WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2690

(By Delegates Talbot, Argento, Pethtel, Swartzmiller, Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)

Passed April 11, 2009
In Effect Ninety Days from Passage
AN ACT to amend and reenact §19-9-28, §19-9-29, §19-9-30, §19-9-31, §19-9-32, §19-9-33, §19-9-34, §19-9-34a, §19-9-35 and §19-9-36 of the Code of West Virginia, 1931, as amended, all relating to updating language pertaining to the death of diseased or infected animals; indemnity for the death of diseased or infected animals; deleting outdated amounts paid to appraisers and arbitrators for services rendered; and disposing of dead domesticated animals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS AND EUTHANASIA OF DISEASED ANIMALS.

§19-9-28. Indemnity for euthanizing infected or exposed animals; agreement.

Whenever, to prevent the spread of any communicable disease which cannot be cured or controlled by isolation and adequate or proper veterinary treatment, the Commissioner or any of the Commissioner's agents find it necessary to euthanize any animal infected with or directly exposed to any infectious, contagious or communicable disease, which cannot be cured or controlled by isolation and adequate or proper veterinary treatment, and if the owner of the animal elects to receive indemnity for it, the Commissioner shall require the owner, before the appraisal and death of the animal, to execute an agreement that the owner will thoroughly clean and disinfect all premises that may have been infected by the animal in the manner the Commissioner prescribes. If the animal has tuberculosis, the agreement will require the owner to have the entire herd of bovine animals tested with tuberculin by the commissioner or the Commissioner's agent, at times the commissioner designates, and the agreement will require that the owner not admit to the herd any bovine animal that has not had a negative reaction to the test. The agreement shall be in duplicate, one copy to be retained by the signer, on a form prescribed by the Commissioner, and shall be signed by the owner or the owner's agent. The agreement shall be effective for a period of two years from the date it is executed. All animals for which the owner claims indemnity shall be appraised before being euthanized, and the owner shall be indemnified as hereinafter provided: Provided, That any animal infected with rabies may be euthanized by the owner or any person authorized to do so without an agreement or appraisal, and if
30 the disease is caused by a dog bite, the animal shall be
31 appraised and the owner shall be compensated as provided in
32 article twenty of this chapter.
§19-9-29. When right of indemnity does not exist.

1 The right of indemnity shall not exist nor shall payment
2 be made in any of the following cases:

3 (a) For animals owned by the United States, this state, or
4 any county, city, town or village in this state;

5 (b) For animals brought into this state contrary to the
6 provisions of this article, or where the owner of the animals
7 or person claiming compensation has failed to comply with
8 the provisions of this article;

9 (c) When the owner or claimant at the time of coming
10 into possession of the animal knew or had reason to believe
11 it to be afflicted with a communicable disease;

12 (d) When the owner has been guilty of negligence or
13 carelessly exposed such animals to a communicable disease;

14 and

15 (e) When the owner has refused or neglected to comply
16 with the sanitary requirements of the Commissioner of
17 agriculture or the Commissioner's agents.

§19-9-30. Appraisal of infected or exposed animals; amount;
1 arbitration; fees of arbitrators.

1 The commissioner or the commissioner's agent shall act
2 as appraiser and shall appraise each infected or directly
3 exposed animal within five days before euthanizing the
animal, basing the amount upon the class and market value of
the animal at the time of the appraisal, whether for breeding
purposes or for milk or meat production. Animals reacting
to any approved test, but not exhibiting any physical evidence
of disease, shall be appraised without considering the
presence of a diseased condition, but animals exhibiting any
physical evidence of disease shall be appraised as infected
animals: Provided, That where indemnities are claimed for
directly exposed animals euthanized on account of rabies
infection, appraisal shall be based on the value of the animal
before it became infected. If the amount of appraisal of any
animal, as determined by the appraiser, is not satisfactory to
the owner of the animal, the owner shall immediately notify
the appraiser of this fact, setting forth the reason for
complaint. The amount of the appraisal shall then be
determined by arbitrators, one to be appointed by the
appraiser and one by the owner of the animal. If these
arbitrators are not able to agree on the amount of appraisal,
a third arbitrator shall be appointed by them, whose decision
shall be final. Compensation for the arbitrators appointed by
the owner and the appraiser shall be paid by the party
appointing the arbitrator, and in case a third arbitrator is
chosen, the third arbitrator shall be paid by the party against
whom the decision is made.


