

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2095

BY DELEGATES GRAVES, ROWE, THOMPSON, HAYNES,

ZUKOFF, BOOTH, FERRELL AND HAMRICK

[Introduced February 10, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §7-1-14 of the Code of West Virginia, 1931, as amended; to amend
 2 said code by adding thereto two new sections, designated §7-10-1a and §7-10-6; to
 3 amend and reenact §7-10-2 and §7-10-4 of said code; to amend said code by adding
 4 thereto two new sections, designated §19-20-12a and §19-20-27; to amend and reenact
 5 §19-20-22 and §19-20-26; to amend and reenact §61-8-19 of said code; and to amend
 6 said code by adding thereto two new sections, designated §61-8-19d and §61-8-19e, all
 7 relating generally to providing increased protections for the welfare of domestic animals;
 8 requiring facilities for the care of stray, abandoned, and surrendered animals and providing
 9 for access by the public; defining terms; updating the duties of humane officers; specifying
 10 standards for the operation of animal shelters; requiring inspections; establishing
 11 sanctions for violation of the standards of operation; defining an owner's duty of care for
 12 companion animals; requiring an owner to confine unspayed female dogs in estrus;
 13 requiring dog breeders to provide written disclosures to purchasers; specifying minimum
 14 levels of care to be provided by dog breeders; defining when a dog is unfit for sale by a
 15 dog breeder and providing remedies therefor; increasing the penalty for a second offence
 16 of cruelty to animals; defining the criminal offenses of unlawful confinement of domestic
 17 animals and hoarding of animals; establishing criminal penalties; and providing for mental
 18 health treatment in certain circumstances involving hoarding of animals.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-14. Custody and care of animals abandoned, neglected, or cruelly treated; animals causing public nuisance, health risk or safety hazard; authority of county commission.

1 (a) The governing body of each county or municipality shall ensure a facility exists to house

2 and care for their community’s animals in need, including stray animals, abandoned animals, and
3 surrendered animals, either by:

4 (1) Maintaining, or causing to be maintained, a public animal shelter;

5 (2) Contracting with a private group to house and care for animals; or

6 (3) Contracting with another municipality for the housing and care of animals.

7 (b) Any public animal shelter or shelter contracting with a county or municipality shall be
8 accessible to the public at reasonable hours during the week;

9 (c) Any public animal shelter or shelter contracting with a county or municipality must
10 provide care and housing for dogs and may accept any other animals at its discretion.

1 ~~(a)~~ (d) Notwithstanding any provision of this code to the contrary, any county commission
2 may adopt ordinances, rules and regulations providing for the custody and care of animals that
3 have been abandoned, neglected or cruelly treated for the protection of any such animal and to
4 prevent it from becoming a public nuisance or risk to public health or safety or the environment.

5 ~~(b)~~ (e) Any such ordinance, rule or regulation may require each owner to provide for each
6 of his or her animals:

7 (1) Adequate food which provides sufficient quantity and nutritive value to maintain each
8 animal in good health;

9 (2) Adequate water which provides easy access to clean, fresh, potable water of a
10 drinkable temperature in sufficient volume and suitable intervals to maintain normal hydration for
11 each animal;

12 (3) Adequate shelter to protect the animal from the elements and other animals;

13 (4) Adequate space in the primary enclosure for the particular animal depending upon its
14 age, size, species and weight which is regularly cleaned to prevent an unsanitary accumulation
15 of urine and feces;

16 (5) Adequate exercise to assure that the animal maintains normal muscle tone and mass
17 for the age, species, size and condition of the animal; and

18 (6) Veterinary care when needed or to prevent suffering or disease transmission.

19 ~~(e)~~ (f) Any such ordinance, rule or regulation may limit the number of animals owned, kept
20 or maintained by an individual, group or organization, whether public or private based on the
21 person’s ability to provide for the animals as set forth in subsection ~~(b)~~ (e) of this section.

22 ~~(d)~~ (g) Any such ordinance, rule or regulation shall provide appropriate penalties for
23 violations and shall authorize humane officers to take possession of any animal that is not properly
24 cared for as required by such ordinance, rule or regulation.

ARTICLE 10. HUMANE OFFICERS.

§7-10-1a. Definitions.

1 As used in this article,

2 (a) “Animal shelter” means a public or private facility which includes a physical structure
3 that provides housing for stray, abandoned, abused, or owner-surrendered dogs or cats and that
4 is operated, owned, or maintained by a county or municipality for animal control purposes or by a
5 duly incorporated humane society, animal welfare society, or other nonprofit organization.

6 (b) “Humane officer” means a person designated pursuant to §7-10-1 of this code to
7 investigate complaints of cruel or inhumane treatment of animals and enforce laws related to the
8 prevention of cruelty to animals.

