

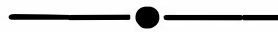
HB 2690

FILED

2009 MAY -4 PM 3: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

ENROLLED

2009 MAY -4 PM 3: 18
COMMITTEE SUBSTITUTE

FOR OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 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to the death of diseased or infected animals; indemnity for the death of diseased or infected animals; deleting outdated amounts paid to appraisers and arbitrators for services rendered; and disposing of dead domesticated animals.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:

That §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, be amended and reenacted, all to read as follows:

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

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

1 Whenever, to prevent the spread of any communicable
2 disease which cannot be cured or controlled by isolation and
3 adequate or proper veterinary treatment, the Commissioner
4 or any of the Commissioner's agents find it necessary to
5 euthanize any animal infected with or directly exposed to any
6 infectious, contagious or communicable disease, which
7 cannot be cured or controlled by isolation and adequate or
8 proper veterinary treatment, and if the owner of the animal
9 elects to receive indemnity for it, the Commissioner shall
10 require the owner, before the appraisal and death of the
11 animal, to execute an agreement that the owner will
12 thoroughly clean and disinfect all premises that may have
13 been infected by the animal in the manner the Commissioner
14 prescribes. If the animal has tuberculosis, the agreement will
15 require the owner to have the entire herd of bovine animals
16 tested with tuberculin by the commissioner or the
17 Commissioner's agent, at times the commissioner designates,
18 and the agreement will require that the owner not admit to the
19 herd any bovine animal that has not had a negative reaction
20 to the test. The agreement shall be in duplicate, one copy to
21 be retained by the signer, on a form prescribed by the
22 Commissioner, and shall be signed by the owner or the
23 owner's agent. The agreement shall be effective for a period
24 of two years from the date it is executed. All animals for
25 which the owner claims indemnity shall be appraised before
26 being euthanized, and the owner shall be indemnified as
27 hereinafter provided: *Provided*, That any animal infected
28 with rabies may be euthanized by the owner or any person
29 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.
18

**§19-9-30. Appraisal of infected or exposed animals; amount;
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

4 animal, basing the amount upon the class and market value of
5 the animal at the time of the appraisal, whether for breeding
6 purposes or for milk or meat production. Animals reacting
7 to any approved test, but not exhibiting any physical evidence
8 of disease, shall be appraised without considering the
9 presence of a diseased condition, but animals exhibiting any
10 physical evidence of disease shall be appraised as infected
11 animals: *Provided*, That where indemnities are claimed for
12 directly exposed animals euthanized on account of rabies
13 infection, appraisal shall be based on the value of the animal
14 before it became infected. If the amount of appraisal of any
15 animal, as determined by the appraiser, is not satisfactory to
16 the owner of the animal, the owner shall immediately notify
17 the appraiser of this fact, setting forth the reason for
18 complaint. The amount of the appraisal shall then be
19 determined by arbitrators, one to be appointed by the
20 appraiser and one by the owner of the animal. If these
21 arbitrators are not able to agree on the amount of appraisal,
22 a third arbitrator shall be appointed by them, whose decision
23 shall be final. Compensation for the arbitrators appointed by
24 the owner and the appraiser shall be paid by the party
25 appointing the arbitrator, and in case a third arbitrator is
26 chosen, the third arbitrator shall be paid by the party against
27 whom the decision is made.

§19-9-31. Certificate of appraisal.

1 When the animal is to be euthanized, the commissioner
2 or the Commissioner's agent shall deliver to the owner a
3 certificate of appraisal which may cover any number of
4 animals belonging to the same owner, showing the age and
5 description of each animal found to be infected or directly
6 exposed; the name and place of test, if any; the mark or brand
7 signifying an animal with tuberculosis; any other mark or
8 brand which the animal may bear; the date when and the
9 place where the animal is to be euthanized by the

10 veterinarian; the designation of the officer who is to
11 supervise the euthanasia; the appraised value of each animal;
12 the name and address of the owner of the animal; and the fact
13 that the owner has executed the agreement as provided in
14 section twenty-eight of this article.

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

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

22 The euthanasia may be supervised and certified by the
23 Commissioner; any of the Commissioner's agents; or any
24 person with the authority of an agent or officer of the United
25 States Department of Agriculture. The Commissioner may
26 prescribe other requirements for the certificates or the

27 affidavits required by this article, and may make and enforce
28 rules governing the handling, shipping and euthanasia of such
29 animals.

