

2008 MAR 27 PM 4:59

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

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COMMITTEE SUBSTITUTE  
FOR

**ENROLLED**

**Senate Bill No. 305**

(SENATORS KESSLER, UNGER, JENKINS,  
WHITE AND HUNTER, *original sponsors*)

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[Passed March 5, 2008; in effect ninety days from passage.]

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STATE OF WEST VIRGINIA  
OFFICE OF THE CLERK

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**Senate Bill No. 305**

(SENATORS KESSLER, UNGER, JENKINS,  
WHITE AND HUNTER, *original sponsors*)

[Passed March 5, 2008; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-14; and to amend and reenact §7-10-4 of said code, all relating generally to custody and care of animals abandoned, neglected or cruelly treated; authorizing county commissions to adopt ordinances, rules and regulations relating to such animals; providing for protection of such animals and the public's health, safety and the environment; providing guidance on developing ordinances, rules and regulations relating to such animals; authorizing county commissions that adopt such ordinances, rules and regulations to also limit the number of animals owned or kept based on ability to care for the

animals; authorizing county commissions to establish penalties in such ordinances, rules and regulations; and clarifying evidentiary standards in hearings before magistrates involving in the seizure of abandoned, neglected or cruelly treated animals.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-14; and that §7-10-4 of said code be amended and reenacted, all to read as follows:

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

8 (b) Any such ordinance, rule or regulation may require  
9 each owner to provide for each of his or her animals:

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

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

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

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

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

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

28 (c) Any such ordinance, rule or regulation may limit  
29 the number of animals owned, kept or maintained by an  
30 individual, group or organization, whether public or  
31 private based on the person's ability to provide for the  
32 animals as set forth in subsection (b) of this section.

33 (d) Any such ordinance, rule or regulation shall  
34 provide appropriate penalties for violations and shall  
35 authorize humane officers to take possession of any  
36 animal that is not properly cared for as required by such  
37 ordinance, rule or regulation.

**ARTICLE 10. HUMANE OFFICERS.**

**§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  
2 section, a humane officer shall take possession of any  
3 animal, including birds or wildlife in captivity, known  
4 or believed to be abandoned, neglected, deprived of  
5 necessary sustenance, shelter, medical care or  
6 reasonable protection from fatal freezing or heat  
7 exhaustion or cruelly treated or used as defined in  
8 sections nineteen and nineteen-a, article eight, chapter  
9 sixty-one of this code.

10 (b) The owner or persons in possession, if his or her  
11 identity and residence are known, of any animal seized  
12 pursuant to subsection (a) of this section shall be

13 provided written notice of the seizure, his or her  
14 liability for the cost and care of the animal seized as  
15 provided in this section and the right to request a  
16 hearing in writing before a magistrate in the county  
17 where the animal was seized. The magistrate court shall  
18 schedule any hearing requested within ten working days  
19 of the receipt of the request. The failure of an owner or  
20 person in possession to request a hearing within five  
21 working days of the seizure is prima facie evidence of  
22 the abandonment of the animal. At the hearing, if  
23 requested, the magistrate shall determine by a  
24 preponderance of the evidence if the animal was  
25 abandoned, neglected or deprived of necessary  
26 sustenance, shelter, medical care or reasonable  
27 protection from fatal freezing or heat exhaustion or  
28 otherwise treated or used cruelly as set forth in this  
29 section.

30 (c)(1) If a hearing is requested and the magistrate finds  
31 by a preponderance of the evidence that the owner did  
32 abandon, neglect or cruelly treat the animal, or if no  
33 hearing is requested and the magistrate finds by a  
34 preponderance of the evidence, based upon the affidavit  
35 of the humane officer, that the owner did abandon,  
36 neglect or cruelly treat the animal, the magistrate shall  
37 enter an order awarding custody of the animal to any  
38 humane officer for further disposition in accordance  
39 with reasonable practices for the humane treatment of  
40 animals. After hearing the evidence, if the magistrate is  
41 not convinced the animal was neglected or cruelly  
42 treated, he or she may dismiss the action and order the  
43 animal be returned to the owner. If the magistrate finds  
44 in favor of the humane officer, the owner of the animal  
45 shall post a bond with the court in an amount sufficient  
46 to provide for the reasonable costs of care, medical  
47 treatment and provisions for the animal for at least  
48 thirty days. The bond shall be filed with the court  
49 within five days following the court's finding against  
50 the owner. At the end of the time for which expenses  
51 are covered by the original bond if the animal remains  
52 in the care of the humane officer and the owner desires  
53 to prevent disposition of the animal by the humane  
54 officer, the owner shall post an additional bond with the