9 (c) “Primary Enclosure” means structure or device used to restrict an animal to a limited
10 amount of space, such as a room, pen, run, cage, compartment, kennel, or hutch, where an
11 animal will sleep, eat, and spend the majority of its time.

12 (d) “Temporary Enclosure” means a cage or crate designed for short-term, temporary
13 confinement or travel (e.g., airline crates, transport carriers, etc.); dogs and cats may be housed
14 in temporary enclosures for no longer than 48 hours after being taken into custody by an animal
15 shelter.

**§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of
individuals suspected; prohibition against interference with humane officers;**

penalties.

1 (a) Humane officers shall prevent the perpetration or continuance of any act of cruelty
2 upon any animal and investigate and, upon probable cause, cause the arrest and assist in the
3 prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable
4 cause, and, as provided by law, such officers have the right to access and inspect records and
5 property reasonably necessary to any investigation. Humane officers also have the duty to
6 enforce the provisions of §7-10-6 of this code, including the investigation of complaints against,
7 and inspection of, animal shelters.

8 (b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a
9 reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse
10 or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the
11 grounds for the suspicion. In the event of suspected child abuse or neglect, the humane officer
12 shall report to the local child protective services agency of the Department of Health and Human
13 Resources in accordance with the provisions of §49-2-809 of this code. In the event of suspected
14 abuse or neglect of an incapacitated or elderly person, he or she shall report to the department's
15 local adult protective services agency in accordance with the provisions of §9-6-11 of this code.
16 In the event of suspected domestic violence, he or she shall report to the State Police in
17 accordance with the provisions of §48-27-101 *et seq.* of this code.

18 (c) Any person who interferes with, obstructs or resists any humane officer in the discharge
19 of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
20 than \$100 nor more than \$500 or confined in jail not more than 30 days, or both fined and confined.
21 Any penalties imposed for a violation of this subsection shall be imposed in addition to any
22 penalties the person incurs for cruel or inhumane treatment of any animal.

**§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 §61-8-19
5 and §61-8-19a 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 10 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 30 days. The bond shall be filed with the court within five

28 days following the court's finding against the owner. At the end of the time for which expenses
29 are covered by the original bond if the animal remains in the care of the humane officer and the
30 owner 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 §30-10A-1 *et*
60 *seq.* 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 §19-10B-

80 2(d) of this code; poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and
81 maintained according to usual and accepted standards of livestock; poultry, gaming fowl, wildlife
82 or game farm production and management; nor to the humane use of animals or activities
83 regulated under and in conformity with the provisions of 7 U.S.C. § 2131, *et seq.*, and the
84 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~~ propose rules for
88 legislative approval relating to the registration of those performing animal euthanasia, pursuant to
89 §29A-3-15 of this code.

§7-10-6. Inspection of animal shelters; standards; penalties.

1 (a) (1) Humane officers may inspect all animal shelters within the county and shall
2 investigate all complaints about the care and welfare of animals in such facilities. Such inspections
3 shall be unannounced and shall occur within the normal business hours of the animal shelter.
4 Inspections shall be performed at least annually, and up to two routine inspections may be
5 conducted per year. Additional inspections may be performed based on probable cause to believe
6 a shelter might be in violation of these and other applicable standards, pursuant to a proper search
7 warrant. The humane officer shall document the inspection or investigation, or both, and present
8 copies of the report to the animal shelter and to the county commissioners.

9 (2) If the humane officer operates, is employed by, or is otherwise affiliated with an animal
10 shelter in the county, any inspection or investigation of that facility shall be done by a veterinarian
11 licensed in this state, accompanied by the sheriff or a deputy not appointed as a humane officer.
12 Such veterinarian shall document the inspection or investigation, or both, and present copies of
13 the report to the animal shelter and to the sheriff's department.

14 (b) All animal shelters shall:

15 (1) Separate animals by species in primary enclosures, separate unaltered male and

16 female animals of the same species at all times, and ensure that all animals in the same enclosure
17 at the same time are compatible;

18 (2) Provide adequate housing, including:

19 (A) Isolation of sick or injured animals sufficient to protect the health or safety of other
20 animals; animals diagnosed with or suspected of communicable illness must be physically
21 isolated from healthy animals either by permanent or temporary barriers sufficient to prevent the
22 transmission of airborne and physical contaminants, and all appropriate steps must be taken to
23 minimize transmission of disease.

24 (B) Indoor housing facilities with protection from extreme temperatures and weather
25 conditions that may be hazardous to the animals, including heated quarters during cold weather;
26 whenever possible, animals' primary housing should be indoors.

