

SB 501

FILED

2009 JUN -5 PM 4:21

WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 501**

(SENATORS KESSLER AND  
PREZIOSO, *original sponsors*)

[Passed May 29, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §7-10-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-20-8 of said code; and to amend and reenact §30-10A-4, §30-10A-6 and §30-10A-8 of said code, all relating to euthanizing animals; prohibiting the euthanizing of animals by use of a gas chamber and providing an exception thereto; requiring all persons or entities performing animal euthanasia to register with the Board of Veterinary Medicine; allowing animal euthanasia technicians to administer sedatives and tranquilizers; and directing the Board of Veterinary Medicine to promulgate emergency rules.

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

That §7-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §19-20-8 of said code be amended and reenacted; and that §30-10A-4, §30-10A-6 and §30-10A-8 of said code be amended and reenacted, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**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 or  
4 believed to be abandoned, neglected, deprived of necessary  
5 sustenance, shelter, medical care or reasonable protection  
6 from fatal freezing or heat exhaustion or cruelly treated or  
7 used as defined in sections nineteen and nineteen-a, article  
8 eight, chapter sixty-one of this code.

9 (b) The owner or persons in possession, if his or her  
10 identity and residence are known, of any animal seized  
11 pursuant to subsection (a) of this section shall be provided  
12 written notice of the seizure, his or her liability for the  
13 cost and care of the animal seized as provided in this  
14 section and the right to request a hearing in writing before  
15 a magistrate in the county where the animal was seized.  
16 The magistrate court shall schedule any hearing requested  
17 within ten working days of the receipt of the request. The  
18 failure of an owner or person in possession to request a  
19 hearing within five working days of the seizure is prima  
20 facie evidence of the abandonment of the animal. At the  
21 hearing, if requested, the magistrate shall determine by a  
22 preponderance of the evidence if the animal was aban-  
23 doned, neglected or deprived of necessary sustenance,  
24 shelter, medical care or reasonable protection from fatal

25 freezing or heat exhaustion or otherwise treated or used  
26 cruelly as set forth in this section.

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

57 (2) If a bond has been posted in accordance with subdivi-  
58 sion (1) of this subsection, the custodial animal care  
59 agency may draw from the bond the actual reasonable  
60 costs incurred by the agency in providing care, medical

61 treatment and provisions to the impounded animal from  
62 the date of the initial impoundment to the date of the final  
63 disposition of the animal.

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

83 (e) After the humane officer takes possession of the  
84 animal pursuant to a finding by a magistrate that the  
85 animal has been abandoned, neglected or cruelly treated  
86 and a licensed veterinarian determines that the animal  
87 should be humanely destroyed to end its suffering, the  
88 veterinarian may order the animal to be humanely de-  
89 stroyed and neither the humane officer, animal euthanasia  
90 technician nor the veterinarian is subject to any civil or  
91 criminal liability as a result of the action.

92 (f) (1) The term "humanely destroyed" as used in this  
93 section means:

94 (A) Humane euthanasia of an animal by hypodermic  
95 injection by a licensed veterinarian or by an animal

96 euthanasia technician certified in accordance with the  
97 provisions of article ten-a, chapter thirty of this code; or

98 (B) Any other humane euthanasia procedure approved  
99 by the American Veterinary Medical Association, the  
100 Humane Society of the United States or the American  
101 Humane Association.

102 (2) The term "humanely destroyed" does not include  
103 euthanizing an animal by means of a gas chamber: *Pro-*  
104 *vided*, That any county which has a gas chamber in  
105 operation as of the effective date of this section may  
106 continue to operate the gas chamber subject to the follow-  
107 ing: (1) The gas chamber shall be operated by an animal  
108 euthanasia technician certified pursuant to article ten-a,  
109 chapter thirty of this code; and (2) the gas chamber shall  
110 have been manufactured and installed by a person who  
111 regularly manufactures and installs gas chambers. The  
112 Board of Veterinary Medicine shall promulgate emergency  
113 rules regarding the inspection of gas chambers, pursuant  
114 to section fifteen, article three, chapter twenty-nine-a of  
115 this code.

116 (g) In case of an emergency in which an animal cannot be  
117 humanely destroyed in an expeditious manner, an animal  
118 may be destroyed by shooting if:

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

123 (2) Maximum precaution is taken to minimize the  
124 animal's suffering and to protect other persons and  
125 animals.

126 (h) The provisions of this section do not apply to farm  
127 livestock, as defined in subsection (d), section two, article  
128 ten-b, chapter nineteen of this code; poultry, gaming fowl  
129 or wildlife kept in private or licensed game farms if kept

130 and maintained according to usual and accepted standards  
131 of livestock; poultry, gaming fowl, wildlife or game farm  
132 production and management; nor to the humane use of  
133 animals or activities regulated under and in conformity  
134 with the provisions of 7 U. S. C. §2131, *et seq.*, and the  
135 regulations promulgated thereunder.

