

TABLE OF CONTENTS

WEST VIRGINIA STATE ANIMAL CODE REVISION 2020

(WV State Animal Code follows the ‘Table of Contents’)

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.....Page 7

5-11A-3 Definitions.

5-11A-5 Discrimination in sale or rental of housing and other prohibited practices ...Page 8

5-11A-6 Discrimination in residential real estate-related transactions.

5-11A-7 Discrimination in provision of brokerage services.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.....Page 11

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.

ARTICLE 10. HUMANE OFFICERS.....Page 12

7-10-1 Deputy sheriffs as humane officers or so designated.

7-10-2 Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

7-10-3 Cruel treatment of animals drawing or in vehicle; custody and care thereof by humane officers.

7-10-4 Custody and care of animals abandoned, neglected, or cruelly treated, hearing; bonds; liability for costs; liens; exclusions. (Humanely destroyed does not include euthanizing an animal by means of a gas chamber).....Page 13

7-10-4a Reporting of animals abandoned, neglected or cruelly treated: enforcement.

7-10-5 Destruction of animals.

CHAPTER 9. HUMAN SERVICES.....Page 15

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

9-6-9a. Mandatory reporting suspected of animal cruelty by adult protective service workers

CHAPTER 19. AGRICULTURE

TITLE 73 LEGISLATIVE RULE

SERIES 1 LIVESTOCK CARE STANDARDS.....Page 16

These rules are only in effect through 2021 therefore not included in this 2020 edition. Access rules on the foho.org website under *WV Animal State Code*.

ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.....Page 16

19-14-4. Special revenue fund.

ARTICLE 18. GENERAL STOCK LAW.

19-18-1 Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.

19-18-2 Unclaimed livestock; containment by sheriff; sheriff's sale at public auction.

19-18-3 Criminal penalties for trespassing livestock.....**Page 18**

ARTICLE 20. DOGS AND CATS.....Page 19

19-20-1 Dogs subject to taxation; declared personal property

19-20-2 Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor

19-20-3 Registration of dog kennels; application; fee expiration of certificate of registration

19-20-4 Forms for registration; records; registration tags; loss thereof

19-20-5 Wearing of registration tag by dog.....**Page 21**

19-20-6 County dog warden; rules and regulations for dog control; prosecution and penalties for violation of ordinances

19-20-6a Authority of county commission to contract with private society, other county or municipality for the care and control of dogs and cats

19-20-7 Dog pound and equipment to be provided by county court [county commission]; exception.

19-20-8 Impounding and disposition of dogs; costs and fees. Gas Chamber Prohibition and Regulation –Existing gas chambers grandfathered in prior to 2009 but subject to inspection by WV Vet Board.....**Page 23**

19-20-8a Joint ownership, etc.; by counties and municipalities of dog pounds; joint employment of dog wardens.

19-20-9 Failure to register dog or kennel; alteration or forging of registration certificate or tag, penalties.....**Page 24**

19-20-9a Dogs, cats, etc.; rabies observation.

19-20-10 Dog and kennel fund; disposition thereof

19-20-11 Assessment of dogs as personal property

19-20-12 Dogs; other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of animals

19-20-13 Dogs running at large; liability of owner

19-20-14 Dog killing, wounding or worrying livestock or poultry–recovery of damages

19-20-15 Same–Assessment of damages; appraisers

19-20-16 Same–When lawful to kill a dog.....**Page 28**

| | | |
|-----------|---|----------------|
| 19-20-17 | Same–Unlawful to harbor dog; penalty | |
| 19-20-18 | Same– Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill | |
| 19-20-19 | Offenses; criminal penalties; jurisdiction | |
| 19-20-19a | Dog warden and deputy dog wardens; power to issue citations | |
| 19-20-20 | Keeping vicious dogs; humane officers may kill such dogs | |
| 19-20-21 | License fee for keeping vicious or dangerous dog | |
| 19-20-22 | Confinement of female dogs..... | Page 29 |
| 19-20-23 | Prohibition of the use of impounded dogs and cats | |
| 19-20-24 | Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties | |
| 19-20-25 | Retirement, transfer or disposal of state owned dogs and horses | |
| 19-20-26 | Commercial dog-breeding operations..... | Page 30 |

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.....Page 32

| | | |
|----------|--|--|
| 19-20A-1 | Purpose and policy | |
| 19-20A-2 | Vaccination of dogs and cats | |
| 19-20A-3 | Vaccination record and report | |
| 19-20A-4 | Vaccination tag and certificate | |
| 19-20A-5 | Type of vaccine to be furnished; fee | |
| 19-20A-6 | Offenses and penalties | |
| 19-20A-7 | Enforcement of article | |
| 19-20A-8 | Vaccinated dogs and cats may run at large; confinement may be required by the commissioner of agriculture within the limits of any quarantine area or locality; and ordinances or rules may be promulgated by any county commission or municipality relating to the control and management of dogs within the county; providing limited exemption for hunting and farm dogs from county commission or municipality action. | |

ARTICLE 20B. SPAYING OR NEUTERING OF DOGS AND CATS.Page 35

| | | |
|----------|--|--|
| 19-20B-1 | Short Title – article may be cited as the West Virginia <i>Spay/Neuter Act</i> | |
| 19-20B-2 | Requirement of adoption | |
| 19-20B-3 | Deposit | |
| 19-20B-4 | Petition for compliance | |
| 19-20B-5 | Penalty | |
| 19-20B-6 | Dogs or cats claimed by owner | |

ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.

| | | |
|----------|---|----------------|
| 19-20C-1 | West Virginia Spay Neuter Assistance Program. | |
| 19-20C-2 | Fund established; acceptance of funds..... | Page 36 |
| 19-20C-3 | Rulemaking; annual report. | |

**TITLE 61 SERIES 24 LEGISLATIVE RULE
WV DEPT. OF AGRICULTURE
WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM RULES...Page 37**

ARTICLE 33. EQUINE RESCUE FACILITIES ACT.....Page 41

- 19-33-1 Definitions.
- 19-33-2 Licensing of equine rescue facilities.
- 19-33-3 Inspections of equine rescue facilities.
- 19-33-4 Legislative rules. (Rules not completed)
- 19-33-5 Penalties.

**TITLE 61 SERIES 32 LEGISLATIVE RULE
WV DEPT. OF AGRICULTURE
EQUINE RESCUE FACILITIES RULES.....Page 42**

ARTICLE 34. DANGEROUS WILD ANIMALS ACT.....Page 44

- 19-34-1 Findings and purpose.
- 19-34-2 Definitions.
- 19-34-3 Rule-making authority.
- 19-34-4 Prohibition on the possession of a dangerous wild animal; exceptions.
- 19-34-5 Dangerous Wild Animal Board; composition; duties.
- 19-34-6 Permit applications, requirements, issuance and revocation.
- 19-34-7 Confiscation and disposition of animals; suspension and revocation of permits.
- 19-34-8 Exemptions.
- 19-34-9 Criminal and civil penalties.

**TITLE 61 SERIES 30 LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR
DANGEROUS WILD ANIMALS RULES.....Page 49**

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

- 20-2-5j. Leashed dogs for tracking mortally wounded deer or bear.
- 20-2-16. Dogs chasing deer.....Page 51

CHAPTER 30. PROFESSIONS AND OCCUPATIONS

ARTICLE 10. VETERINARIANS.

- 30-10-12 Requirements to be a certified animal euthanasia technician.
- 30-10-12d Out of state certification accepted.....Page 55

**TITLE 26 - LEGISLATIVE RULE - WEST VIRGINIA BOARD OF VETERINARY
MEDICINE**

SERIES 5 - CERTIFIED ANIMAL EUTHANASIA

TECHNICIANS.....Page 55

CHAPTER 48. DOMESTIC RELATIONS.....Page 63

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

48-27-503 Permissive provisions in protective order

Protection of pets in cases of domestic violence

48-27-702 Law enforcement officers to provide information, transportation and to report
suspicions of animal cruelty.

CHAPTER 49. CHILD WELFARE.Page 65

ARTICLE 5. JUVENILE PROCEEDINGS.

49-5-13F Animal Cruelty Early Intervention Program

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED**

49-6A-2 Persons mandated to report suspected abuse and neglect.

49-6A-2b Mandatory reporting of suspected animal cruelty by child protective service workers

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.....Page 66

ARTICLE 3. CRIMES AGAINST PROPERTY.

61-3-27 Malicious killing of animals by poison or otherwise; penalty

ARTICLE 3B. TRESPASS.

61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

61-3E-6 Causing death or injury to an explosives detection animal; penalty

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY

61-8-19 Cruelty to animals; penalties; exclusions.....Page 68

61-8-19a Animal fighting ventures prohibited

61-8-19b Attendance at animal fighting ventures prohibited; penalty

61-8-19c Wagering at animal fighting venture prohibited; penalty.....Page 70

61-8-20 Keeping or using live birds to be shot at; penalty

- 61-8-21 Search warrants relating to cruelty to animals
- 61-8-22 Search warrants relating to birds and animals kept for fighting
- 61-8-23 Search without warrant where there is an exhibition of the fighting
birds or animals.

Resources Page.....Page 73

NOTE* Rules have been included with the applicable code for your convenience.

WEST VIRGINIA STATE ANIMAL CODE REVISION 2020

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

5-11A-3. Definitions.

As used in this article:

- (a) "Commission" means the West Virginia Human Rights Commission;
- (b) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence or sleeping place by one or more persons or families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof;
- (c) "Family" includes a single individual;
- (d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries;
- (e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant;
- (f) "Discriminatory housing practice" means an act that is unlawful under section five, six, seven or nineteen of this article;
- (g) "Disability" means, with respect to a person:
 - (1) A physical or mental impairment which substantially limits one or more of the person's major life activities;
 - (2) A record of having such an impairment; or
 - (3) Being regarded as having such an impairment, but the term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802;
- (h) "Aggrieved person" includes any person who:
 - (1) Claims to have been injured by a discriminatory housing practice; or
 - (2) Believes that the person will be injured by a discriminatory housing practice that is about to occur;
- (i) "Complainant" means the person, including the commission, who files a complaint under section eleven of this article;
- (j) "Familial status" means:
 - (1) One or more individuals who have not attained the age of eighteen years being domiciled with:
 - (A) A parent or another person having legal custody of the individual or individuals; or
 - (B) The designee of the parent or other person having custody of the individual with the written permission of the parent or other person; or
 - (2) Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;
- (k) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of the complaint through informal negotiations involving the aggrieved person, the

respondent and the commission;

(l) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation;

(m) "Respondent" means:

(1) The person or other entity accused in a complaint of an unfair housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents identified under subsection (a), section eleven of this article;

(n) The term "rooming house" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to persons he or she chooses to receive; and

(o) The term "basic universal design" means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.

(p) "Assistance animal" means any service, therapy or support animal, weighing less than one hundred fifty pounds, with or without specific training or certification, that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviate one or more identified symptoms or effects of a person's disability.

5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.

As made applicable by section four of this article and except as exempted by sections four and eight of this article, it is unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(b) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(c) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, blindness, disability, familial status, ancestry or national origin, or an intention to make any such preference, limitation or discrimination;

(d) To represent to any person because of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is in fact available;

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, blindness, disability, familial status, ancestry or national origin; or

(f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of: (A) That buyer or renter; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a disability of: (A) That person; (B) a person residing in or intending to reside in that

dwelling after it is so sold, rented or made available; or (C) any person associated with that person.