27 (C) Indoor housing facilities which are: Sanitary and in good repair; free of standing water;
28 constructed of fully disinfectable materials (no wood or other porous surfaces); constructed of
29 solid flooring (no mesh, wire, or slatted floors); and sufficiently ventilated to provide for the
30 animals' health and well-being and to minimize odors, drafts, ammonia levels, and moisture
31 condensation. Ambient temperature must not fall below 50° F (10° C), or rise above 85° F (29.5° C)
32 when animals are present unless expressly authorized by a veterinarian;

33 (D) Outdoor housing facilities, if used to house animals, must be large enough to
34 accommodate all animals in the enclosure simultaneously and allow the animals to remain dry
35 and protected from extreme temperature or weather conditions that may be hazardous to the
36 animals. Outdoor housing should not be considered suitable primary enclosures for cats and dogs
37 unless no reasonable indoor option is available.

38 (E) Primary enclosures for dogs must be at least six inches higher than the head of the
39 tallest dog in the enclosure when the dog is in a normal standing position and must allow sufficient
40 space for sleeping, eating, and elimination, and must ensure that each animal has sufficient room
41 to engage in normal behaviors;

42 (F) Primary enclosures for cats must allow each animal to fully extend its limbs, including
43 its tail, and must allow for sleeping, eating, and elimination areas; enclosures ideally should
44 provide two feet of triangulated distance between bedding, litterbox, and food/water bowls; and

45 (G) Primary enclosures for all animals must be large enough for each animal to turn about
46 freely, stand erect, lie down in a natural position, and fully extend their limbs. Primary enclosures
47 must contain a rest board, floormat, or similar device that can be maintained in a sanitary
48 condition.

49 (3) Clean primary enclosures and housing facilities to remove urine, feces, hair, dirt,
50 debris, and food waste at least daily, or more often if necessary, to prevent accumulation and to
51 reduce disease hazards, insects, pests, and odors. While animals need not necessarily be
52 removed from housing areas during cleaning, they may not be permitted to come into direct
53 contact with disinfectants, cleaning solutions, or other potentially harmful products, nor may they
54 be permitted to become wet during the cleaning process, either directly or indirectly; in no case
55 may high-pressure water systems be used to clean kennels with animals still inside them;

56 (4) Provide adequate veterinary care for sick or injured animals, such that animals
57 suspected of illness or injury receive veterinary care within 24 hours and are provided medication
58 necessary to alleviate pain;

59 (5) Provide continuous access to potable, uncontaminated water that is not frozen and is
60 readily accessible to all animals in the enclosure, unless otherwise directed by a veterinarian for
61 the health of the animal;

62 (6) Provide palatable, uncontaminated food at least once daily, unless otherwise directed
63 by a veterinarian for the health of the animal;

64 (7) Ensure each animal is individually observed at least twice in every 24-hour period by
65 an animal shelter supervisor tasked with overseeing the welfare and care of the animals;

66 (8) Provide all animals with daily enrichment to ensure adequate mental and physical
67 stimulation, either outside or inside the animals' primary enclosure. Dogs should be removed from

68 their primary enclosures for exercise (walks, playgroup sessions, etc.) at least once per day,
69 unless inclement weather, isolation/quarantine/health restrictions, or staffing limitations prevent
70 their removal; in such cases, shelters must document daily in-kennel enrichment provided to
71 maintain the physical and psychological well-being of dogs not afforded outdoor exercise; and

72 (9) Keep written records of the care of each animal, including, but not limited to,
73 documentation of daily cleanings, individual observation of each animal, and outdoor access, as
74 well as veterinary treatment, and provide these records to the humane officer or other inspector
75 authorized by subsection (a) of this section upon request.

76 (c) Humane officers or other inspectors authorized by subsection (a) of this section may
77 issue orders to address violations of this section, including, but not limited to, ordering suspension
78 of intake of animals until violations are corrected and permanent closure of the facility.

79 (d) If the humane officer or other inspector authorized by subsection (a) of this section
80 finds that the animal shelter is not in compliance with the standards established in this section,
81 the humane officer or other authorized inspector shall issue orders as follows:

82 (1) For the first non-compliant inspection, the animal shelter shall be issued a warning and
83 shall be reinspected 30 days after the date of the first inspection.

84 (2) If, after the second inspection, the animal shelter remains noncompliant, the animal
85 shelter shall be subject to a fine of not less than \$100 nor more than \$500 and/or the humane
86 officer or other authorized inspector shall issue an order requiring the animal shelter to suspend
87 intake of animals for a period of 15-30 days, as needed to address the noncompliance. After such
88 period, the animal shelter shall be reinspected.

