sustain normal health and fitness or to end the suffering of any animal. In addition,
37 an effective program established and maintained for the control of insects, ectoparasites, rodents,
38 and other pests;

39 (D) Abandon an animal to die;

40 (E) Leave an animal unattended and confined in a motor vehicle when physical injury to
41 or death of the animal is likely to result;

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

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

45 (H) Cruelly chain or tether an animal:

46 (i) The animal must be properly fitted with and wearing a nonchoke harness or collar made
47 of leather, nylon, or similar material. Collars such as, but not limited to, choke, prong, martingale,
48 and greyhound shall not be used;

49 (ii) The tether must be attached to the animal's harness or collar by means of a swivel
50 anchor, swivel latch, or other mechanism designed to prevent the animal from becoming
51 entangled, and not directly to the animal's neck;

52 (iii) The tether must be three times the length of the animal, as measured from the tip of
53 its nose to the base of its tail or 10 feet, whichever is longer, free from tangles, and weigh no more
54 than 1/8 of the animal's weight;

55 (iv) The animal must be tethered so as to prevent injury, strangulation, or entanglement;

56 (v) Each animal must be tethered separately;

57 (vi) The animal must be six months of age or older;

58 (vii) The animal must not be sick or injured or have any open sores or wounds;

59 (viii) If using a pulley system, all previous conditions shall apply; and

60 (ix) The running line must be at least 15 feet in length and at least four feet high, and no
61 more than seven feet above ground, sufficient for the animal to move about freely; and the animal
62 must be tethered at sufficient distance from any other objects to prohibit the tangling of the cable,
63 from extending over an object or an edge that could result in injury of strangulation of the animal,
64 and be of sufficient distance from any fence so as to prohibit the animal's access to the fence;

65 (x) Tether, cage, confine, leave free roaming, or in any way leave an animal outside for
66 more than 15 minutes during extreme weather, including, but not limited to, extreme heat (85
67 degrees Fahrenheit) or freezing temperatures (32 degrees Fahrenheit), thunderstorms,
68 tornadoes, or floods; or

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

71 (2) Any person in violation of subdivision (1) of this subsection shall have their animal
72 seized immediately, if risk of harm or death is likely, and for a first offense is guilty of a
73 misdemeanor and, upon conviction thereof, shall be fined not less than \$300 nor more than
74 \$2,000 or confined in jail not more than six months, or both fined and confined.

75 (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or
76 causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal,
77 is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility
78 not less than one nor more than five years and be fined not less than \$1,000 nor more than
79 \$5,000. For the purposes of this subsection, "torture" means an action taken for the primary
80 purpose of inflicting pain.

81 (c) A person, other than a licensed veterinarian or a person acting under the direction or
82 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to
83 be administered to any animal participating in any contest any controlled substance or any other
84 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a
85 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
86 \$2,000.

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

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

93 (f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or
94 animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game
95 farms if kept and maintained according to usual and accepted standards of livestock, poultry,
96 gaming fowl or wildlife or game farm production and management, nor to humane use of animals

97 or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et seq.*, and
98 the regulations promulgated thereunder, as both statutes and regulations are in effect on the
99 effective date of this section.

100 (g) Notwithstanding the provisions of subsection (a) of this section, any person convicted
101 of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and, shall be
102 confined in jail for a period of not less than ~~ninety days~~ six months nor more than one year, fined
103 not less than ~~\$500~~ \$1,000 nor more than ~~\$3,000~~, \$5,000 or both fined and confined. The
104 incarceration set forth in this subsection is mandatory unless the provisions of subsection (h) of
105 this section are complied with.

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

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

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

121 (j) Any person(s) in violation of any subsection of this section for a second time shall be
122 added to a state-wide, publicly available, do not adopt or sell registry.

NOTE: The purpose of this bill is to amend the statute relating to cruelty to animals. The bill provides definitions of "food", "water", "shelter" and "treatment". It provides specifics for tethering an animal. The bill includes for seizure of an animal for violations in addition to increasing criminal penalties. Finally, the bill provides that a person in violation of this statute for a second time shall be added to a state-wide, publicly available, do not adopt or sell registry.

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