55 court within five days of the expiration of the original  
56 bond. During this period the humane officer is  
57 authorized to place the animal in a safe private home or  
58 other safe private setting in lieu of retaining the animal  
59 in an animal shelter. The person whose animal is seized  
60 is liable for all costs of the care of the seized animal.

61 (2) If a bond has been posted in accordance with  
62 subdivision (1) of this subsection, the custodial animal  
63 care agency may draw from the bond the actual  
64 reasonable costs incurred by the agency in providing  
65 care, medical treatment and provisions to the  
66 impounded animal from the date of the initial  
67 impoundment to the date of the final disposition of the  
68 animal.

69 (d) Any person whose animal is seized and against  
70 whom the magistrate enters a finding pursuant to this  
71 section is liable during any period it remains in the  
72 possession of the humane officer for the reasonable  
73 costs of care, medical treatment and provisions for the  
74 animal not covered by the posting of the bond as  
75 provided in subdivision (1), subsection (c) of this  
76 section. The magistrate shall require the person liable  
77 for these costs to post bond to provide for the  
78 maintenance of the seized animal. This expense, if any,  
79 becomes a lien on the animal and must be discharged  
80 before the animal is released to the owner. Upon  
81 dismissal or withdrawal of the complaint, any unused  
82 portion of posted bonds shall be returned to the owner.  
83 Upon a finding in favor of the humane officer, all  
84 interest in the impounded animal shall transfer to the  
85 humane officer for disposition in accordance with  
86 reasonable practices for the humane treatment of  
87 animals. Any additional expense above the value of the  
88 animal may be recovered by the humane officer or  
89 custodial agency.

90 (e) After the humane officer takes possession of the  
91 animal pursuant to a finding by a magistrate that the  
92 animal has been abandoned, neglected or cruelly treated  
93 and a licensed veterinarian determines that the animal  
94 should be humanely destroyed to end its suffering, the

95 veterinarian may order the animal to be humanely  
96 destroyed and neither the humane officer, animal  
97 euthanasia technician nor the veterinarian is subject to  
98 any civil or criminal liability as a result of such action.

99 (f) The term "humanely destroyed" as used in this  
100 section means:

101 (1) Humane euthanasia of an animal by hypodermic  
102 injection by a licensed veterinarian or by an animal  
103 euthanasia technician certified in accordance with the  
104 provisions of article ten-a, chapter thirty of this code; or

105 (2) Any other humane euthanasia procedure approved  
106 by the American Veterinary Medical Association, the  
107 Humane Society of the United States or the American  
108 Humane Association.

109 (g) In case of an emergency in which an animal cannot  
110 be humanely destroyed in an expeditious manner, an  
111 animal may be destroyed by shooting if:

112 (1) The shooting is performed by someone trained in  
113 the use of firearms with a weapon and ammunition of  
114 suitable caliber and other characteristics designed to  
115 produce instantaneous death by a single shot; and

116 (2) Maximum precaution is taken to minimize the  
117 animal's suffering and to protect other persons and  
118 animals.

119 (h) The provisions of this section do not apply to farm  
120 livestock, as defined in subsection (d), section two,  
121 article ten-b, chapter nineteen of this code; poultry,  
122 gaming fowl or wildlife kept in private or licensed game  
123 farms if kept and maintained according to usual and  
124 accepted standards of livestock; poultry, gaming fowl,  
125 wildlife or game farm production and management; nor  
126 to the humane use of animals or activities regulated  
127 under and in conformity with the provisions of 7 U. S.  
128 C. §2131, *et seq.*, and the regulations promulgated  
129 thereunder.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chandy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Stephens*  
.....  
Clerk of the Senate

*Barry R. Smith*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *27<sup>th</sup>* Day of *May* ....., 2008.

*[Signature]*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

MAR 17 2008

Time 11:10 am