89 (3) If, after the third inspection, the animal shelter remains noncompliant, the humane
90 officer or other authorized inspector shall issue an order permanently closing the facility. Such
91 order shall grant the animal shelter a period of 30-90 days, as needed, to transfer all animals in
92 the facility to other animal shelters, organizations, or individuals within the state. Animals from
93 animal shelters subject to a closure order may be transferred out of the state as long as the

94 transfer does not violate laws of this state or of the importing state.

95 (e) Nothing in this section prevents any local, state, or federal law-enforcement agency
96 from investigating animal cruelty in animal shelters.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-12a. Owner’s duty of care of companion animals.

1 (a) As used in this section:

2 “Adequate care” or “care” means the responsible practice of good animal husbandry,
3 handling, management, confinement, feeding, watering, protection, shelter, transportation,
4 treatment, and when necessary, euthanasia, appropriate for the age, species, condition, size, and
5 type of the animal and the provision of veterinary care when needed to prevent suffering or
6 impairment of health;

7 “Adequate exercise” or “exercise” means the opportunity for the animal to move sufficiently
8 to maintain normal muscle tone and mass for the age, species, size, and condition of the animal,
9 in order to promote good physical and psychological health;

10 “Adequate feed” mean access to and the provision of food that is of sufficient quantity and
11 nutritive value to maintain each animal in good health; is accessible to each animal; is prepared
12 so as to permit ease of consumption for the age, species, condition, size and type of each animal,
13 is provided in a clean and sanitary manner; is placed so as to minimize contamination from
14 excrement and pests; and is provided at suitable levels for the species, age and condition of the
15 animal, at least once daily, except as otherwise prescribed by a veterinarian or as dictated by
16 naturally occurring states of hibernation or fasting for that species;

17 “Adequate shelter” means provision of and access to shelter that is suitable for the
18 species, age, condition, and age of each animal; provides adequate space for each animal, is
19 safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, adverse effect of

20 heat or cold, physical suffering, and impairment of health; is properly lighted to provide a regular
21 diurnal cycle and to allow observation of the physical condition of the animal; is properly cleaned
22 by regular removal of excreta and food waste; enables each animal to be clean and dry, except
23 when detrimental to the species; is properly shaded during hot weather and does not readily
24 conduct heat; has a windbreak at its entrance during cold weather and provides a sufficient
25 quantity of bedding material to protect the animal from cold and to promote the retention of body
26 heat; and for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar
27 device that is large enough for the animal to lie upon in a normal manner and can be maintained
28 in a sanitary condition;

29 “Adequate space” means sufficient space to allow each animal to: (1) Easily stand, sit, lie,
30 turn around, and make all other normal body movements in a comfortable, normal position for the
31 animal; and (2) interact safely with other animals in the enclosure. When freedom of movement
32 would endanger the animal, then temporary, appropriate restraints or confinement are permitted
33 within the meaning of “adequate space” according to professionally accepted standard of care
34 and treatment; and

35 “Adequate water” means provision of and access to clean, fresh, potable water of a
36 drinkable temperature, accessible at all times, and provided in an appropriate manner and amount
37 sufficient to the animal’s needs.

38 (b) Each owner shall provide the following for each of his or her companion animals:

39 (1) Adequate feed;

40 (2) Adequate water;

41 (3) Adequate shelter that is clean;

42 (4) Adequate space in the primary enclosure for the particular animal depending upon its
43 age, size, species, and weight;

44 (5) Adequate exercise;

45 (6) Adequate care, treatment, and transportation; and

46 (7) Veterinary care when needed to prevent suffering or disease transmission.

47 (c) Shelters with wire, grid, or slat floor must not permit the animals' feet to pass through
48 the openings, sag under the animals' weight, or otherwise allow the animals' feet or toes to be
49 injured. Shelters and animal enclosures must have sufficient drainage to remove standing water.

§19-20-22. ~~Confinement of female dogs~~ Confinement of unspayed female dogs in estrus.

1 Every person owning or harboring a female dog, whether licensed or unlicensed, which
2 has not been spayed shall keep such dog confined in a building or secure enclosure for 25 days
3 during the period of estrus.

§19-20-26. Commercial dog-breeding operations.

1 (a) As used in this section:

2 (1) "Advertisement" means any media used to promote the sale of dogs including, but not
3 limited to, the Internet, newspapers, flyers, magazines, radio, television, bulletins and signs.

