

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 217

By Senator Chapman

[Introduced January 13, 2023; referred
to the Committee on Agriculture and Natural
Resources; and then 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 to
 2 strengthening the definition of shelter for animals exposed to extreme weather; clarifying
 3 the minimum requirements for what constitutes a shelter; and clarifying what does not
 4 amount to a shelter.

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 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~~ for a tethered animal or an animal
 7 roaming free shall consist of a four-sided structure, with a roof and one opening only wide enough
 8 for the animal to enter into the structure unimpeded, and it shall be a suitable size to accommodate
 9 the animal in both standing and lying positions. The shelter shall be moisture-proof, windproof, and
 10 ventilated. The shelter shall promote the retention of body heat, and be made of solid, durable
 11 material with a solid, moisture-proof floor raised at least two inches from the ground. The shelter
 12 shall have a sufficient quantity of suitable clean bedding material consisting of hay, straw, cedar
 13 shavings, or the equivalent to provide insulation and protection against cold and dampness.
 14 Blankets that can retain moisture and freeze are not considered an acceptable bedding. The
 15 structure and the surrounding area shall be free from excessive waste, dirt, and trash. Each
 16 animal tethered or roaming free shall have their own individual shelter. For an animal in a
 17 confinement area (including, but not limited to, outdoor pens or any other area used to house an
 18 animal), the shelter shall be at least 100 square feet of floor space in such area for each animal
 19 over four months of age kept in the area. The same requirements for shelter apply for tethered or

20 roaming free animals. Examples of inadequate shelters include, but are not limited to, lean-tos,
21 metal drums, plastic drums, cardboard or other disposable boxes, vehicles, or the area on or
22 beneath exposed porches or exposed decks; or

23 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the
24 suffering of any animal;

25 (D) Abandon an animal to die;

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

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

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

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

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

34 (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor
35 and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined in
36 jail not more than six months, or both.

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

43 (c) A person, other than a licensed veterinarian or a person acting under the direction or
44 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to
45 be administered to any animal participating in any contest any controlled substance or any other

46 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a
47 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
48 \$2,000.

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

53 (e) For the purpose of this section, the term "controlled substance" has the same meaning
54 ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

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

62 (g) Notwithstanding the provisions of subsection (a) of this section, any person convicted
63 of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and, shall be
64 confined in jail for a period of not less than 90 days nor more than one year, fined not less than
65 \$500 nor more than \$3,000, or both. The incarceration set forth in this subsection is mandatory
66 unless the provisions of subsection (h) of this section are complied with.

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

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

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

NOTE: The purpose of this bill is to provide added protection for animals exposed to cold weather.

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