(3) For purposes of this subdivision, discrimination includes:

(A) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) A refusal to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the West Virginia Fair Housing Act, a failure to design and construct those dwellings in a manner that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons;

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(iii) All premises within the dwellings contain the following features of adaptive design: (I) An accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the *American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People*, commonly cited as ANSI A117.1, suffices to satisfy the requirements of subparagraph (3)(C)(iii) of this subdivision.

(5) (A) If a unit of general local government has incorporated into its laws the requirements set forth in subparagraph (3) (C) of this subdivision, compliance with those laws satisfy the requirements of that subparagraph.

(B) The commission or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of subparagraph (3)(C) of this subdivision are met.

(C) The commission shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance to units of local government and other persons to implement the requirements of that subparagraph.

(D) Nothing in this article requires the commission to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of the dwellings are consistent with the requirements of subparagraph (3)(C) of this subdivision.

(6) (A) Nothing in paragraph (5) of this subdivision affects the authority and responsibility of the commission or a local public agency to receive and process complaints or otherwise engage

in enforcement activities under this article.

(B) Determinations by a unit of general local government under subparagraphs (5)(A) and (B) of this subdivision are not conclusive in enforcement proceedings under this article.

(7) As used in this section, the term "covered multifamily dwellings" means: (A) Buildings consisting of four or more units if the buildings have one or more elevators; and (B) ground floor units in other buildings consisting of four or more units.

(8) Nothing in this article invalidates or limits any law of this state or any political subdivision of this state that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this article.

(9) This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. The burden of proving such threat to health or safety or the likelihood of such damage is upon the respondent.

(10) For the purposes of this subdivision, rules, policies, practices or services regarding animals are subject to the reasonable accommodation requirements of subparagraph (B), paragraph (3) of this subdivision and the following provisions:

(A) In connection with a request for reasonable accommodation to the rules, policies or services, a person with a disability may be required to submit documentation, from a professional treatment provider, of the disability related need for the assistance animal.

(i) Such documentation is sufficient if it establishes that the assistive animal will provide some type of disability-related assistance or emotional support.

(ii) A person with a disability may not be required to submit or provide access to medical records or medical providers, or to provide detailed or extensive information or documentation of a person's physical or mental impairments.

(B) A person with a disability may be denied the accommodation of an assistance animal if there is credible evidence that:

(i) The assistance animal poses a direct threat to the health or safety of others that cannot be eliminated by another reasonable accommodation; or

(ii) The assistance animal would cause substantial physical damage to the property of other that cannot be reduced or eliminated by another reasonable accommodation.

(C) A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct.

(D) A request for a reasonable accommodation may not be unreasonably denied, conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed.

5-11A-6. Discrimination in residential real estate-related transactions.

(a) It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin.

(b) As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance: (A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or (B) secured by

residential real estate; or

(2) The selling, brokering or appraising of residential real property.

(c) Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, ancestry, sex, blindness, disability or familial status.

5-11A-7. Discrimination in provision of brokerage services.

It is unlawful to deny any person access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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.

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

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

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

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

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

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

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

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

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

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

ARTICLE 10. HUMANE OFFICERS.

7-10-1. Deputy sheriffs as humane officers.

The sheriff of each county of this state shall annually designate, by a record made in the office of the clerk of the county commission, one of his or her deputies to act as humane officer of the county; or, if the county commission and sheriff agree, the county dog warden may be designated to act as the humane officer or as an additional humane officer; any person designated to act as a humane officer and all peace officers designated by law as a humane officer or an additional humane officer shall investigate all complaints made to him or her of cruel or inhumane treatment of animals within the county and he or she shall personally see that the law relating to the prevention of cruelty to animals is enforced. The willful failure of such designee to investigate any complaint made to him or her and to take proper measures in such case or to perform his or her duty in any other respect may constitute good cause for removal from employment.

7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

(a) It is the duty of humane officers to prevent the perpetration or continuance of any act of cruelty upon any animal and to investigate and, upon probable cause, to cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and as provided by law, such officers have the right to access and inspection of records and property as may be reasonably necessary to any investigation.

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds therefor. In the event of suspected child abuse or neglect, the humane officer shall report to the local child protective services agency of the Department of Health and Human Resources in accordance with the provisions of section five, article six-a, chapter forty-nine of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department's local adult protective services agency in accordance with the provisions of section eleven, article six, chapter nine of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of article twenty-seven, chapter forty-eight of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars or confined in jail not more than thirty days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

7-10-3. Cruel treatment of animals drawing or in vehicle; custody and care thereof by humane officers.

When any person arrested is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, such officer shall take charge of such animal and of such vehicle and its contents, and of the animal or animals drawing the same, and shall, if the person

in charge thereof be not the owner, give notice of such seizure to the owner, and provide for them until their owner shall take charge of the same; and if the person in charge of or driving such animals be the owner thereof, the same shall not be returned to him until he has been tried for the offense and acquitted, or if convicted, until he shall give bond in the penalty of five hundred dollars with approved security before the tribunal trying the case conditioned not to again cruelly treat such animals; and the officer shall have a lien upon such animals and the vehicle and its contents for the expenses of such care and provision, or such expenses or any part thereof remaining unpaid may be recovered by such humane officer in a civil action.

7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; bonds; liability for costs; liens; exclusions.

(a) Subject to the provisions of subsection (h) of this section, a humane officer shall take possession of any animal, including birds or wildlife in captivity, known or believed to be abandoned, neglected, deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion or cruelly treated or used as defined in sections nineteen and nineteen-a, article eight, chapter sixty-one of this code.

(b) The owner or persons in possession, if his or her identity and residence are known, of any animal seized pursuant to subsection (a) of this section shall be provided written notice of the seizure, his or her liability for the cost and care of the animal seized as provided in this section and the right to request a hearing in writing before a magistrate in the county where the animal was seized. The magistrate court shall schedule any hearing requested within ten working days of the receipt of the request. The failure of an owner or person in possession to request a hearing within five working days of the seizure is prima facie evidence of the abandonment of the animal. At the hearing, if requested, the magistrate shall determine by a preponderance of the evidence if the animal was abandoned, neglected or deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion or otherwise treated or used cruelly as set forth in this section.

(c) (1) If a hearing is requested and the magistrate finds by a preponderance of the evidence that the owner did abandon, neglect or cruelly treat the animal, or if no hearing is requested and the magistrate finds by a preponderance of the evidence, based upon the affidavit of the humane officer, that the owner did abandon, neglect or cruelly treat the animal, the magistrate shall enter an order awarding custody of the animal to any humane officer for further disposition in accordance with reasonable practices for the humane treatment of animals. After hearing the evidence, if the magistrate is not convinced the animal was neglected or cruelly treated, he or she may dismiss the action and order the animal be returned to the owner. If the magistrate finds in favor of the humane officer, the owner of the animal shall post a bond with the court in an amount sufficient to provide for the reasonable costs of care, medical treatment and provisions for the animal for at least thirty days. The bond shall be filed with the court within five days following the court's finding against the owner. At the end of the time for which expenses are covered by the original bond if the animal remains in the care of the humane officer and the owner desires to prevent disposition of the animal by the humane officer, the owner shall post an additional bond with the court within five days of the expiration of the original bond. During this period the humane officer is authorized to place the animal in a safe private home or other safe private setting in lieu of retaining the animal in an animal shelter. The person whose animal is seized is liable for all costs of the care of the seized animal.

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

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

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

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

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

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

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

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

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

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

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

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

7-10-4a. Reporting of animals abandoned, neglected or cruelly treated; enforcement.

(a) It is the duty of any licensed veterinarian and the right of any other person to report to a humane officer any animal found, reasonably known or believed to be abandoned, neglected or cruelly treated as set forth in this article, and such veterinarian or other person may not be subject to any civil or criminal liability as a result of such reporting.

(b) Any person who, with force, assaults, resists, or impedes any other person engaged in the reporting of abandoned, neglected or cruelly treated animals as provided for in this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred fifty nor more than one thousand dollars, or confined in the county jail not more than one year, or both so fined and confined.

7-10-5. Destruction of animals.

Any humane officer or animal shelter lawfully may humanely destroy or cause to be humanely destroyed any animal in a manner consistent with the provisions of section four of this article when, in the judgment of the humane officer or director or supervisor of an animal shelter and upon the written certificate of a regularly licensed veterinary surgeon, the animal appears to be injured, disabled or diseased past recovery or the animal is unclaimed.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.

(a) If any medical, dental or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, state or regional ombudsman or any employee of any nursing home or other residential facility has reasonable

cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of section eleven of this article: *Provided*, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation, any other person may make such a report.

(c) The secretary shall develop a form for the filing of written complaints, as provided by section eleven of this article, and provide these forms to all nursing homes or other residential facilities, hospitals, ombudsmen and adult protective service agencies in this state. The forms shall be designed to protect the identity of the complainant, if desired, and to facilitate the prompt filing of complaints.

9-6-9a. Mandatory reporting suspected of animal cruelty by adult protective service workers.

In the event an adult protective service worker, in response to a report mandated by section nine of this article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis therefor to the county humane officer provided under section one, article ten, chapter seven of this code within twenty-four hours of the response to the report.

CHAPTER 19. AGRICULTURE.

TITLE 73 LEGISLATIVE RULE SERIES 1 LIVESTOCK CARE STANDARDS

These rules are in effect through 2021 therefore they have been left out of this 2020 edition. They can be found on the foho.org website under *WV Animal State Code*.

ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.

19-14-4. Special revenue fund.

Except as otherwise provided in this article, all fees and penalties collected under the provisions of this article shall be deposited with the state Treasurer in a special revenue account. Such moneys shall be expended by the commissioner of agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

19-14-5. Permits; registration.

(a) Permits and registrations shall not be transferrable with respect to persons or locations.

(b) A person must apply for a permit or registration at least fifteen days prior to the expiration of the current permit or registration expires; or at least fifteen days prior to the date that the person

intends to engage in business or market products in this state. All applications shall be accompanied by the fee established in this section. A penalty of \$2 shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

(c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit, except all persons manufacturing feed for only his/her animals on his/her premises. Application forms shall be provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by an application fee of \$15. Each permit issued shall expire on December 31, next following the date of issue.

(d) Each person first distributing commercial feed into West Virginia trade channels must obtain a Commercial Feed Distributor Permit, except: (1) Persons distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing Permit, and (3) persons distributing only those feeds that they register. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by an application fee of \$10. Each permit issued shall expire on December 31, next following the date of issue.

(e) All commercial feed distributed or used in this state, except customer-formula feed, must be registered. Commercial feed that can be uniquely identified by its brand name, product name, physical form or other descriptive term shall be registered as a separate product. Commercial feed that is packaged in such weights as to apply to several categories shall be registered in each applicable category. Application forms shall be provided by the commissioner and include such information as established by rules.

(1) Commercial feed, other than pet food, in packages over ten pounds or bulk shall be registered permanently. A registration fee of \$10 per product shall accompany each application for registration, except that there will be no fee for a revision of a commercial feed already on file that involves a change in the net weight, a change in the list of ingredients, and/or a change in the guarantee for vitamins or minerals.