4 (2) "Commercial dog breeder" means any person who:

5 (A) Maintains 11 or more unsterilized dogs over the age of one year for the exclusive
6 purpose of actively breeding;

7 (B) Is engaged in the business of breeding dogs as household pets for direct or indirect
8 sale or for exchange in return for consideration; and

9 (C) Commercial dog breeder shall not include:

10 (i) Any person who keeps or breeds dogs exclusively for the purpose of herding or
11 guarding livestock or farm animals, hunting, tracking or exhibiting in dog shows, performance
12 events or field and obedience trials; and

13 (ii) With respect to greyhound dogs only, any person who holds an occupational permit
14 from, and has registered a greyhound kennel name with, the West Virginia Racing Commission.

15 (3) "Class I Commercial Dog Breeder" means a commercial dog breeder that possesses
16 11 to 30 unsterilized dogs over the age of one year at any one time for the exclusive purpose of
17 actively breeding.

18 (4) "Class II Commercial Dog Breeder" means a commercial dog breeder that possesses
19 more than 30 unsterilized dogs over the age of one year at any time.

20 (5) "Clinically ill" means an illness that is apparent to a veterinarian based on observation,
21 examination, or testing of the dog, or upon a review of the medical records relating to the dog;

22 ~~(5)~~ (6) "Housing facility" means a structure in which dogs are kept that provides them with
23 shelter, protection from the elements and protection from temperature extremes.

24 (7) "Nonelective surgical procedure" means a surgical procedure that is necessary to
25 preserve or restore the health of the dog, to prevent the dog from experiencing pain or discomfort,
26 or to correct a condition that would otherwise interfere with the dog's ability to walk, run, jump, or
27 otherwise function in a normal manner;

28 ~~(6)~~ (8) "Primary enclosure" means a structure that restricts a dog's ability to move in a
29 limited amount of space, such as a room, cage or compartment.

30 (b) No commercial dog breeder may breed dogs without a business registration certificate
31 in accordance with §11-12-3 of this code and a valid business license issued by the locality in
32 which the dog breeding operation is located, if the locality so requires.

33 (c) A commercial dog breeder shall:

34 (1) Obtain a permit annually to operate, as required by the county commission in which
35 the commercial dog breeding operation is located. County commissions are authorized to charge
36 a fee to commercial dog breeders and shall deposit the fees collected in a specially designated
37 account to be used for animal shelters, animal rescue and spay neuter programs administered by
38 county animal shelters or other humane organizations. The fee for a Class I commercial dog-
39 breeding permit shall be an amount determined by the county commission, not to exceed \$250
40 per year. The fee for a Class II commercial dog breeding permit shall be an amount determined
41 by the county commission, not to exceed \$500 per year;

42 (2) Breed female dogs only after the breeder has obtained an annual certification by a
43 licensed veterinarian that the dog is in suitable health for breeding;

44 (3) Dispose of dogs only by ~~gift~~, sale, transfer, ~~barter~~ or euthanasia by a licensed
45 veterinarian;

46 (4) Maintain current, valid rabies certificates for every dog pursuant to §19-20A-1 *et seq.*
47 of this code;

48 (5) Include the breeder's annual permit number on any advertisement for the sale of a
49 dog;

50 (6) If selling directly to the public, post a conspicuous notice containing the breeder's
51 name, address and annual permit number on each cage;

52 (7) Deliver to each purchaser of a dog a written disclosure containing all of the following:

53 (A) The breeder's name and address and, if the breeder is a dealer licensed by the United
54 States Department of Agriculture, the federal dealer identification number;

55 (B) The date of the dog's birth and the date the breeder received the dog: *Provided, That*
56 if the dog is not advertised or sold as purebred, registered, or registerable, the date of birth may
57 be approximated if not known by the breeder;

58 (C) The breed, sex, color, and identifying marks at the time of sale, if any, and if the breed
59 is unknown or mixed, the record shall so indicate;

60 (D) If the dog is from a United States Department of Agriculture licensed source, the
61 individual identifying, tag, tattoo, or collar number for that dog.

62 (E) If the dog is being sold as capable of registration, the names and registration numbers
63 of the sire and dam and the litter number if known;

64 (F) A record of inoculations and worming treatments administered, if any, to the dog as of
65 the time of the sale, including dates of administration and the type of vaccine or worming
66 treatment;

67 (G) A record of any veterinarian treatment or medication received by the dog while in the
68 possession of the breeder and either of the following:

69 (i) A statement signed by the breeder at the time of sale that the dog has no known disease

70 or illness and that the dog has no congenital or hereditary condition that adversely affects the
71 health of the dog at the time of sale or that is likely to adversely affect the health of the dog in the
72 future; or

73 (ii) A record of any known disease, illness, or congenital or hereditary condition that
74 adversely affects the health of the dog at the time of sale, or that is likely to adversely affect the
75 health of the dog in the future, along with a statement signed by a veterinarian licensed in the
76 state of West Virginia that authorizes the sale of the dog, recommends necessary treatment, if
77 any, and verifies that the disease, illness, or condition does not require hospitalization or
78 nonelective surgical procedures in the future. A veterinarian statement is not required for intestinal
79 or external parasites unless their presence makes the dog clinically ill or is likely to make the dog
80 clinically ill. The statement is valid for seven days following examination of the dog by the
81 veterinarian; and

82 (H) The written disclosure made pursuant to this subsection shall be signed by both the
83 breeder certifying the accuracy of the statement and by the purchaser of the dog acknowledging
84 receipt of the statement.

