

HB 2757

FILED

2014 MAR 28 P 5:04

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2757**

(By Delegates Sponaugle, Lynch,  
A. Evans and Andes)



Passed March 8, 2014

In effect ninety days from passage.

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**H. B. 2757**

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20D-1, §19-20D-2 and §19-20D-3, all relating to the creation of a private cause of action in magistrate court for the purpose of seeking humane destruction of a dog which has attacked a person; providing the elements of the cause of action and contents of the verified petition; allowing attorney fees; providing for limitations of the cause of action; requiring the court to issue a written order; providing for contents of order; requiring proof of euthansia; and requiring dismissal of petition if euthansia not ordered.

*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 article, designated §19-20D-1, §19-20D-2, and §19-20D-3, all to read as follows:

ARTICLE 20D. PRIVATE CAUSE OF ACTION FOR THE HUMANE DESTRUCTION OF A DOG.

§19-20D-1. Purpose.

AMSCO  
STATE

1 The purpose of this article is to protect the public by  
2 providing a private cause of action seeking euthanasia of a dog  
3 in magistrate court to a person who has been attacked by a dog  
4 resulting in personal injuries requiring medical treatment which  
5 cost \$2,000 or more, or who has been attacked by the dog and  
6 the dog had attacked a person causing personal injury which  
7 required medical treatment within the previous twelve months.

§19-20D-2. Procedure; petition to magistrate court; elements of action; burden of proof; attorney fees; limitation of action.

1 (a) A person seeking relief under this article may apply to  
2 the magistrate court in the county where the dog owner resides,  
3 or the county where the injury occurred, by verified petition  
4 setting forth and affirming the following:

5 (1) That the owner of the dog resides in the county where the  
6 petition is filed or the attack giving rise to the action occurred in  
7 the county where the petition is filed;

8 (2) That the petitioner was:

9 (A) Attacked by the dog and the attack resulted in personal  
10 injuries requiring medical treatment in the amount of \$2,000 or  
11 more; or

12 (B) Attacked by the dog and the dog had engaged in a  
13 separate attack on a person causing personal injury requiring  
14 medical treatment within the previous twelve months; and

15 (3) That the petitioner did nothing to provoke the dog.

16 (b) The petition and summons shall be served on the  
17 respondent in the manner set forth in Rule 4 of the West Virginia  
18 Rules of Civil Procedure.

19 (c) The petitioner must prove the allegations in the petition  
20 by clear and convincing evidence.

21 (d) The prevailing party is entitled to an award of reasonable  
22 attorney fees and costs.

23 (e) The limitations of the cause of action in this article are as  
24 follows:

25 (1) Relief, other than attorney fees and costs in subsection  
26 (d) of this section, is limited to an order directing that the owner  
27 of the dog have the dog euthanized; and

28 (2) The cause of action provided by this article does not  
29 establish statutory liability nor does it supplant a common law  
30 negligence cause of action.

**§19-20D-3. Order of the magistrate court.**

1 (a) If the trier of fact finds by clear and convincing evidence  
2 that the dog which is the subject of the action under this article  
3 has attacked the petitioner and caused personal injuries requiring  
4 medical treatment in the amount of \$2,000 or more or that the  
5 dog attacked the petitioner and within the twelve month period  
6 prior to the attack had engaged in a separate attack causing  
7 personal injury requiring medical treatment, then the court shall  
8 order the owner of the dog to have the dog euthanized.

9 (b) The magistrate court shall issue and file a written order  
10 that sets forth the following:

11 (1) Findings of fact and conclusions of law; and

12 (2) If the court orders euthanasia, a specific date upon which  
13 the owner of the dog must have the euthanasia performed and a

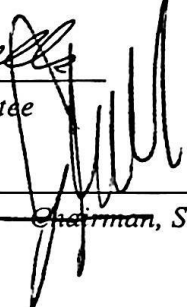
14 direction that documentation be mailed to the petitioner and filed  
15 with the court by a specific date showing that the procedure was  
16 performed.

17 (c) If the court does not order euthanasia, the court shall  
18 order that the petition be dismissed with prejudice.

19 (d) The court may award reasonable attorney fees and costs  
20 to the prevailing party.

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

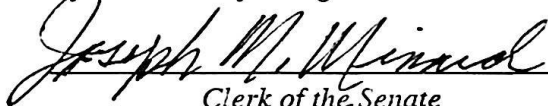
  
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Chairman, House Committee

  
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Member ~~Chairman, Senate Committee~~

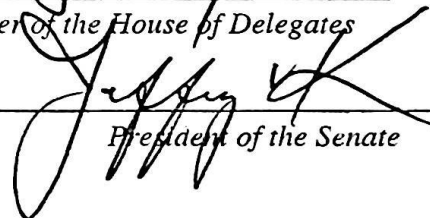
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the House of Delegates

  
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Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

The within is approved this the 28th  
day of March, 2014.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE GOVERNOR

MAR 28 2014

Time 10:45 am