(2) On the thirty-first day of August, 1991, permanent registrations for pet food in packages over ten pounds are void and application for registration and payment of fees will be required. Pet food, including specialty pet foods, in packages over ten pounds or bulk shall be registered annually. A registration fee of \$50 per product shall accompany each application for registration. The registration shall expire on the thirty-first day of August next following the date of issue.: *Provided*, That until June 30, 2027, an additional registration fee of \$50 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

(3) Commercial feed, excluding specialty pet food in packages of one pound or less, in packages of ten pounds and under shall be registered annually. A registration fee of \$40 per product shall accompany each application for registration. The registration shall expire on December 31, next following the date of issue.: *Provided*, That until June 1, 2027, an additional registration fee of \$35 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.

- (4) Specialty pet food in packages of one pound or less shall be registered annually. A registration fee of \$20 per product shall accompany each application for registration. The registration shall expire on December 31, next following the date of issue.
- (f) A person is not required to register any brand name or product name of commercial feed which is already registered by another person.
- (g) Alteration of commercial feed that changes the label requires a new application for a Commercial Feed Registration be made and approved before distribution.

ARTICLE 18. GENERAL STOCK LAW.

19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.

- (a) If livestock enters the property of a landowner without that landowner's consent, the owner of the livestock is liable for damages for personal injury or property damage in a civil action in magistrate or circuit court.
- (b) The landowner must attempt to contact the owner of the trespassing livestock within forty-eight hours of the trespass. If the owner cannot be contacted within forty-eight hours, the landowner shall notify the county sheriff.
- (c) The landowner may contain the trespassing livestock on his or her property, but is not required to do so. If the landowner is able to contact the owner of the trespassing livestock pursuant to subsection (a) of this section, he or she shall also inform the owner of the costs of containment.
- (d) The owner of the trespassing livestock and the landowner shall attempt to mutually agree upon a fair cost for any containment. A fair cost for containment is an amount which would be allowed for the sheriff for containing similar livestock. If the negotiation fails, or if the landowner is not otherwise reimbursed for the costs for containment, the landowner may seek monetary damages in a civil action for these costs.

19-18-2. Unclaimed livestock; containment by sheriff; sheriff's sale at public auction.

- (a) If the owner of trespassing livestock cannot be determined, or if the trespassing livestock has not been recovered within ten days of notifying the owner, the county sheriff shall take possession of the trespassing livestock.
- (b) The county sheriff may return the livestock to its owner and seek reimbursement for containment costs. If attempts to return the livestock to the owner fail, the sheriff may, after publishing notice as a Class I legal advertisement, sell the livestock to the highest bidder at a public livestock auction.
- (c) The proceeds of the livestock sale shall be distributed in the following order:
- (1) Costs incident to the sale;
 - (2) Costs of containment incurred by the sheriff and the landowner;
 - (3) Any remaining amount to the owner of the trespassing livestock; and
 - (4) If the owner is unknown or does not claim the amount remaining within ninety days, that amount shall be deposited into the county treasury.

19-18-3. Criminal penalties for trespassing livestock.

(a) While livestock may escape enclosures due to accident or unforeseen circumstances, it is unlawful for the owner of livestock to negligently permit livestock to run at large and trespass on the property of other landowners.

(b) If livestock injures a person or destroys the property of another person while negligently trespassing, the owner of the livestock shall be given an oral or written warning for the first offense. For a second offense within six months of the first, the owner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100. For a third or subsequent offense within six months of the second or subsequent offense, the owner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000.

ARTICLE 20. DOGS AND CATS.

19-20-1. Dogs subject to taxation; declared to be personal property.

Any dog shall be and is hereby declared to be personal property within the meaning and construction of the laws of this state, and any dog above the age of six months shall be subject to taxation.

19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

It shall be the duty of the county assessor and his or her deputies of each county within this state, at the time they are making assessment of the personal property within such county, to assess and collect a head tax of three dollars on each dog, male or female; and in addition to the above, the assessor and his or her deputies shall have the further duty of collecting any such head tax on dogs as may be levied by the ordinances of each and every municipality within the county. However, no head tax may be levied against any guide or support dog especially trained for the purpose of serving as a guide, leader, listener or support for a blind person, deaf person or a person who is physically or mentally disabled because of any neurological, muscular, skeletal or psychological disorder that causes weakness or inability to perform any function. Guide or support dogs must be registered as provided by this section. In the event that the owner, keeper or person having in his or her possession or allowing to remain on any premises under his or her control any dog above the age of six months, shall refuse or fail to pay such tax, when the same is assessed or within fifteen days thereafter, to the assessor or deputy assessor, then such assessor or deputy assessor shall certify such tax to the county dog warden; if there be no county dog warden he or she shall certify such tax to the county sheriff, who shall take charge of the dog for which the tax is delinquent and impound the same for a period of fifteen days, for which service he or she shall be allowed a fee of one dollar and fifty cents to be charged against such delinquent taxpayer in addition to the taxes herein provided for. In case the tax and impounding charge herein provided for shall not have been paid within the period of fifteen days, then the sheriff may sell the impounded dog and deduct the impounding charge and the delinquent tax from the amount received therefore, and return the balance, if any, to the delinquent taxpayer. Should the sheriff fail to sell the dog so impounded within the time specified herein, he or she shall kill such dog and dispose of its body.

At the same time as the head tax is assessed, the assessor and his or her deputies shall, on the forms prescribed under section four of this article, take down the age, sex, color, character of hair (long or short) and breed (if known) and the name and address of the owner, keeper or harbinger thereof. When the head tax, and extra charges, if any, are paid, the officer to whom payment is made shall issue a certificate of registration and a registration tag for such dog.

In addition to the assessment and registration above provided for, whenever a dog either is acquired or becomes six months of age after the assessment of the personal property of the owner, keeper or harbinger thereof, the said owner, keeper or harbinger of said dog shall, within ten days after the acquisition or maturation, register the said dog with the assessor, and pay the head tax thereon unless the prior owner, keeper or harbinger paid the head tax.

All certificates of registration and registration tags issued pursuant to the provisions of this section shall be issued for the fiscal year and shall be valid from the date on which issued until the thirtieth day of June of that fiscal year, or until reissued by the assessor or his or her deputy in the regular performance of his or her duties, but in no case shall previous registration tags be valid after September thirtieth of the next ensuing fiscal year.

The assessor collecting the head tax on dogs shall be allowed a commission of ten percent upon all such taxes collected by him or her, and shall turn in to the county treasury ninety percent of such taxes so collected, as are levied by this section; and the assessor shall turn over to the treasurer or other proper officer of each and every municipality within the county ninety percent of such taxes levied by the ordinances of such municipality. All such dog taxes, except those belonging to municipalities, shall be accredited to the dog and kennel fund provided for in section ten of this article. Such dog taxes as are collected for and turned over to municipalities shall be deposited by the proper officer of such municipalities to such fund and shall be expended in such manner as the law of such municipality may provide. All taxes on dogs not collected by the assessor shall be collected by the regular tax collecting officer of the county and placed to the credit of the dog and kennel fund.

19-20-3. Registration of dog kennels; application; fee; expiration of certificate of registration.

Every owner or operator of a kennel, wherein dogs are bred, kept, boarded or sold as a commercial venture for profit shall annually, between the first day of July and the thirtieth day of September of each year, file with the assessor of the county in which such kennel is located, kept or maintained, an application for the registration of such kennel for the fiscal year. Such application shall state the location of the kennel, the name and address of the person actually in charge of and supervising it, and the name and address of the owner of the kennel. Upon the filing of such application, together with the payment to the assessor of a fee of ten dollars the assessor shall issue a certificate of registration for such kennel. The registration of a kennel, as herein provided, shall entitle the registrant to register and receive certificates and tags for not more than five dogs without the payment of a separate head tax on such dogs. The head tax provided for in section two of this article shall, on such five or less dogs, be included in and charged against the kennel registration fee herein provided.

Every person upon becoming the owner or operator of a kennel of dogs as herein described after the thirtieth day of September of any year shall, within three days after becoming such owner or operator, register such kennel for the remainder of the current fiscal year in the manner, and upon the payment of the registration fee, herein provided.

All certificates of registration issued pursuant to the provisions of this section shall be issued for

the fiscal year, and shall be valid from the date on which issued until the thirtieth day of June of that fiscal year.

19-20-4. Forms for registration; records; registration tags; loss thereof.

The commissioner of agriculture shall prescribe the form of all applications, certificates of registration, and registration tags required by this article. Certificates of registration and registration tags shall bear identifying numbers.

A public record of all certificates of registration and registration tags issued under the provisions of this article shall be kept by the assessor of each county. Such record shall be kept intact and available for inspection for a period of not less than two years following the end of the registration year.

Registration tags shall be made of metal or some other suitable substance of a permanent nature. The design of such tags shall be changed from year to year so that identification of the year of issue of any tag may be made without close visual examination. If any registration tag be lost, a duplicate shall be furnished by such assessor upon proper proof of loss and the payment to him of a fee of twenty-five cents.

19-20-5. Wearing of registration tag by dog.

Every registered dog shall at all times wear a valid registration tag issued as provided in this article. The failure to have displayed or worn on any dog, at any time, of such valid tag shall be prima facie evidence that such dog is not registered and such dog shall be subject to be, and shall be, impounded, sold, or destroyed as hereinbefore or hereinafter provided.

19-20-6. County dog warden; rules and regulations for dog control; prosecution and penalties for violation of ordinances.

(a) The county commission of each county may appoint and employ a county dog warden, and such number of deputies, for such time, and at such compensation, as such county commission shall deem reasonable and necessary to enforce the provisions of this code with respect to the control and registration of dogs, the impounding, care and destruction of unlicensed dogs. Such county dog warden may be appointed a deputy assessor for the purpose of collecting the dog tax and registration fees, taking the dog registration and providing the tags authorized by this article. The county dog warden or any deputies may, in the discretion of the county commission, be regularly employed officers or agents of any humane society or society for the prevention of cruelty to animals, organized and operating under the laws of this state and owning, controlling and operating a suitable place within the county for impounding and destroying dogs. In addition to the compensation provided for above, a bounty of fifty cents per dog shall be paid to the county dog warden or deputy who captures an unregistered dog. Such county dog warden and deputy wardens shall each give bond in a sum of not less than one thousand dollars and not more than two thousand dollars conditioned on the faithful performance of their duties. Such bonds shall be filed with the county commission by which such persons are appointed.

The county dog warden and his deputies shall patrol the county in which they are appointed and shall seize on sight and impound any dog more than six months of age found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel. They shall be responsible for the proper care and final disposition of all impounded dogs. The county dog warden shall make a monthly report, in writing, to the county commission of his county. When any dog shall have been seized and impounded, the county dog warden shall forthwith give notice to the owner of such dog, if such owner be known to the warden, that such dog has been

impounded and that it will be sold or destroyed if not redeemed within five days. If the owner of such dog be not known to the dog warden, he shall post a notice in the county courthouse. The notice shall describe the dog and the place where seized and shall advise the unknown owner that such dog will be sold or destroyed if not redeemed within five days.