§19-9-33. Payment of indemnity.

1 All claims for indemnity for animals euthanized as
2 having tuberculosis shall be paid in the manner prescribed in
3 section thirty-seven of this article. In all other cases when
4 animals are euthanized as provided in this article the
5 veterinarian shall forthwith forward to the Commissioner the
6 certificates of appraisal and euthanasia, together with the
7 owner's claim for indemnity, and the owner's affidavit that
8 the owner has in all respects complied with the agreement
9 provided for in section twenty-eight of this article, and with
10 any other requirements prescribed by the Commissioner. If
11 the certificates, claim and affidavit are correct and the claim
12 is not barred by section twenty-nine of this article, the
13 Commissioner shall approve and file them. The
14 Commissioner shall, at the end of each fiscal year, issue a
15 requisition to the State Auditor for two thirds of the value of
16 the approved certificates: *Provided*, That in case of an
17 outbreak of foot-and-mouth disease, or any other dangerously
18 contagious or infectious disease among bovine animals, ovine
19 animals, or swine, on account of which such animals are
20 being euthanized by cooperative order of federal and state
21 authority, and for which euthanized animals the federal
22 government pays one half of the indemnity, this state shall
23 pay one half, and only one half, of such indemnity. The State
24 Auditor shall issue a warrant on the State Treasurer, in favor
25 of the claimant, for the amount ordered by the Commissioner,
26 which shall be paid out of the current appropriation for
27 administering this article: *Provided, however*, That in case
28 the amount of the certificates of appraisal, and of those
29 described in section thirty-seven of this article, in any one
30 year, exceeds the current appropriation therefor, the

31 certificates shall be paid pro rata at the end of each fiscal
32 year.

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

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

32 collected from the owner as debts of like amount are by law
33 collectible.

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

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

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

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

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

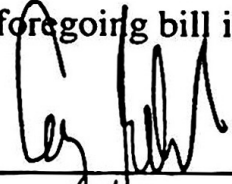
18 All bovine animals within the state which are deemed t to
19 have tuberculosis, either as a result of a physical examination
20 or the tuberculin test, shall be euthanized, and if the owner of
21 any such animal demands indemnity, the owner shall execute

22 the agreement provided for in section twenty-eight of this
23 article; such animal shall be appraised as provided in section
24 thirty of this article; an appraisal certificate shall be issued as
25 provided in section thirty-one of this article; and the
26 euthanasia shall be supervised and the certificate shall be
27 issued as provided in section thirty-two of this article.

§19-9-36. Rules for determining amount of indemnity.

1 The owners of animals euthanized as having tuberculosis
2 shall be indemnified in an amount determined by the results
3 of post-mortem inspection by the officer supervising the
4 euthanasia, and the certificate of appraisal shall be credited
5 according to the following rules: (a) If an animal is found
6 upon post-mortem inspection not to show lesions of
7 tuberculosis, the carcass and other edible portions shall be
8 passed as food, and the veterinarian shall sell them, including
9 all accompanying parts, for the best price obtainable, which
10 shall be paid to the owner and deducted from the amount of
11 appraisal, and any remaining balance shall be paid to the
12 owner; (b) if a an animal is found upon post-mortem
13 inspection to be infected with tuberculosis, and the lesions
14 are such that the carcass and parts of the carcass are passed
15 for food, the veterinarian shall sell them, including all
16 accompanying parts, for the best price obtainable, which shall
17 be paid to the owner and deducted from eighty percent of the
18 amount of the appraisal, and any remaining balance shall be
19 paid the owner; (c) if an animal upon post-mortem inspection
20 is condemned for offal, the veterinarian shall sell the hide and
21 offal for the best price obtainable, which price shall be paid
22 to the owner and deducted from forty percent of the
23 appraisal, and any remaining balance shall be paid to the
24 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.

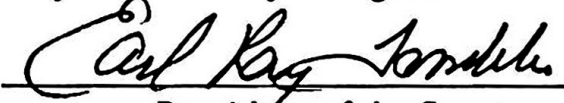
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is appended this the 4th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 30 2009

Time 3:20pm