85 (8) Maintain a written record on the health, status, and disposition of each dog for a period
86 of not less than one year after disposition of the dog, which record shall include all information
87 that the breeder is required to disclose pursuant to subdivision (c)(7) of this section;

88 ~~(7)~~ (9) Provide for the humane treatment of dogs in accordance with §61-8-19 of this code;

89 ~~(8)~~ (10) Provide dogs with easy and convenient access to adequate amounts of clean food
90 and water. Food and water receptacles must be regularly cleaned and sanitized daily. All
91 enclosures must contain potable water that is not frozen, is substantially free from debris and is
92 readily accessible to all dogs in the enclosure at all times unless otherwise directed by a
93 veterinarian for the health of the dog;

94 ~~(9)~~ (11) Provide veterinary care without delay when necessary;

95 ~~(10)~~ (12) Maintain adequate staffing levels to ensure compliance with this section; and

96 ~~(14)~~ (13) Maintain adequate housing facilities and primary enclosures that meet the
97 following minimum requirements:

98 (A) Housing facilities and primary enclosures must be kept in a sanitary condition and in
99 good repair; must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels
100 and to prevent moisture condensation; must have a means of fire suppression, such as
101 functioning fire extinguishers or a sprinkler system on the premises; and must have sufficient
102 lighting to allow for observation of the dogs at any time of day or night;

103 (B) Housing facilities and primary enclosures must enable all dogs to remain dry and clean;

104 (C) Housing facilities must provide shelter and protection from ~~extreme~~ adverse
105 temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

106 (D) Housing facilities must provide sufficient shade to simultaneously shelter all of the
107 dogs housed therein;

108 (E) A primary enclosure must have solid floors that are constructed in a manner that
109 protects the dogs' feet and legs from injury;

110 (F) Primary enclosures must provide sufficient space to allow each animal to make normal
111 postural adjustments, to turn freely and to easily stand, sit, stretch, move its head without touching
112 the top of the enclosure, lie in a comfortable position with limbs extended, move about and
113 assume a comfortable posture for feeding, drinking, urinating and defecating. A primary enclosure
114 shall allow animals to sit, sleep, and eat away from where they defecate and urinate. For animals
115 housed long-term, primary enclosures shall include opportunities for hiding, playing, resting,
116 feeding, and eliminating. Dogs must be provided with a rest board, floormat, or similar device that
117 can be maintained in a sanitary condition.

118 ~~(F)~~ (G) Primary enclosures must be placed no higher than 42 inches above the floor and
119 may not be placed over or stacked on top of another cage or primary enclosure;

120 ~~(G)~~ (H) Feces, hair, dirt, debris and food waste must be removed from primary enclosures
121 and housing facilities ~~at least daily or more often, if necessary~~ sufficiently often to prevent

122 accumulation and to reduce disease hazards, insects, pests and odors;

123 (I) All dogs shall be provided regular social contact, mental stimulation, and physical
124 activity, including positive daily social interactions with humans.

125 ~~(H)~~ (J) All dogs in the same enclosure at the same time must be compatible, as determined
126 by observation. Breeding females in heat may not be in the same enclosure at the same time with
127 sexually mature males, except for breeding purposes. Breeding females and their litters may not
128 be in the same enclosure at the same time with other adult dogs. Puppies under 12 weeks may
129 not be in the same enclosure at the same time with other adult dogs, other than the dam or foster
130 dam unless under immediate supervision. Dogs which are fearful or aggressive toward other
131 animals, are stressed by the presence of other animals, require individual monitoring, or are ill
132 and require treatment that cannot be provided in group housing shall be separated from other
133 dogs and provided with individual enrichment; and

134 ~~(I)~~ (K) Sick dogs shall be isolated sufficiently so as not to endanger the health of other
135 dogs and protocols shall be in place to control parasites and prevent transmission of contagious
136 diseases.

137 (d) To ensure compliance with state animal care laws and regulations, commercial dog
138 breeding locations are subject to biannual inspections by animal control officers or law-
139 enforcement officers.

140 (e) It is unlawful for a commercial dog breeder to operate if he or she has been convicted
141 of animal cruelty in any local, state, or federal jurisdiction.

