WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 205

(By Senator Kessler, et al)

PASSED February 27, 2003

In Effect Ninety days from Passage
ENROLLED

Senate Bill No. 205

(BY SENATORS KESSLER, MCKENZIE, EDGELL, BOWMAN, ROWE, PREZIOSO, HUNTER, UNGER, PLYMALE, SPRouple, MINEAR AND WHITE)

[Passed February 27, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nineteen, article eight, chapter sixty-one of said code, all relating to modifying the criminal intent requirement for animal cruelty crimes; increasing the fine applicable to convicted persons; eliminating the civil recovery limitation of the assessed value of a dog; creating a felony offense for intentionally torturing or maliciously killing animals; and mandating that persons convicted of animal cruelty be prohibited from possessing, owning or residing with animals for varying periods depending on whether the person is convicted of a misdemeanor or felony.

Be it enacted by the Legislature of West Virginia:
That section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nineteen, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of companion animals.

(a) Any dog which is registered, kept and controlled as provided in this article or any dog, cat or other animal or any reptile which is owned, kept and maintained as a companion animal by any person, irrespective of age, is protected by law; and, except as otherwise authorized by law, any person who shall intentionally, knowingly or recklessly kill, injure, poison or in any other manner, cause the death or injury of any dog, cat, other animal or any reptile is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred dollars nor more than five hundred dollars, or both. However, this section does not apply to a dog who is killed while attacking a person, a companion animal or livestock. Any person whose dog, cat, other animal or reptile as specified herein is killed or injured wrongfully or unlawfully by any other person shall have a right of action against the person who shall so kill or injure any dog, cat, animal or reptile.

(b) Any person who shall intentionally and unlawfully steal a dog, cat, other animal or reptile as specified in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred nor more than
five hundred dollars, or both. Any person violating the provisions of this subsection shall, for second or subsequent offense, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than ninety days nor more than six months, or shall be ordered to provide public service for not more than one year, and fined not less than one thousand dollars. In no case can any action or prosecution relating to a dog under the provisions of this section be maintained if the dog concerned shall not have been duly registered pursuant to the provisions of this article or owned and kept pursuant to the provisions of this section at the time the cause of action shall have arisen.

(c) The commissioner of agriculture is hereby authorized to designate a reasonable number of his present employees as may be necessary to investigate alleged incidents of the unlawful stealing of dogs, other domestic animals or reptiles, alleged incidents of cruelty to animals or reptiles and the alleged incidents of the unlawful stealing of animals or reptiles for the purpose of sale to medical or other research companies. The deputies shall make the results of their investigations known to any law-enforcement officers who have authority to enforce the provisions of this article.

(d) It shall be the duty of all members of the West Virginia state police, sheriffs and police officers to aid in the enforcement of the provisions of this article and, for services rendered in the enforcement thereof, such persons shall be entitled to fees in the amounts set forth in section eight of this article. The fees shall be paid by the county commission from the dog and kennel fund.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.
(a) If any person cruelly mistreats, abandons or withholds proper sustenance, including food, water, shelter or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandons any animal to die, or uses, trains or possesses any domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than one thousand dollars or confined in the county or regional jail not more than six months, or both so fined and confined.

(b) If any person intentionally tortures or maliciously kills an animal, or causes, procures or authorizes any other person to torture or maliciously kill an animal, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than three years and be fined not less than one thousand dollars nor more than five thousand dollars. For the purposes of this subsection, “torture” means an action taken for the primary purpose of inflicting pain.

(c) Any person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal’s performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars.

(d) Any person convicted of a violation of this section shall forfeit his or her interest in any animal and all interest in the animal shall vest in the humane society or county pound of the county in which said conviction was rendered and the person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.
(e) For the purpose of this section, the term "controlled substance" shall have the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

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

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of said subsection is guilty of a misdemeanor and shall be confined in the county or regional jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than two thousand dollars, or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (h) are complied with.

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

(i) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five
years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding two thousand dollars and forfeiture of the animal.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 11th Day of March, 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3/4/03

Time 3:25 pm