(b) Any county commission may promulgate and enforce such ordinances, rules and regulations, not inconsistent with the provisions of this article, as it considers necessary or convenient for the control and management of all dogs in the county, or any portion thereof, regardless of the age of any such dog: Provided, That the county commissions may promulgate and enforce such ordinances, rules and regulations to the extent necessary for the implementation of the provisions contained in this article.

(c) The county commission of each county may provide in such ordinance for the arrest, conviction and punishment of any person who violates the provisions thereof. The county commission of each county may provide in any such ordinance that any person who violates the provisions of the ordinance is guilty of a misdemeanor, and, upon conviction thereof, that such person is subject to a fine or fines. The amount of such fine for a single violation of any such ordinance may not exceed one hundred dollars. Magistrate courts and circuit courts shall have concurrent jurisdiction with respect to such misdemeanors.

19-20-6a. Authority of county commission to contract with private society, other county or municipality for the care and control of dogs and cats.

In addition to the powers granted to county commissions by section six of this article, the county commission of each county may contract with or reimburse any private incorporated society or association, county commission or municipality for the care, maintenance, control or destruction of dogs and cats.

19-20-7. Dog pound and equipment to be provided by county court [county commission]; exception.

The county court of each county, if the court appoints a county dog warden, shall provide the dog warden with nets and other suitable devices for taking dogs in a humane manner, and with facilities for transporting any dog seized to the dog pound, a suitable place for impounding dogs with proper provisions for their feeding and care, and humane equipment, devices and methods for destroying dogs: Provided, That in any county in which there is a society for the prevention of cruelty to animals or a humane society, incorporated and organized under the laws of this state, and having one or more duly appointed agents, and maintaining an animal home or shelter suitable for impounding dogs and possessing devices for humanely destroying dogs, the county court shall not be required to provide a dog pound, but it may designate such animal home or shelter as the county dog pound, and the county dog warden shall in such case deliver all dogs seized by him and his deputies to such animal home or shelter for impounding and disposition in the manner provided by this article. The county court shall provide for the payment of reasonable compensation, not to exceed the fees and costs provided for in this article, to such society for the use of its facilities and services in impounding and disposing of dogs. Such compensation to such society shall be paid from the fund provided for in this article.

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

(a) All dogs seized and impounded as provided in this article, except dogs taken into custody under section two of this article, shall be kept housed and fed in the county or municipal shelter for five days after notice of seizure and impounding has been given or posted as required by this article, at the expiration of which time all dogs which have not previously been redeemed by their owners as provided in this article, shall be sold or humanely destroyed. No dog sold as provided in this section may be discharged from the county or municipal shelter until the dog has been registered and provided with a valid registration tag.

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

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

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

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

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

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

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

(d) The owner, keeper or harbinger of any dog seized and impounded under the provisions of this article may, at any time prior to the expiration of five days from the time that notice of the seizure and impounding of the dog has been given or posted as required by this article, redeem the dog by paying to the dog warden or his or her authorized agent or deputy all of the costs assessed against the dog and by providing a valid certificate of registration and registration tag for the dog.

(e) Reasonable costs and fees, in an amount to be determined, from time to time, by the county commission, shall be assessed against every dog seized and impounded under the provisions of this article, except dogs taken into custody under section two of this article. The cost shall be a

valid claim in favor of the county against the owner, keeper or harbinger of any dog seized and impounded under the provisions of this article and not redeemed or sold as provided in this section and the costs shall be recovered by the sheriff in a civil action against the owner, keeper or harbinger.

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

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

19-20-8a. Joint ownership, etc., by counties and municipalities of dog pounds; joint employment of dog wardens.

The county court of any county may contract with any municipality within the county for the joint ownership, leasing, operation and maintenance within the county of a dog pound and may jointly employ a dog warden or dog wardens.

19-20-9. Failure to register dog or kennel; alteration or forging of registration certificate or tag; penalties.

Any person who owns, keeps, or harbors a dog, or who owns or operates a kennel, subject to registration under the provisions of this article, and who fails, refuses, or neglects to register such dog or kennel, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars.

Any person who shall alter, or forge any certificate or tag, provided for in this article, or display, present, or utter such certificate as valid with knowledge that it has been altered or forged, or who knowingly causes or permits any dog owned, kept or harbored by him to wear any fictitious, altered, or invalid registration tag in place of a valid tag as required under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than thirty days or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment.

19-20-9a. Dogs, cats, etc.; rabies observation.

(a) Any person who owns or harbors any dog, cat or other domesticated animal, whether licensed or unlicensed, which bites any person, shall forthwith confine and quarantine the animal for a period of ten days for rabies observation.

(b) If any unvaccinated domesticated animal is bitten by a rabid animal, the owner shall confine the bitten animal for a period of six months. The animal shall be vaccinated or revaccinated after five months.

(c) If the animal is not confined and quarantined as directed in subsections (a) and (b) of this section, the humane officer, dog warden or sheriff may cause the animal to be placed in the custody and care of a licensed veterinarian for that purpose at the owner's expense. The penalty

for any violation of this section is a fine of fifty dollars or confinement in the county or regional jail for a period of no less than two nor more than three days.

19-20-10. Dog and kennel fund; disposition thereof.

All registration fees, head taxes, and fees and costs for impounding and disposing of dogs, as provided in this article, and collected thereunder, shall be paid into the county treasury where they shall constitute and be set aside as a special fund to be designated the "dog and kennel fund."

The county commission shall expend such fund, and issue drafts payable therefrom, for the following purposes, and no others: To pay the actual expenses incurred by the county commission, the county assessor, and the sheriff in carrying out the provisions of this article; to pay for the services of the dog warden, his deputies, pound keepers, and such other persons as may be employed, if any, or may render services, in actually carrying out the provisions of this article; to pay in its discretion to the dog warden and his deputies mileage at the rate up to fifteen cents per mile for the use of their privately owned vehicles actually used in carrying out the provisions of this article; to pay for the purchase, procurement, rental, construction, operation, maintenance and repair of any property, devices or facilities reasonably necessary and required to carry out the provisions of this article; to compensate any department of the state government or any local board of health for any necessary service rendered in connection with this article; to pay the costs of any rabies control project or program authorized by law; to compensate any persons who have suffered loss or damage on account of the destruction, loss, or injury by dogs of any sheep, lamb, goat, kid or poultry, when such claims have been proved and allowed as provided in this article: Provided, however, That such compensation authorized by the county commission shall not exceed an amount double the assessed value of the destroyed or injured animals or poultry as shown on the assessor's records, and in the event such animals are not assessed, then compensation authorized by said court shall not exceed the average assessed value of like animals or poultry, or if no like animal or poultry is assessed, then not to exceed the fair market value as determined by the county commission.

In the event that the dog and kennel fund shall in any year be insufficient to pay the several items set forth in this section, then the county commission may be, and it is hereby, authorized and empowered to pay such items out of the county general fund. Any surplus of the dog and kennel fund remaining unexpended in the county treasury, and, in the opinion of the county commission, not needed for the payment and satisfaction of claims and expenses as herein provided, shall annually be paid into and credited to the county school fund, but the funds thus used shall be in an amount deemed proper and safe in the judgment and discretion of the county commission.

19-20-11. Assessment of dogs as personal property.

In addition to the head tax on dogs provided for in this article, the owner of any dog above the age of six months shall be permitted to place a value on such dog and have such dog assessed as personal property in the same manner and at the same rate as other personal property.

19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of companion animals.

(a) Any dog which is registered, kept and controlled as provided in this article or any dog, cat or other animal or any reptile which is owned, kept and maintained as a companion animal by any person, irrespective of age, is protected by law; and, except as otherwise authorized by law, any

person who shall intentionally, knowingly or recklessly kill, injure, poison or in any other manner, cause the death or injury of any dog, cat, other animal or any reptile is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred dollars nor more than five hundred dollars, or both. However, this section does not apply to a dog who is killed while attacking a person, a companion animal or livestock. Any person whose dog, cat, other animal or reptile as specified herein is killed or injured wrongfully or unlawfully by any other person shall have a right of action against the person who shall so kill or injure any dog, cat, animal or reptile.

(b) Any person who shall intentionally and unlawfully steal a dog, cat, other animal or reptile as specified in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred nor more than five hundred dollars, or both. Any person violating the provisions of this subsection shall, for second or subsequent offense, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than ninety days nor more than six months, or shall be ordered to provide public service for not more than one year, and fined not less than one thousand dollars. In no case can any action or prosecution relating to a dog under the provisions of this section be maintained if the dog concerned shall not have been duly registered pursuant to the provisions of this article or owned and kept pursuant to the provisions of this section or owned and kept pursuant to the provisions of this section at the time the cause of action shall have arisen.

(c) No person other than the owner of a registered dog may remove a tag, collar or other identifying apparel from the registered dog, nor remove or turn off a radio transmitting collar on the registered dog, without the permission of the owner, unless removal of the tag, collar or apparel is necessary to prevent or treat an injury to the dog or is done by a law-enforcement officer for a legitimate law-enforcement purpose. Any person who intentionally removes a tag, collar or other apparel from a registered dog in violation of the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide community service for not less than eight hours nor more than forty hours or fined not less than fifty dollars nor more than one hundred fifty dollars, or both.

(d) The commissioner of agriculture is hereby authorized to designate a reasonable number of his present employees as may be necessary to investigate alleged incidents of the unlawful stealing of dogs, other domestic animals or reptiles, alleged incidents of cruelty to animals or reptiles and the alleged incidents of the unlawful stealing of animals or reptiles for the purpose of sale to medical or other research companies. The deputies shall make the results of their investigations known to any law-enforcement officers who have authority to enforce the provisions of this article.

(e) It shall be the duty of all members of the West Virginia state police, sheriffs and police officers to aid in the enforcement of the provisions of this article and, for services rendered in the enforcement thereof, such persons shall be entitled to fees in the amounts set forth in section eight. The fees shall be paid by the county commission from the dog and kennel fund.

19-20-13. Dog running at large; liability of owner.

Any owner or keeper of any dog who permits such dog to run at large shall be liable for any damages inflicted upon the person or property of another by such dog while so running at large.

19-20-14. Dog killing, wounding or worrying livestock or poultry - recovery of damages.

If any dog has killed or assisted in killing, wounding or worrying any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry out of the enclosure of the owner of the dog, the owner or keeper of the dog shall be liable for the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry in the amount of the damages sustained, to be recovered in an action before any court or magistrate having jurisdiction of the action. It shall not be necessary to sustain the action to prove that the owner of the dog knew the dog was accustomed to worrying, killing or wounding. A recovery under this section shall bar and preclude the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry from obtaining compensation from the county commission under the provisions of this article. If the person suffering the loss or damage cannot ascertain the owner or keeper of the dog, or if the owner or keeper is not financially responsible, then the person suffering the loss or damage may file his claim with and prove the same before the county commission of the county in which the loss or damage is sustained, in the manner provided in this article, and the commission shall pay the loss or damage out of the fund provided for such purposes and according to the provisions of this article. When compensation is so obtained from the county commission, the county commission is authorized to sue under this section and recover as the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry. The amount so recovered shall be paid into the county treasury; but no suit shall be commenced unless authorized by the county commission.

19-20-15. Same - Assessment of damages; appraisers.