142 (f) Any commercial dog breeder who violates any provision of this section is guilty of a
143 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 per violation. In
144 any proceeding brought pursuant to the provisions of this section, a circuit judge or magistrate
145 may grant a person accused of violating this section an improvement period not to exceed one
146 year upon such terms and conditions as the judge or magistrate may determine. Upon successful
147 completion of the improvement period the judge or magistrate shall dismiss the charges.

148 (g) Nothing in this section exempts a facility licensed by the United States Department of
149 Agriculture from compliance.

150 (h) Nothing in this section prevents any local, state or federal law-enforcement agency
151 from investigating animal cruelty in commercial dog breeding operations.

§19-20-27. Dogs unfit for sale and purchaser's remedies.

1 (a) A dog shall be considered unfit for sale if:

2 (1) Within 15 days after a purchaser has taken physical possession of a dog following the
3 sale by a breeder, the purchaser discovers that the dog has become ill and the purchaser obtains
4 written verification from a licensed veterinarian that this is due to an illness or disease that existed
5 in the dog on or before delivery of the dog;

6 (2) Within one year after the purchaser has taken physical possession of the dog after the
7 sale by a breeder, the purchaser discovers that the dog has a congenital or hereditary condition
8 and the purchaser obtains written verification from a licensed veterinarian that the condition
9 adversely affects the health of the dog or that it requires, or is likely in the future to require,
10 hospitalization or nonelective surgical procedures and that such condition should have been
11 known to the breeder at the time of purchase.

12 (b) There is a rebuttable presumption that an illness existed at the time of sale if the dog
13 dies within 15 days of delivery to the purchaser.

14 (c) If a dog is deemed unfit for sale pursuant to the provisions of subsection (a) of this
15 section, the purchaser shall be allowed, at the purchaser's election, any of the following remedies:

16 (1) Return of the dog to the breeder for a refund of the purchase prices, plus sales tax,
17 and reimbursement for reasonable veterinary fees for diagnosis and treating the dog in an amount
18 not to exceed the original purchase price of the dog including sales tax;

19 (2) Exchange the dog for another dog of the purchaser's choice of equivalent value,
20 providing that a replacement dog is available, and reimburse the purchaser for reasonable
21 veterinary fees for diagnosis and treatment of the dog in an amount not to exceed the original

22 purchase price of the dog including sales tax;

23 (3) Reimbursement to the purchaser for veterinary fees for diagnosis and treatment of the
24 dog in an amount not to exceed 150 percent of the original purchase price of the dog including
25 sales tax; or

26 (4) In the event of the death of the dog, the purchaser may obtain a refund for the purchase
27 price of the dog plus sales tax or a replacement dog of the purchaser's choice of equivalent value
28 and reimbursement of reasonable veterinary fees for the diagnosis and treatment of the dog in an
29 amount not to exceed the purchase price of the dog plus sales tax.

30 (d) To be eligible to claim the remedies provided in this section, the purchaser shall:

31 (1) Notify the breeder as soon as possible, but no later than five days after the diagnosis
32 by a veterinarian of a qualifying medical or health problem, including a congenital or hereditary
33 condition, and provide the name and telephone number of the veterinarian providing the
34 diagnosis; and

35 (2) Return the dog, if alive, to the breeder along with the written statement of the licensed
36 veterinarian made to the purchaser; or

37 (3) Provide the breeder, in the event of the dog's death, with a written statement of a
38 licensed veterinarian attesting that the dog died from an illness that existed on or before delivery
39 of the dog to the purchaser.

40 (e) No refund, replacement, or reimbursement of veterinary fees shall be made if any of
41 the following conditions exist:

42 (1) The illness, condition, or death resulted from maltreatment or neglect occurring, or from
43 an injury sustained, or an illness or condition contracted, subsequent to the delivery of the dog to
44 the purchaser;

45 (2) The purchaser fails to carry out the treatment recommended by the examining
46 veterinarian who made the initial diagnosis;

47 (3) The disease, illness, or condition was disclosed in a written statement from the breeder

48 to the purchaser made pursuant to §19-20-26(c)(7) of this code.

49 (f) For purposes of this section, the value of veterinary services shall be deemed
50 reasonable if the services rendered are appropriate for the presenting condition of the dog, and
51 for the diagnosis and treatment of the identified illness, disease, or condition and the charges of
52 the services are comparable to similar services rendered by other licensed veterinarians in the
53 surrounding community.

54 (g) To receive reimbursement for reasonable veterinary expenses, the purchaser must
55 submit an itemized statement of all veterinary services performed and medications provided to
56 the dog.