When the animal is to be euthanized, the commissioner
or the Commissioner's agent shall deliver to the owner a
certificate of appraisal which may cover any number of
animals belonging to the same owner, showing the age and
description of each animal found to be infected or directly
exposed; the name and place of test, if any; the mark or brand
signifying an animal with tuberculosis; any other mark or
brand which the animal may bear; the date when and the
place where the animal is to be euthanized by the
the veterinarian; the designation of the officer who is to supervise the euthanasia; the appraised value of each animal; the name and address of the owner of the animal; and the fact that the owner has executed the agreement as provided in section twenty-eight of this article.

§19-9-32. Euthanasia of diseased animals; supervision; certificate of euthanasia.

After the agreement described in section twenty-eight of this article has been executed, the appraisal has been made and the certificate of appraisal issued, the Commissioner or the Commissioner's agent shall have the animal euthanized and the carcass disposed of in accordance with the meat inspection regulations of the United States Department of Agriculture, or in such manner as the Commissioner prescribes. The officer supervising the euthanasia shall immediately include in the certificate of appraisal provided for in section thirty-one of this article a certificate of euthanasia stating that the officer has witnessed the euthanasia of each of the animals; identifying the place and date of the euthanasia; certifying that the number, age, description and brand or mark correspond to those in the certificate of appraisal; stating the result of the post-mortem examination; the disposition made of the carcass; and the amount paid to the veterinarian, which amount shall be paid to the owner and credited on the amount of appraisal: Provided, That in case animals are euthanized as having tuberculosis, the appraisal certificate shall be credited in the manner provided in section thirty-six of this article.

The euthanasia may be supervised and certified by the Commissioner; any of the Commissioner's agents; or any person with the authority of an agent or officer of the United States Department of Agriculture. The Commissioner may prescribe other requirements for the certificates or the
affidavits required by this article, and may make and enforce
rules governing the handling, shipping and euthanasia of such
animals.

§19-9-33. Payment of indemnity.

All claims for indemnity for animals euthanized as
having tuberculosis shall be paid in the manner prescribed in
section thirty-seven of this article. In all other cases when
animals are euthanized as provided in this article the
veterinarian shall forthwith forward to the Commissioner the
certificates of appraisal and euthanasia, together with the
owner's claim for indemnity, and the owner's affidavit that
the owner has in all respects complied with the agreement
provided for in section twenty-eight of this article, and with
any other requirements prescribed by the Commissioner. If
the certificates, claim and affidavit are correct and the claim
is not barred by section twenty-nine of this article, the
Commissioner shall approve and file them. The
Commissioner shall, at the end of each fiscal year, issue a
requisition to the State Auditor for two thirds of the value of
the approved certificates: Provided, That in case of an
outbreak of foot-and-mouth disease, or any other dangerously
contagious or infectious disease among bovine animals, ovine
animals, or swine, on account of which such animals are
being euthanized by cooperative order of federal and state
authority, and for which euthanized animals the federal
government pays one half of the indemnity, this state shall
pay one half, and only one half, of such indemnity. The State
Auditor shall issue a warrant on the State Treasurer, in favor
of the claimant, for the amount ordered by the Commissioner,
which shall be paid out of the current appropriation for
administering this article: Provided, however, That in case
the amount of the certificates of appraisal, and of those
described in section thirty-seven of this article, in any one
year, exceeds the current appropriation therefor, the
certificates shall be paid pro rata at the end of each fiscal year.

§19-9-34. Disposal of carcass of diseased animal.