Authority is hereby given to magistrates and notaries public within this state, and within their respective jurisdictions, to summon three substantial, upright and worthy bona fide residents, citizens and taxpayers of his county to assess the damages suffered by any person on account of the destruction, loss or injury of any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry by dogs within the county. The appraisers shall be appointed upon the request of a person suffering damages on account of such destruction, loss or injury. The appraisers shall go upon the ground and investigate fully the extent of the destruction, loss or injury, taking all the evidence deemed necessary to arrive at the facts to be passed upon in arriving at the amount of damage, if any, suffered by the party making the complaint. Before the appraisers may be summoned by the magistrate or notary public, the complainant shall be required to make a sworn complaint before the magistrate or notary public, setting out in plain, easily comprehensible terms the facts concerning his damages to the best of his knowledge. After making a full investigation of the facts involved, the appraisers, with the assistance of the magistrate or notary public, shall make a sworn statement and report the facts ascertained and the damages suffered. The report and statement shall be filed with the county commission or the clerk thereof in vacation. The fees and mileage for services allowed in such cases shall be the same as are allowed magistrates, witnesses and arbitrators in magistrates' courts in this state for similar services. In the event that the appraisers find that the complainant has suffered no damage, then the complainant shall be responsible for and pay all the costs and expenses of the proceeding. In the event that the complainant has suffered damages on account of the destruction, loss or injury of his domestic animals, according to the finding of the

appraisers, the owner, keeper or person permitting the dog, or dogs, causing the damage to remain upon the premises under his control shall be liable for all damages sustained by the complainant, including all costs and necessary expenses. All of the damages shall be collectible by an action at law before any court or magistrate having jurisdiction of the matter. All papers in connection with any claim shall be filed and preserved in the office of the clerk of the county commission.

19-20-16. Same - When lawful to kill dog.

A person may kill a dog that he may see chasing, worrying, wounding or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry outside of the enclosure of the owner of the dog, unless the chasing or worrying be done by the direction of the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits or horses and colts or poultry.

19-20-17. Same - Unlawful to harbor dog; penalty.

A person who shall harbor or secrete or aid in secreting a dog which he knows or has reasons to believe has worried, chased or killed any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry not the property of the owner of the dog, out of his enclosure, or knowingly permits the same to be done on any premises under his control, is guilty of a misdemeanor, and, upon conviction thereof, before any court or magistrate having jurisdiction thereof in the county in which the offense is committed, shall be fined not less than ten dollars nor more than fifty dollars, and, at the discretion of the court or magistrate, imprisoned in the county jail not more than thirty days. Each day that the dog is harbored, kept or secreted shall constitute a separate offense.

19-20-18. Same - Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill.

The owner or keeper of a dog that has been worrying, wounding, chasing or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry not the property of the owner or keeper, out of his enclosure, shall, within forty-eight hours, after having received notice thereof in writing from a reliable and trustworthy source, under oath, kill the dog or direct that the dog be killed. If the owner or keeper refuses to kill the dog as hereinbefore provided, the magistrate, upon information, shall summon the owner or keeper of the dog, and, after receiving satisfactory proof that this dog did the mischief, shall issue a warrant on application being made by the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, or colts or poultry killed; and give it into the hands of the sheriff, who shall kill the dog forthwith or dispose of by other available methods. The cost of the proceedings shall be paid by the owner or keeper of the dog so killed, including a fee of fifty cents to the officer killing the dog. The owner or keeper of the dog so killed shall, in addition to the costs, be liable to the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry or to the county commission for the value of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses or colts or poultry so killed or injured.

19-20-19. Offenses; criminal penalties; jurisdiction.

A person who violates any of the provisions of this article for which no specific penalty is prescribed is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than

one hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned. Magistrates shall have concurrent jurisdiction with the circuit courts to enforce the penalties prescribed by this article.

19-20-19a. Dog warden and deputy dog wardens; power to issue citations.

The county commission may, at its discretion, empower county dog wardens and deputy dog wardens to issue citations for violation of provisions of this article.

19-20-20. Keeping vicious dogs; humane officers may kill such dogs.

Except as provided in section twenty-one of this article, no person shall own, keep or harbor any dog known by him to be vicious, dangerous, or in the habit of biting or attacking other persons, whether or not such dog wears a tag or muzzle. Upon satisfactory proof before a circuit court or magistrate that such dog is vicious, dangerous, or in the habit of biting or attacking other persons or other dogs or animals, the judge may authorize the humane officer to cause such dog to be killed.

19-20-21. License fee for keeping vicious or dangerous dog.

Any person who keeps a dog which is generally considered to be vicious, for the purpose of protection, shall acquire a special license therefore from the county assessor. The assessor shall charge ten dollars for such license. Such license shall be required in addition to the license required under section two of this article. The keeper or owner shall properly secure such dog in such a manner so as to prevent injury to a person who lawfully passes through or enters upon the property of the keeper or owner. Nothing contained in this section shall constitute a defense to any action for personal injury, wrongful death or damage to property.

19-20-22. Confinement of female dogs.

Every person owning or harboring a female dog, whether licensed or unlicensed, shall keep such dog confined in a building or secure enclosure for twenty-five days during the period of estrus.

19-20-23. Prohibition of the use of impounded dogs and cats.

On and after the first day of September, one thousand nine hundred eighty-nine, any dog or cat impounded under the provisions of this article may not be sold, given, transferred or otherwise made available directly or indirectly to any person, institution, corporation or other entity for use in educational or scientific research or related activities. Disposition of impounded dogs or cats may only be by adoption as pets or humanely destroyed. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than four hundred fifty dollars nor more than two thousand dollars.

19-20-24. Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties.

Any person who, without justification, and with the unlawful intent to inflict serious physical injury or death, causes the death of any trained dog or horse used by law-enforcement officials, the department of military affairs and public safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars and imprisoned in the penitentiary for a definite term of not more than three years.

Any person who, without justification, willfully and unlawfully causes physical injury to any trained dog or horse used by law-enforcement officials, the department of military affairs and public safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail not more than six months, or both.

Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the department of military affairs and public safety or to the state fire marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills and replacement costs of any disabled or killed animal.

19-20-25. Retirement, transfer or disposal of state owned dogs and horses.

(a) Whenever any dog or horse, which is the property of the state, is unable to perform its duties as a service animal, the responsible governmental agency may:

(1) Transfer ownership of the dog or horse to another governmental agency within West Virginia;

(2) Transfer ownership of the dog or horse to the animal's handler;

(3) Transfer ownership of the dog or horse to a person who wishes to maintain the animal; or

(4) Transfer the dog or horse to the care and custody of any animal shelter, humane society or society for the prevention of cruelty to animals, organized and operating under the laws of this state, so that the dog or horse may be adopted. If the animal shelter, humane society or society for the prevention of cruelty to animals determines that the dog or horse is not suitable for adoption, then the animal may be humanely euthanized by a person licensed under the provisions of article ten or ten-a, chapter thirty of this code.

(b) In the event ownership of a dog or horse is transferred pursuant to subdivision (2), (3) or (4), subsection (a) of this section, the transfer documents must include provisions, signed by the person accepting ownership of the dog or horse, which hold the state harmless from any liability after the date of transfer.

19-20-26. Commercial dog-breeding operations.

(a) As used in this section:

(1) "Advertisement" means any media used to promote the sale of dogs including, but not limited to, the Internet, newspapers, flyers, magazines, radio, television, bulletins and signs.

(2) "Commercial dog breeder" means any person who:

(A) Maintains eleven or more unsterilized dogs over the age of one year for the exclusive purpose of actively breeding;

(B) Is engaged in the business of breeding dogs as household pets for direct or indirect sale or for exchange in return for consideration; and

(C) Commercial dog breeder shall not include:

(i) Any person who keeps or breeds dogs exclusively for the purpose of herding or guarding livestock or farm animals, hunting, tracking or exhibiting in dog shows, performance events or field and obedience trials; and

(ii) With respect to greyhound dogs only, any person who holds an occupational permit from, and has registered a greyhound kennel name with, the West Virginia Racing Commission.

(3) "Class I Commercial Dog Breeder" means a commercial dog breeder that possesses eleven to thirty unsterilized dogs over the age of one year at any one time for the exclusive purpose of actively breeding.

(4) "Class II Commercial Dog Breeder" means a commercial dog breeder that possesses more than thirty unsterilized dogs over the age of one year at any time.

(5) "Housing facility" means a structure in which dogs are kept that provides them with shelter, protection from the elements and protection from temperature extremes.

(6) "Primary enclosure" means a structure that restricts a dog's ability to move in a limited amount of space, such as a room, cage or compartment.

(b) No commercial dog breeder may breed dogs without a business registration certificate in accordance with section three, article twelve, chapter eleven of this code and a valid business license issued by the locality in which the dog breeding operation is located, if the locality so requires.

(c) A commercial dog breeder shall:

(1) Obtain a permit annually to operate, as required by the county commission in which the commercial dog breeding operation is located. County commissions are authorized to charge a fee to commercial dog breeders and shall deposit the fees collected in a specially designated account to be used for animal shelters, animal rescue and spay neuter programs administered by county animal shelters or other humane organizations. The fee for a Class I commercial dog-breeding permit shall be an amount determined by the county commission, not to exceed \$250 per year. The fee for a Class II commercial dog breeding permit shall be an amount determined by the county commission, not to exceed \$500 per year;

(2) Breed female dogs only after the breeder has obtained an annual certification by a licensed veterinarian that the dog is in suitable health for breeding;

(3) Dispose of dogs only by gift, sale, transfer, barter or euthanasia by a licensed veterinarian;

(4) Maintain current, valid rabies certificates for every dog pursuant to article twenty-a of this chapter;

(5) Include the breeder's annual permit number on any advertisement for the sale of a dog;

(6) If selling directly to the public, post a conspicuous notice containing the breeder's name, address and annual permit number on each cage;

(7) Provide for the humane treatment of dogs in accordance with section nineteen, article eight, chapter sixty-one of this code;

(8) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris and is readily accessible to all dogs in the enclosure at all times unless otherwise directed by a veterinarian for the health of the dog;

(9) Provide veterinary care without delay when necessary;

(10) Maintain adequate staffing levels to ensure compliance with this section; and

(11) Maintain adequate housing facilities and primary enclosures that meet the following minimum requirements:

(A) Housing facilities and primary enclosures must be kept in a sanitary condition and in good repair; must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels and to prevent moisture condensation; must have a means of fire suppression, such as functioning fire extinguishers or a sprinkler system on the premises; and must have sufficient lighting to allow for observation of the dogs at any time of day or night;

(B) Housing facilities and primary enclosures must enable all dogs to remain dry and clean;

(C) Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

(D) Housing facilities must provide sufficient shade to simultaneously shelter all of the dogs housed therein;

(E) A primary enclosure must have solid floors that are constructed in a manner that protects the dogs' feet and legs from injury;

(F) Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;

(G) Feces, hair, dirt, debris and food waste must be removed from primary enclosures and housing facilities at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests and odors;

(H) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision; and

(I) Sick dogs shall be isolated sufficiently so as not to endanger the health of other dogs.

(d) To ensure compliance with state animal care laws and regulations, commercial dog breeding locations are subject to biannual inspections by animal control officers or law-enforcement officers.