136 (i) All persons or entities in the state performing eutha-  
137 nasia under this article shall register with the Board of  
138 Veterinary Medicine by December 31, 2009, in a manner to  
139 be prescribed by the board. The Board of Veterinary  
140 Medicine shall promulgate emergency rules relating to the  
141 registration of those performing animal euthanasia,  
142 pursuant to section fifteen, article three, chapter twenty-  
143 nine-a of this code.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 20. DOGS AND CATS.

#### §19-20-8. Impounding and disposition of dogs; costs and fees.

1 (a) All dogs seized and impounded as provided in this  
2 article, except dogs taken into custody under section two  
3 of this article, shall be kept housed and fed in the county  
4 or municipal shelter for five days after notice of seizure  
5 and impounding has been given or posted as required by  
6 this article, at the expiration of which time all dogs which  
7 have not previously been redeemed by their owners as  
8 provided in this article, shall be sold or humanely de-  
9 stroyed. No dog sold as provided in this section may be  
10 discharged from the county or municipal shelter until the  
11 dog has been registered and provided with a valid regis-  
12 tration tag.

13 (b) (1) The term "humanely destroyed" as used in this  
14 section means:

15 (A) Humane euthanasia of an animal by hypodermic  
16 injection by a licensed veterinarian or by an animal

17 euthanasia technician certified in accordance with the  
18 provisions of article ten-a, chapter thirty of this code; or

19 (B) Any other humane euthanasia procedure approved  
20 by the American Veterinary Medical Association, the  
21 Humane Society of the United States or the American  
22 Humane Association.

23 (2) The term "humanely destroyed" does not include  
24 euthanizing a dog or cat by means of a gas chamber:  
25 *Provided*, That any county which has a gas chamber in  
26 operation as of the effective date of this section may  
27 continue to operate the gas chamber subject to the follow-  
28 ing: (1) The gas chamber shall be operated by an animal  
29 euthanasia technician certified pursuant to article ten-a,  
30 chapter thirty of this code; and (2) the gas chamber shall  
31 have been manufactured and installed by a person who  
32 regularly manufactures and installs gas chambers. The  
33 Board of Veterinary Medicine shall promulgate emergency  
34 rules regarding the inspection of gas chambers, pursuant  
35 to section fifteen, article three, chapter twenty-nine-a of  
36 this code.

37 (c) In an emergency or in a situation in which a dog  
38 cannot be humanely destroyed in an expeditious manner,  
39 a dog may be destroyed by shooting if:

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

44 (2) Maximum precaution is taken to minimize the dog's  
45 suffering and to protect other persons and animals.

46 (d) The owner, keeper or harbinger of any dog seized and  
47 impounded under the provisions of this article may, at any  
48 time prior to the expiration of five days from the time that  
49 notice of the seizure and impounding of the dog has been  
50 given or posted as required by this article, redeem the dog

51 by paying to the dog warden or his or her authorized agent  
52 or deputy all of the costs assessed against the dog and by  
53 providing a valid certificate of registration and registra-  
54 tion tag for the dog.

55 (e) Reasonable costs and fees, in an amount to be deter-  
56 mined, from time to time, by the county commission, shall  
57 be assessed against every dog seized and impounded under  
58 the provisions of this article, except dogs taken into  
59 custody under section two of this article. The cost shall be  
60 a valid claim in favor of the county against the owner,  
61 keeper or harbinger of any dog seized and impounded under  
62 the provisions of this article and not redeemed or sold as  
63 provided in this section and the costs shall be recovered by  
64 the sheriff in a civil action against the owner, keeper or  
65 harbinger.

66 (f) A record of all dogs impounded, the disposition of the  
67 dogs and a statement of costs assessed against each dog  
68 shall be kept by the dog warden and a transcript thereof  
69 shall be furnished to the sheriff quarterly.

70 (g) All persons or entities in the state performing eutha-  
71 nasia under this article shall register with the Board of  
72 Veterinary Medicine by December 31, 2009, in a manner to  
73 be prescribed by the board. The Board of Veterinary  
74 Medicine shall promulgate emergency rules relating to the  
75 registration of those performing animal euthanasia,  
76 pursuant to section fifteen, article three, chapter twenty-  
77 nine-a of this code.

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 10A. ANIMAL EUTHANASIA TECHNICIANS.**

#### **§30-10A-4. Scope of practice.**

1 (a) A certified animal euthanasia technician may sedate,  
2 tranquilize and euthanize animals assigned to the care of  
3 a legally operated humane society, animal shelter or

4 animal control facility within this state. A certified  
5 animal euthanasia technician shall practice sedation,  
6 tranquilization and euthanasia under the authority of a  
7 licensed veterinarian as defined in article ten of this  
8 chapter or a county humane officer as defined in article  
9 ten, chapter seven of this code within the limitations  
10 imposed by this article and rules promulgated by the  
11 board under this article.