Whenever it is necessary to destroy or dispose of the carcass of any animal to prevent the spread of disease, the destruction or disposal shall be made by one of the following methods designed to be protective of human health and the environment: (a) Complete cremation of the entire carcass with all its parts and products; (b) boiling the carcass and all its parts and products in water or heating the same with steam at the temperature of boiling water, continuously during at least two hours; (c) disposing of the carcass and all its parts and products in a solid waste landfill permitted and approved by the Department of Environmental Protection; (d) burial of the carcass and all its parts and products in a place that will not be subjected to overflow from ponds or streams, and which is not less than one hundred feet from any watercourse, well, spring, public highway, house or stable. If buried, the carcass shall be covered with quicklime to a depth of not less than three inches, and the top of such carcass shall not be within two feet of the surface of the ground when the grave is filled and smoothed to the level of the surrounding surface; (e) rendering by a licensed facility; (f) composting; and (g) such other method as the Commissioner may prescribe. When an animal infected with a communicable disease dies or is euthanized, the owner of the animal shall destroy or dispose of the carcass in the manner provided in this section. It shall be unlawful to sell any such carcass, any part of it, or any hide or offal from it. If the owner of such animal does not dispose of the carcass within twenty-four hours as provided by law, the Commissioner or the Commissioner's agent shall destroy or dispose of the carcass according to law, at the cost of the owner. The expense of destruction or disposal may be
collected from the owner as debts of like amount are by law collectible.

§19-9-34a. Authority of Commissioner to promulgate rules regulating disposal of dead animals.

Notwithstanding any other provision of law to the contrary, the Commissioner of Agriculture is authorized to promulgate rules to regulate the disposal of dead animals.

§19-9-35. Tests for bovine tuberculosis; disposition of infected bovine animals.

The Commissioner or the Commissioner's agent is authorized to test with tuberculin any bovine animal kept within the state, subject to rules prescribed by the Commissioner. The tuberculin test shall be applied to bovine animals at times designated by the Commissioner for the control and eradication of bovine tuberculosis, and all cows whose milk is sold for human consumption or manufacture, and all uncastrated beef animals, shall be tested with tuberculin to the greatest extent possible.

When a bovine animal has a clearly defined reaction to such test, as prescribed by the Commissioner's rules, the animal shall be considered infected with bovine tuberculosis and shall be marked or branded upon the left jaw with a capital "T" not less than two inches high, one and one-half inches wide, with a mark one fourth of an inch wide. Such branding shall not constitute cruelty to animals within the meaning of the penal laws of the state.

All bovine animals within the state which are deemed to have tuberculosis, either as a result of a physical examination or the tuberculin test, shall be euthanized, and if the owner of any such animal demands indemnity, the owner shall execute
the agreement provided for in section twenty-eight of this article; such animal shall be appraised as provided in section thirty of this article; an appraisal certificate shall be issued as provided in section thirty-one of this article; and the euthanasia shall be supervised and the certificate shall be issued as provided in section thirty-two of this article.


The owners of animals euthanized as having tuberculosis shall be indemnified in an amount determined by the results of post-mortem inspection by the officer supervising the euthanasia, and the certificate of appraisal shall be credited according to the following rules: (a) If an animal is found upon post-mortem inspection not to show lesions of tuberculosis, the carcass and other edible portions shall be passed as food, and the veterinarian shall sell them, including all accompanying parts, for the best price obtainable, which shall be paid to the owner and deducted from the amount of appraisal, and any remaining balance shall be paid to the owner; (b) if an animal is found upon post-mortem inspection to be infected with tuberculosis, and the lesions are such that the carcass and parts of the carcass are passed for food, the veterinarian shall sell them, including all accompanying parts, for the best price obtainable, which shall be paid to the owner and deducted from eighty percent of the amount of the appraisal, and any remaining balance shall be paid the owner; (c) if an animal upon post-mortem inspection is condemned for offal, the veterinarian shall sell the hide and offal for the best price obtainable, which price shall be paid to the owner and deducted from forty percent of the appraisal, and any remaining balance shall be paid to the owner.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within happened this the 16 day of May, 2009.

Governor
PRESENTED TO THE GOVERNOR

APR 30 2009

Time 3:00 pm