(e) It is unlawful for a commercial dog breeder to operate if he or she has been convicted of animal cruelty in any local, state or federal jurisdiction.

(f) Any commercial dog breeder who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 per violation. In any proceeding brought pursuant to the provisions of this section, a circuit judge or magistrate may grant a person accused of violating this section an improvement period not to exceed one year upon such terms and conditions as the judge or magistrate may determine. Upon successful completion of the improvement period the judge or magistrate shall dismiss the charges.

(g) Nothing in this section exempts a facility licensed by the United States Department of Agriculture from compliance.

(h) Nothing in this section prevents any local, state or federal law-enforcement agency from investigating animal cruelty in commercial dog breeding operations.

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

19-20A-1. Purpose and policy.

The purpose of this article is to establish a rabies vaccination procedure for dogs and cats and to check the spread of rabies for the immediate preservation of life, health and safety for the reason that rabies is spreading among dogs and cats, and becoming a menace and danger to people, livestock, poultry and game, and the provisions herein are designated to prevent the spread of rabies.

19-20A-2. Vaccination of dogs and cats.

(a) A person who owns, obtains or possesses a dog or cat within the State of West Virginia shall have the dog or cat properly vaccinated against rabies with a vaccine capable of producing immunity for three years, boosted one year after initial vaccination and every third year thereafter. Dogs and cats need not be vaccinated before the age of three months, but must be vaccinated by the age of six months.

(b) Dogs and cats over six months of age entering the State of West Virginia must have been vaccinated for rabies as set forth in subsection (a) of this section prior to entry.

(c) A dog or cat may be vaccinated by any licensed veterinarian or his or her assistant. If there is no licensed veterinarian practicing in the county, a qualified person may be appointed by the county health department to administer vaccinations.

19-20A-3. Vaccination record and report.

Whoever vaccinates or revaccinates a dog or cat against rabies shall keep a record of such vaccination or revaccination, and on or before the first day of each calendar month thereafter, shall mail to or deliver to the county clerk of the county where the vaccination takes place a report of such vaccination or revaccination which shall include a number identifying the individual record of the dog or cat vaccinated, a complete description of the dog or cat, place where the dog or cat is kept or harbored, name of the owner, keeper or harborer, his or her address, date and type of vaccination or revaccination and such other information as may be required by the county health department or the county commission over the signature of the person reporting.

19-20A-4. Vaccination tag and certificate.

Each person vaccinating a dog or cat for rabies shall provide a "certificate of rabies vaccination" which shall contain the following information:

- (a) Name of the county where the owner of the animal resides;
- (b) Vaccination tag number;
- (c) Identification of the animal by color, weight, breed, age and sex;
- (d) Name, address and telephone number of the owner;
- (e) Type of vaccine, the manufacturer of the vaccine and the serial number;
- (f) Date of the vaccination;
- (g) Identification of the veterinarian, doctor of medicine or person administering the vaccination;
- (h) Such other information as the commissioner of agriculture may require.

The owner of the animal shall retain the original certificate of vaccination in his or her records. Copies of the certificate or a computer printout that contains the information required above shall be filed with the person administering the vaccination and the clerk of the county commission in the county where the owner of the animal resides.

Tags to be furnished by the county commission shall be of a distinctive and easily recognized color, and shall have thereon engraved, or stamped, the year of vaccination and the number indicating the record above described. Such tag shall be securely fastened to the collar worn by the dog and shall be given to the owner by the veterinarian, the doctor of medicine or the person vaccinating the dog or cat at the time of vaccination.

19-20A-5. Type of vaccine to be furnished; fee.

It is the duty of the veterinarian, or person vaccinating each animal to furnish vaccine of a type capable of establishing and maintaining immunity for a period of not less than thirty-six months and he or she shall charge and collect a fee of not more than \$8 for each animal vaccinated, if done at a clinic established by a county commission or, if vaccinated at any other place, he or she shall charge and collect a reasonable fee for his or her services.

19-20A-6. Offenses and penalties.

Whoever owns, keeps or harbors a dog or cat and fails to have such dog or cat vaccinated or revaccinated against rabies, and whoever vaccinates a dog or cat against rabies and fails or refuses to keep and report the required record of such vaccination, or fails or refuses to provide the required tag, or whoever obstructs or interferes in any way with the enforcement of any section of this article shall, upon conviction, be fined not less than ten dollars nor more than fifty dollars, or be confined in the county jail not less than ten days nor more than sixty days, or both.

19-20A-7. Enforcement of article.

The enforcement of the provisions of this article shall be in the hands of the sheriff of each county, any of his deputies, constables, conservation commission officers, commonly known as game wardens, and, if deemed necessary, there shall be a special officer to be appointed by the county commission, who is authorized, empowered, and directed to inspect rabies, pick up dogs and cats and dispose of dogs which are not taxable or not vaccinated according to this article. The sheriff of each county can have one or more sittings, if deemed necessary, in each district of the county, at which he shall be present or have present one of his deputies or the special officer above provided for, to take charge of all delinquent dogs and cats and homeless dogs and cats that are not vaccinated. The assessor of each county, or one of his deputies, shall accompany the veterinarian, doctor, or the one who administers the vaccine in these sittings for the purpose of collecting taxes on dogs. All dogs which are not vaccinated and for which taxes are unpaid shall become the responsibility of the sheriff to catch and dispose of as is provided by law.

19-20A-8. Vaccinated dogs and cats may run at large; confinement may be required by the commissioner of agriculture within the limits of any quarantine area or locality; and ordinances or rules may be promulgated by any county commission or municipality relating to the control and management of dogs within the county; providing limited exemption for hunting and farm dogs from county commission or municipality action.

Dogs or cats vaccinated in compliance with the provisions of this article may run at large in any area or locality: *Provided*, That the commissioner of agriculture may, pursuant to article nine of this chapter, exercise his discretion to establish a quarantined area or locality and to require all dogs and cats within the limits of any quarantined area or locality to be confined as provided in article nine: *Provided, however*, That a county commission or a municipality may adopt and enforce ordinances not inconsistent with the provisions of article twenty of this chapter of the code, as it considers necessary or convenient for the control and management of all dogs in the county, or a portion thereof, vaccinated or not, except as further provided herein: *Provided further*, That any county commission or municipality may not adopt any ordinance which purports to keep any vaccinated dog from running at large while engaged in any lawful hunting activity; from running at large while engaged in any lawful training activity; or from running at large while engaged in any lawful herding or other farm related activity: *And provided further*,

That the provisions of this section shall not exempt any dog from any quarantine established by or any confinement order required by the commissioner relating to the establishment of a quarantine.

ARTICLE 20B. SPAYING OR NEUTERING OF DOGS AND CATS.

19-20B-1. Short title.

This article may be cited as the "West Virginia Spay/Neuter Act."

19-20B-2. Requirement for adoption.

(a) No person may adopt a dog or cat from an agency, including, but not limited to, an animal shelter, animal control agency or humane shelter operated by a municipality, county, or other governmental agency within the state, or a private organization operating a shelter from which animals are adopted or reclaimed, unless:

- (1) The dog or cat has already been spayed or neutered;
- (2) The dog or cat has been spayed or neutered by a licensed veterinarian while in the custody of the agency; or
- (3) The new owner signs a written agreement with the agency stating that the new owner will have the dog or cat spayed or neutered by a licensed veterinarian:
 - (A) Within thirty days of the date of the adoption, if the dog or cat is sexually mature; or
 - (B) Within thirty days after the dog or cat reaches six months of age, if the dog or cat is not sexually mature at the time of the adoption.

(b) Any agency as set forth in subsection (a) of this section which has written policy of not permitting the adopted dog or cat from being released from the custody of the agency to the new owner until the dog or cat has been spayed or neutered, does not have to comply with the provisions of subdivision (3), subsection (a) of this section.

(c) Nothing in this section precludes the spaying or neutering of a sexually immature dog or cat at the discretion of a licensed veterinarian with the consent of the new owner.

19-20B-3. Deposit.

(a) If the dog or cat being adopted has not been spayed or neutered, the agency may require a deposit of not more than fifty dollars from the new owner prior to the adoption to ensure that the dog or cat is spayed or neutered. The new owner shall receive a refund of the deposit from the agency upon providing confirmation of the spaying or neutering.

(b) If the new owner fails to have the dog or cat spayed or neutered within the time frame established in section two of this article, or if the spaying or neutering is timely performed, but the new owner fails to request the return of the deposit within an additional thirty days after the date by which the spaying or neutering is required to be performed, the deposit shall be forfeited to the agency holding the deposit and shall be used by the agency to conduct programs to spay or neuter dogs and cats or to conduct educational programs in support of the spaying and neutering of dogs and cats.

19-20B-4. Petition for compliance.

If a person fails to comply with the provisions of this article, the agency may file a petition with

a court of competent jurisdiction seeking compliance or requesting return of the dog or cat to the agency from which it was adopted.

19-20B-5. Penalty.

A person failing to have a dog or cat spayed or neutered within the time frame established in section two of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred fifty dollars nor more than two hundred fifty dollars.

19-20B-6. Dogs or cats claimed by owner.

Nothing in this article authorizes an agency to spay or neuter a dog or cat if the dog or cat is claimed by and returned to its lawful owner within five days of being taken into custody by the agency.

ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.

19-20C-1. West Virginia Spay Neuter Assistance Program.

The Department of Agriculture shall establish a spay neuter assistance program that provides grants to nonprofit spay neuter organizations and programs in the state. The purpose of this program is to have more dogs and cats sterilized, thereby reducing shelter populations and costs, euthanasia rates and threats to public health and safety from rabies and other problems posed by the growing population of stray, feral and abandoned dogs and cats.

19-20C-2. Fund established; acceptance of funds.

(a) There is created in the State Treasury a special revenue account to be designated the West Virginia Spay Neuter Assistance Fund and administered by the Commissioner of Agriculture. Expenditures from the fund are for the purposes set forth in this article and are to be made in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code.

(b) All moneys received and collected pursuant to this article shall be deposited into the fund. The fund may receive any appropriations, gifts, grants, contributions or other money from any source that is designated for deposit into the fund.

(c) Administrative expenses of the department may not exceed ten percent of the funds deposited in any fiscal year. The remainder shall be used exclusively for implementation of the program.

19-20C-3. Rulemaking; annual report.

(a) The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this article.

(b) Rules promulgated under this section shall, at a minimum:

(1) Identify the types of nonprofit organizations and programs that qualify for spay neuter grants;

(2) Establish parameters for spay neuter grants;

- (3) Establish procedures and requirements for grant applications; and;
- (4) Establish administration, record-keeping and reporting requirements for nonprofit organizations and programs that receive spay neuter grants.

TITLE 61

LEGISLATIVE RULE

WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 24

WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM

61-24-1. General.

1.1. Scope. -- This rule sets forth the requirements for the West Virginia Spay Neuter Assistance Program. The purpose of this rule is to establish a spay neuter assistance program to have more dogs and cats sterilized, and provide a rabies vaccination if the animal is not currently vaccinated, thereby reducing shelter populations and costs, euthanasia rates and threats to public health and safety from rabies and other problems posed by the growing population of stray, feral and abandoned dogs and cats.