12 (b) For the purposes of this article, controlled substance  
13 permits issued by the state Board of Pharmacy and the  
14 federal Drug Enforcement Administration shall be issued  
15 to a municipal or county run animal control facility, or a  
16 humane society or animal shelter incorporated and  
17 organized under the laws of the state, with one or more  
18 duly appointed agents. The humane society or animal  
19 shelter shall possess a tax-exempt charitable or tax-  
20 exempt governmental determination under the Internal  
21 Revenue Code of 1986, as amended.

22 (c) A certified animal euthanasia technician may not  
23 practice or offer to practice his or her profession outside  
24 the direct authority of the humane society, animal shelter  
25 or animal control facility which employs him or her or  
26 otherwise contracts for his or her services. A certified  
27 animal euthanasia technician is not qualified and may not  
28 indicate that he or she is qualified to act in any capacity  
29 relative to animals beyond his or her specified and regu-  
30 lated authority to sedate, tranquilize and euthanize  
31 animals at the instruction of the humane society, animal  
32 shelter or animal control facility by which he or she is  
33 employed and under the supervision of a humane officer  
34 or licensed veterinarian.

**§30-10A-6. Recordkeeping.**

1 A humane society, animal shelter or animal control  
2 facility which was issued a controlled substances permit  
3 by the Board of Pharmacy and an identification number

4 by the federal Drug Enforcement Administration is  
5 responsible for ensuring that certified animal euthanasia  
6 technicians in its employ maintain proper records regard-  
7 ing the inventory, storage and administration of controlled  
8 substances and any other drugs which he or she is autho-  
9 rized to administer. The proper completion and retention  
10 of these records is the joint responsibility of the humane  
11 society, animal shelter or animal control facility and the  
12 certified animal euthanasia technician. The humane  
13 society, animal shelter or animal control facility and the  
14 certified animal euthanasia technicians are subject to  
15 inspection and audit by the board, the West Virginia  
16 Board of Pharmacy and any other appropriate state or  
17 federal agency with authority regarding the  
18 recordkeeping, inventory, storage and administration of  
19 controlled substances and other drugs authorized for use  
20 by animal euthanasia technicians under authority of this  
21 article.

**§30-10A-8. Drug selection.**

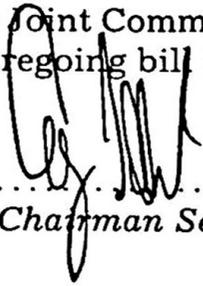
1 (a) In the event that sodium pentobarbital is no longer  
2 approved as the euthanasia “drug of choice” for animals  
3 by either state or federal mandate, the board shall deter-  
4 mine the replacement “drug of choice” for sodium  
5 pentobarbital for use by certified animal euthanasia  
6 technicians by legislative rule. The replacement “drug of  
7 choice” shall be administered, controlled, stored and  
8 secured by a humane society, animal shelter or animal  
9 control facility which meets the qualifications in section  
10 one of this article in accordance with legislative rules  
11 promulgated by the board.

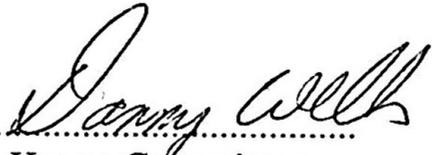
12 (b) The board may replace sodium pentobarbital as the  
13 “drug of choice” at any time by legislative rule promul-  
14 gated pursuant to article three, chapter twenty-nine-a of  
15 this code. The determined “drug of choice” for animal  
16 euthanasia as specified by the board shall be used by

17 animal euthanasia technicians certified under the provi-  
18 sions of this article.

19 (c) The board shall promulgate emergency rules pursuant  
20 to section fifteen, article three, chapter twenty-nine-a of  
21 this code to allow the use of sedatives and tranquilizers by  
22 euthanasia technicians, as defined in section one of this  
23 article.

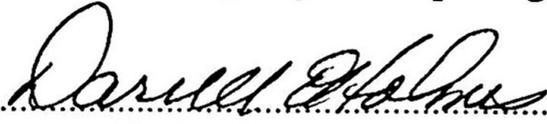
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

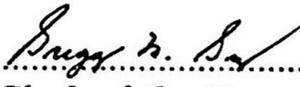
  
.....  
Chairman Senate Committee

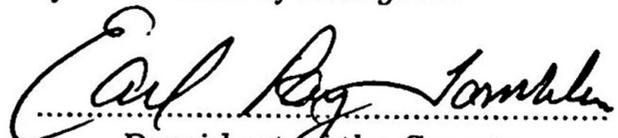
  
.....  
Chairman House Committee

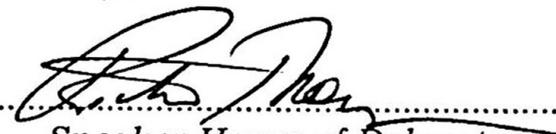
Originated in the Senate.

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 appended ..... this the 5<sup>th</sup> .....  
Day of June ....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

JUN - 3 2009

Time 10:30hr