57 (h) In the event that the breeder wishes to contest a demand for any of the remedies
58 provided in this section, the breeder may, except in the case of the death of the dog, require the
59 purchaser to produce the dog for examination by a licensed veterinarian selected by the breeder.
60 This examination shall be conducted at the expense of the breeder.

61 (i) If the purchaser and the breeder are unable to reach resolution within 10 days following
62 the breeder's receipt of the purchaser's demand and presentation of a veterinarian's statement,
63 the purchaser may initiate a civil action in a court of competent jurisdiction to resolve the dispute.
64 The prevailing party in the dispute may also claim and receive reasonable attorney's fees if the
65 opposing party is found to have acted in bad faith in the purchase or in pursuit of or opposition to
66 the remedies provided in this section.

67 (j) Nothing in this section shall, in any way, limit the rights or remedies that are otherwise
68 available to a consumer under any other law. Nor shall this section limit the breeder and purchaser
69 from agreeing between themselves upon terms and conditions that are not inconsistent with this
70 section. However, any agreement or contract by a purchaser to waive any rights provided in this
71 section shall be void and unenforceable.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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 fined and confined. A person who has a second or
21 subsequent conviction for a violation of subdivision (1) of this subsection is guilty of a felony and,
22 upon conviction thereof, shall be confined in a state correctional facility for not less than one nor
23 more than five years and be fined not less than \$1,000 nor more than \$5,000. As used in this
24 section, "bodily injury" means substantial physical pain, illness, or any impairment of physical

25 condition.

26 (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or
27 causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal,
28 is guilty of a felony and, upon conviction thereof, shall be ~~confined~~ imprisoned in a correctional
29 facility not less than one nor more than five years and be fined not less than \$1,000 nor more than
30 \$5,000. For the purposes of this subsection, "torture" means an action taken for the primary
31 purpose of inflicting pain.

32 (c) A person, other than a licensed veterinarian or a person acting under the direction or
33 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to
34 be administered to any animal participating in any contest any controlled substance or any other
35 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a
36 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
37 \$2,000.

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

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

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

51 (g) Notwithstanding the provisions of subsection (a) of this section, any person convicted
52 of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and, shall be
53 confined in jail for a period of not less than 90 days nor more than one year, fined not less than
54 \$500 nor more than \$3,000, or both. The incarceration set forth in this subsection is mandatory
55 unless the provisions of subsection (h) of this section are complied with.

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

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

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

§61-8-19d. Unlawful confinement of domestic animals.

1 (a) It is unlawful for a person to chain, tether, cage, or stake out a domestic animal that is
2 in the person's custody and:

3 (1) With a tether that is not a reasonable length given the size of the animal and available
4 space;

5 (2) With a tether that allows the animal to become entangled in a manner that risks the

6 health and safety of the animal:

7 (3) In such manner that the animal is not able to easily stand, sit, lie, turn around, and
8 make all other, normal body movements in a comfortable, normal position for the animal;

9 (4) In such a manner that the animal may go beyond the property line of the owner or
10 custodian of the animal unless the person has obtained permission from the owner of the affected
11 property; or

12 (5) Leave outside during extreme weather conditions, including, but not limited to, extreme
13 heat, freezing or near-freezing temperatures, thunderstorms, tornadoes, or floods, unless
14 adequate food, potable water, shade, shelter, and protection is provided.

15 (b) Unlawful confinement of an animal does not include:

16 (1) Using a handheld leash for the purposes of walking a dog, cat, or other domestic
17 animal;

18 (2) Securing a dog pursuant to the requirements of a campground, recreational area, or
19 other public area; or

20 (3) Securing a dog or other domestic animal for transportation.

21 (c) Any person in violation of this section is guilty of a misdemeanor and, upon conviction
22 thereof, shall be fined not less than \$100 nor more than \$500.

§61-8-19e. Hoarding of animals.

1 (a) The hoarding of animals is unlawful and is prohibited. A person is guilty of hoarding
2 animals when he or she possesses a large number of companion animals, and:

3 (1) Fails to, or is unable to provide food and water, adequate shelter and protection from
4 weather, veterinary care, and humane care and treatment, and

5 (2) Displays an inability to recognize or understand the nature of, or has a reckless
6 disregard for, the conditions under which the companion animals are living and the deleterious
7 impact they have on the companion animals and the owner's health and well-being. A person who
8 is found to be hoarding animals is guilty of a misdemeanor and, upon conviction thereof, shall be

- 9 fined not more than \$500.
- 10 (b) Animals found to be living under the conditions outlined in this section shall be taken
- 11 from the hoarder and turned over to an animal shelter for proper care and relocation.

NOTE: The purpose of this bill is to provide increased protections for the welfare of domestic animals in the care of animal shelters, breeders, and private individuals.

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