1.2. Authority. -- W. Va. Code §19-20C-1

1.3. Filing Date. -- April 30, 2020

1.4. Effective Date. -- April 30, 2020

1.5. Sunset Date. -- This rule shall terminate and have no further effect April 30, 2030.

61-24-2. Enforcement.

2.1. This rule is enforced by the Commissioner of the Department of Agriculture

61-24-3. Definitions.

3.1. "Animal" means a dog or cat that has not been spayed or neutered:

3.2. "Caretaker" means a person, organization or agency that captures or facilitates the capture of free roaming cats for the purpose of spaying or neutering them and returning them to the environment from which they were captured.

3.3. "Cat" means a member of the genus and species known as *felis catus*.

3.4. "Commissioner" means the Commissioner of the Department of Agriculture.

3.5. "Dog" means a member of the genus and species known as *canis familiaris*.

3.6. "Feral cat" means a domesticated cat that has returned to the wild or the offspring of such a cat.

3.7. "Free roaming cat" includes feral, stray, community, or abandoned cats that may or may not have a caretaker and do not have an owner or are otherwise homeless. The term does not include a stray pet cat that might have been lost or abandoned and which has identifiable ownership such as, but not limited to, a tag, microchip or tattoo.

3.8. "Fund" means the Spay Neuter Assistance Fund established in the State Treasury and maintained by the Commissioner.

3.9. "Grant" means a monetary amount from the Fund awarded to a grantee along with the

associated terms and conditions.

3.10. “Grantee” means a nonprofit spay neuter organization or program that receives a grant from the Commissioner under this rule to perform spay neuter services for eligible owners and caretakers. “Nonprofit spay neuter organization or program” means:

3.10.a. A nongovernmental entity that is incorporated in and is in good standing with the state, has its principal place of business in the state, maintains a 501(c)(3) status under the federal Internal Revenue Code and meets one or more of the following criteria:

3.10.a.1. Provides or facilitates spay neuter services by a veterinarian to the general public;

3.10.a.2. Rescues stray, abandoned or feral animals and provides or facilitates adoptions services for the animals to the general public; or

3.10.a.3. Advocates and furthers effective means for the propagation of humane principles to prevent animal cruelty, abuse, neglect and overpopulation; or

3.10.b. A county or municipal shelter or animal control agency.

3.11 “Low-income restricted program” means a spay neuter program that provides spay neuter services to owners or caretakers currently receiving assistance from at least one of the state and federal public assistance programs:

3.11.a. The Supplemental Nutrition Assistance Program (SNAP);

3.11.b. Medicaid;

3.11.c. Supplemental Security Income (SSI);

3.11.d. The West Virginia Low Income Energy Assistance Program (LIEAP);

3.11.e. Social Security Disability;

3.11.f. Temporary Assistance for Needy Families (TANF);

3.11.g. Aid to Families with Dependent Children (AFCD);

3.11.h. Children’s Health Insurance Program (CHIP); or

3.11.i. Low Income Veterans Assistance under 38 USC 2044.

3.12. “Owner” means a person who is a resident of this state who owns an animal that has not been spayed or neutered.

3.13. “Spay neuter assistance program” means the program authorized by W. Va. Code 19-20C-1 *et seq.* and this rule.

3.14. “Spay neuter” means to sterilize a female animal by removing the reproductive organs or by tubal ligation, or castration of a male animal by removing the testicles or by vasectomy or by FDA approved pharmaceutical sterilization.

3.15. “Veterinarian” means a person, firm or corporation licensed to practice veterinary medicine under the provisions of W. Va. Code 30-10-1 *et seq.* and doing business in this state.

61-24-4. Spay neuter assistance program created.

4.1. A spay neuter program is established for the purpose of providing grants to approved nonprofit spay neuter organizations or programs for advancing the cause of spaying and neutering of animals. The Commissioner shall administer the program and may establish other grant programs consistent with this rule.

61-24-5. Grant application by nonprofit spay neuter organizations or programs.

5.1. In order to participate as a grantee, a nonprofit spay neuter organization or program shall complete and file the form provided by the Commissioner. The application shall contain at a minimum:

5.1.a. The applicant's name, physical address, mailing address, e-mail address, phone number, and primary contact person;

5.1.b. The applicant's federal employer identification number (FEIN);

5.1.c. The applicant's business registration account number from the W. Va. State Tax Department;

5.1.d. A description of the applicant's business, mission or purpose;

5.1.e. A copy of the applicant's latest financial statement, annual budget, or current balance sheet;

5.1.f. If the applicant is a 501(c)(3) entity, the most recent IRS Form 990, 990-EZ or 990-N;

5.1.g. A listing of the applicant's officers, executive director (if applicable) and a primary contact person;

5.1.h. The amount of the grant requested;

5.1.i. A detailed description of how the applicant intends to use the grant to advance spay neuter services, including a project budget, intended outcomes, and the expected amount of time in which the grant funds will be used;

5.1.j. Information regarding previous participation in the spay neuter program; and

5.1.k. Attestation that the information provided by the applicant is true and accurate to the best of the applicant's knowledge.

61-24-6. Awarding grants by the commissioner

6.1. The Commissioner may establish an advisory committee of animal welfare advocates. The Advisory Committee shall conduct a preliminary review of grant applications, and make recommendations to the Commissioner for grants based on animal welfare best practices, volume of spay neuter services contemplated to be provided, and the efficiency of spay neuter service delivery. The Advisory Committee shall give preference to applicants that intend to operate a low-income restricted program. The Advisory Committee shall make recommendations for action, if necessary, on interim and post-grant reports by grantees on the use of grant funds. The committee shall abide by standard 'conflict of interest' policies.

6.2. The Commissioner shall review grant applications and the recommendations of the advisory committee to approve, reject or modify the amount requested within 90 days of receipt of an application. The Commission shall give preference to applicants that intend to operate a low-income restricted program. The Commissioner shall notify the applicant of the final disposition of their application within 30 days of the Commissioner's decision.

6.3. The Commissioner shall enter into a grant contract with the grantee which shall include the terms, conditions and requirements of the grant.

6.4. The grantee shall disburse funds within the grant term determined by the Commissioner and stated in the grant contract. Thereafter, the Commissioner may extend a grant term; otherwise the grant and any undisbursed grant amounts expire and all unused monies shall be returned to the Fund. A grantee may apply for a subsequent or concurrent grant.

6.5. The Commissioner may amend a current grant to a higher or lower amount at any point during the grant term following the initial approval.

6.6. A grantee shall notify the Commissioner of any subsequent change in its 501(c)(3) status that would disqualify it from participation in the spay neuter assistance program or otherwise negatively affect its ability to participate. A grantee shall execute the program as designated in the grant contract unless changes are approved in writing by the Commissioner.

6.7. The Commissioner may revoke a grant and deny further participation by a grantee in the spay neuter program, if it is determined that the grantee has failed to comply with the requirements of the program and this rule.

6.8. The Commissioner shall maintain and make available to the public, a current list of grantees and their contact information.

6.9. A grantee shall comply with the provisions of W. Va. Code 12-4-14, and legislative rules promulgated regarding accountability of persons receiving state funds or grants.

6.10. A grantee may not impose any administrative, processing or other extraneous fee or charge upon an owner or caretaker. A grantee shall not charge a fee incident to adoption to cover spay neuter services paid for under the spay neuter assistance program. If such a fee is charged, the spay neuter services are not eligible for reimbursement.

6.11. A grantee shall maintain proper financial records on the use of grant monies.

6.12. Upon completion of a grant, a grantee shall file, with the Commissioner, a report on the outcomes of the grant in fulfillment of its terms, conditions and requirements. For grants with a term of 12 months or longer, the grantee shall also file with the Commissioner an interim report within six (6) months of receiving the grant.

61-24-7. Reimbursement rules.

7.1. The Commissioner may reimburse grantees for costs of spay neuter services and reasonably related expenses, including but not limited to anesthesia, pain medication, increased expenses due to cryptorchidism and pregnancy, and rabies vaccinations incident to spay neuter services. The Commissioner shall not reimburse grantees for unrelated veterinary care, administrative costs, overhead, advertising, or facilities or equipment related to the provision of spay neuter services.

7.2. The Commissioner shall enter into a grant contract with the grantee which shall include, at a minimum, the terms, conditions and requirements of the grant and instructions for requesting reimbursement.

7.3. A grantee shall submit invoices supported by documents sufficient to prove all costs for which the grantee is requesting reimbursement.

7.4. To be eligible for reimbursement, spay neuter services must be performed by a person, firm, or corporation licensed to practice veterinary medicine under the provisions of W. Va. Code 30-10-1 *et seq.* and doing business in the state of West Virginia.

ARTICLE 33. EQUINE RESCUE FACILITIES ACT

19-33-1. Definitions.

For purposes of this article.

(a) "Commissioner" means the Commissioner of Agriculture.

(b) "Equine rescue facility" means a facility that is listed as a nonprofit organization having a legitimate and current status under Title 26 U. S. C. 501(c)(3), as amended, that fosters care to unwanted equines due to age, health or other circumstances that deem the equines homeless.

19-33-2. Licensing of equine rescue facilities.

No person may operate an equine rescue facility as defined in this section without an equine rescue facility license issued by the Department of Agriculture. The annual fee for an equine rescue facility license is \$100, which shall be remitted by the commissioner to the humane officer or animal control officer in the county where the facility is located to offset the expense of inspecting that facility. If the county does not have a humane officer or animal control officer, the commissioner shall remit the license fee to the sheriff of the county where the facility is located.

19-33-3. Inspections of equine rescue facilities.

Upon application for an equine rescue facility license, the commissioner shall notify the county humane officer or animal control officer in the county where the equine rescue facility is located, who shall inspect the facility prior to issuance of an equine rescue facility license and, thereafter, not less than twice annually. If the county does not have a humane officer or animal control officer, the sheriff of that county is responsible for inspections of equine rescue facilities in the county as set forth in this section.

19-33-4. Legislative rules.

The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty- nine-a of this code to provide for the following:

(a) The issuance of equine rescue facility licenses and revocation of the licenses for violations of the provisions of this article or rules adopted hereunder;

(b) Notification of the application and issuance of an equine rescue facility license to the humane officer, animal control officer or county sheriff in the county where the facility is located and providing remittance of the annual equine rescue facility license fee;

(c) Standards for maintenance of the premises, the care and health of the horses kept at equine rescue facilities and standards for inspection of those facilities and horses, using guidelines developed by the West Virginia Livestock Care Standards Board; and

(d) Standards for closure of an equine rescue facility and seizure of horses at the facility where the health and welfare of the horses are endangered.

19-33-5. Penalties.

Any person who violates any provision of this article or rules adopted hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 for the first offense, and for a second or subsequent offense shall be fined not less than \$500 nor more than \$2,500.

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
SERIES 32 EQUINE RESCUE FACILITIES

61-32-1. General.

1.1. Scope. -- This legislative rule defines terms, establishes the standards for maintenance of the premises of an Equine Rescue facility, the standards of care and health of the horses kept at the facility, as well as standards for inspection of those facilities. This legislative rule also establishes standards for closure and seizure of horses kept at an Equine Rescue facility.

1.2. Authority. -- West Virginia Code §19-33-1.

1.3. Filing Date. -- April 14, 2015.

1.4. Effective Date. -- June 1, 2015.

61-32-2. Definitions.

2.1. “APHIS” means Animal and Plant Health Inspection Service.

2.2. “Application” means a request form submitted to the Commissioner to open an Equine Rescue Facility.

2.3. “Body condition score” means an industry accepted evaluation of an animal’s body fat and muscle mass as related to skeletal dimension and stage of production.

2.4. “Coggins” means the common name for the agar gel immunodiffusion test for diagnosis of Equine Infectious Anemia (EIA).

2.5. “Commissioner” means the Commissioner of the West Virginia Department of Agriculture.

2.6. “Designated isolation area” means an area with no direct equine contact.

2.7. “Emergency situation” means a serious unexpected and often dangerous situation requiring immediate action.

2.8. “Equine” means any animal in the Family Equidae, including horses, asses, mules, ponies, and zebras.

2.9. “Equine infectious anemia” means an infectious disease of equines caused by a lentivirus, equine infectious anemia virus (EIAV).

2.10. “Equine rescue facility” means a facility that is listed as a nonprofit organization having a legitimate and current status under Title 26 U.S.C. 501(c)(3) that fosters care to unwanted equines due to age, health or other circumstances that deem the equines homeless; provided that a nonprofit organization that supervises foster care of unwanted equines but does not have a physical location where animals are housed is not an equine rescue facility for purpose of West Virginia Code §19-33-1

2.11. “Equine rescue facility license” means a license granted by the Commissioner to an applicant to open an equine rescue facility.

- 2.12. “Henneke body score” means a numerical scale used to evaluate the amount of fat on a horse’s body, based on both visual appraisal and palpable fat cover of the six major points of the horse that are most responsive to changes in body fat. It is the scientific method of evaluating a horse’s body condition regardless of breed, body type, sex or age.
- 2.13. “Humane officer” means a person, designated by the sheriff in each county, to prevent the perpetration or continuance of any act of cruelty upon any animal and to investigate and, upon probable cause, to arrest and assist in the prosecution of any person engaging in cruel and forbidden practices.
- 2.14. “Inspection” means an examination of an equine rescue facility to see that the standards of care are met for the horses, facility, and premises, conducted by a humane officer or county sheriff, in the county that the facility is located.
- 2.15. “Licensed accredited veterinarian” means any veterinarian licensed to practice veterinary medicine in the state of West Virginia and accredited by the State Veterinarian , APHIS and approved by the Deputy Administrator of USDA, APHIS, VS (United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Service) in accordance with provisions of Part 161, Title 9, Code of Federal Regulations (CFR) and pre-approved to perform certain functions of Federal and cooperative State-Federal programs.
- 2.16. “Maintenance” means the preservation and upkeep of the premises of an equine rescue facility, as well as the space in which horses are kept.
- 2.17. “Quarantine area” means a confined area, a minimum of 200 yards from any equine and under the direct supervision and control of a State or Federal animal health official, who shall establish procedures for the accounting of all animals entering or leaving the area.
- 2.18. “Revocation” means the withdrawal of a license to operate an equine rescue facility by the Commissioner.
- 2.19. “Seizure” means to take possession of the horses that are kept at an equine rescue facility.
- 2.20. “Shelter” means any cover man made or natural that gives livestock or poultry protection from the elements.
- 2.21. “USDA” means the United States Department of Agriculture.
- 2.22. “West Virginia Equine Rescue Standards” means the American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities.

61-32-3. Issuance of license.

- 3.1. A person requesting a license to operate an Equine Rescue Facility shall submit an application to the Commissioner of the West Virginia Department of Agriculture.
- 3.2. The application shall include:
- 3.2.a. The name of the person responsible for the facility;
 - 3.2.b. The address of the facility;
 - 3.2.c. A detailed drawing and measurements of the facility including;
 - 3.2.c.1. A quarantined area; and
 - 3.2.c.2. An isolation area;
 - 3.2.d. The phone number of the person responsible for the facility; and
 - 3.2.e. All veterinary records pertaining to each equine at the facility including;
 - 3.2.e.1. The name of the veterinarian; and
 - 3.2.e.2. The phone number of the veterinarian.

3.3. The Commissioner shall notify the humane officer upon issuing a license.

61-32-4. Annual fee.

4.1. The annual fee for an equine rescue facility license is \$100.

4.2. The Commissioner shall remit this fee to the humane officer in the county where the facility is located to offset the expense of inspecting that facility.

61-32-5. Standards of care for equine rescue facility.

5.1. Standards of care for an equine rescue facility are contained in the West Virginia Department of Agriculture's rule, Livestock Care Standards 61CSR31.

61-32-6. Standards for inspection.

6.1. All equine rescue facilities shall be inspected two (2) times per year by the humane officer in that county.

6.2. The humane officer shall notify the Commissioner of his or her inspection report.

6.3. If the standards of care that are listed in §61-32-5 and §61-32-6, are not met the Commissioner shall revoke the facility's license.

6.4. The facility shall have up to sixty (60) days after the revocation to correct its violations.

6.5. In the case of an emergency situation, the Commissioner may allow a facility which is not meeting the standards to remain open until it can resolve the situation.

61-32-7. Standards for closure.

7.1. The Commissioner shall close any facility that fails to comply with correction of its violations.

7.2. If ownership of equine seized from the facility is granted to the state, the West Virginia Department of Agriculture shall immediately sell equine at public auction to the highest bidder.

7.2.a. All equine taken to public auction shall require a negative Coggins test.

7.3. Seized horses will be supported in place or relocated to a West Virginia Department of Agriculture facility, and cared for until marketed.

ARTICLE 34. DANGEROUS WILD ANIMALS ACT.

19-34-1. Findings and purpose.

The possession of dangerous wild animals presents serious public health and safety concerns and shall be regulated for the following reasons:

(1) To prevent the introduction or spread of disease or parasites harmful to humans, domestic livestock and poultry, wildlife and captive wild animals;

(2) To ensure the physical safety of humans;

(3) To prevent the escape or release of an animal injurious to or competitive with agricultural, horticultural, forestry, wildlife and other natural resources; and

(4) To prevent the mistreatment of permitted dangerous wild animals.

19-34-2. Definitions.

As used in this article unless otherwise specified:

(1) "Board" means the Dangerous Wild Animal Board;

(2) "Dangerous wild animal" means a mammal, bird, reptile, amphibian or aquatic animal,

including a hybrid, that is dangerous to humans, other animals or the environment due to its inherent nature and capability to do significant harm. “Wildlife”, as defined by section two, article one, chapter twenty of this code, “livestock”, as defined in section two, article ten-b, chapter nineteen of this code, and “domestic animals”, as defined in this section, are excluded.

(3) “Domestic animal” means an animal which, through extremely long association with humans, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and distinguishable from a wild individual of its species, and includes an animal that has been bred as a companion animal.

(4) “Person” means an individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate or other legal entity and an officer, member, shareholder, director, employee, agent or representative thereof.

19-34-3. Rule-making authority.

The Board shall propose rules for legislative approval to effectuate the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code. The board may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

19-34-4. Prohibition on the possession of a dangerous wild animal; exceptions.

(a) Except as otherwise provided in this article, a person may not possess a dangerous wild animal.

(b) Pursuant to the provisions of this article, the board may issue a permit for the possession of a dangerous wild animal if the applicant was in legal possession of the animal prior to the effective date of the rules promulgated under this article.

19-34-5. Dangerous Wild Animal Board; composition; duties.

(a) The Dangerous Wild Animal Board is hereby established with the following members: The Commissioner of the Department of Agriculture, the Secretary of the Department of Health and Human Resources and the Director of the Division of Natural Resources, or their designees. The board shall develop a comprehensive list of dangerous wild animals pursuant to the rule-making authority of this article.

(b) The Commissioner of Agriculture shall serve as the chair, the Secretary of the Department of Health and Human Resources as the vice chair and the Director of the Division of Natural Resources shall serve as the secretary of the board. The Department of Agriculture shall provide necessary staff and support services to the board as needed.

(c) The board shall:

- (1) Establish minimum caging or enclosure requirements for various dangerous wild animals;
- (2) Create a comprehensive list of dangerous wild animals, excluding wildlife, livestock and domestic animals as defined herein. The list may include, but not be limited to:

- (A) Bears;
- (B) Big cats;
- (C) Canids;
- (D) Primates;
- (E) Constrictor snakes greater than six feet, and venomous snakes; and
- (F) Alligators and caimans;

- (3) Enforce the permit requirements and set the fees for permits;
- (4) Issue, renew, revoke and maintain records for dangerous wild animal permits;
- (5) Annually review the list of prohibited dangerous wild animals to determine if animals should be added or subtracted from the list; and
- (6) Address any other issues required by this article.

19-34-6. Permit applications, requirements, issuance and revocation.

(a) Application. - A person applying for a permit to possess a dangerous wild animal shall submit an application that includes the following:

- (1) A fee established by the board for each dangerous wild animal;
- (2) The name, address and telephone number of the applicant, and the address where the dangerous wild animal is located;
- (3) A description of each dangerous wild animal, including the scientific name, common name, permanent and unique identifier, and any information that would aid in the identification of the animal; and
- (4) A description of the exact location on the property and a description of the enclosure or cage where each dangerous wild animal is kept.

(b) Permit requirements and restrictions. - The application shall state, and the person shall acknowledge his or her understanding, that:

- (1) He or she may not breed, receive or replace a dangerous wild animal;
- (2) He or she shall notify the sheriff or humane officer in his or her county immediately if the dangerous wild animal escapes;
- (3) He or she may not allow the dangerous wild animal to come into physical contact with a person other than the permittee, the animal's designated handler, an employee of a law-enforcement agency enforcing this article or a veterinarian administering medical treatment or care;
- (4) He or she has not been convicted for an offense involving the abuse or neglect of any animal;
- (5) He or she has not had a permit or license concerning the care, possession, exhibition, breeding or sale of a dangerous wild animal revoked or suspended by a governmental agency;
- (6) He or she shall permanently mark each dangerous wild animal with a unique identifier;
- (7) He or she shall maintain records for each dangerous wild animal, including veterinary records, acquisition papers, the purchase date and other records that prove ownership of the dangerous wild animal;
- (8) He or she presents proof of liability insurance in an amount of not less than \$300,000 with a deductible of not more than \$250 for each occurrence of property damage, bodily injury or death caused by a dangerous wild animal possessed by the person;
- (9) He or she shall notify the board not less than three days before a dangerous wild animal is transferred to another person out of state;
- (10) He or she may not transfer dangerous wild animals in the state without the written consent of the board;
- (11) He or she shall notify the board of any plans to move or change his or her address, and may not move the animal without the written consent of the board. However, in the event of a medical emergency, a dangerous wild animal may be transported to a licensed veterinarian's facility for treatment and care if the animal is at all times confined sufficiently to prevent escape; and

(12) He or she shall comply with all rules promulgated by the board pursuant to the provisions of this article.

(c) The board may issue a permit to possess a dangerous wild animal if it determines that the applicant has met the requirements of this article.

(d) A permit to possess a dangerous wild animal is valid for one calendar year and must be renewed annually.

19-34-7. Confiscation and disposition of animals; suspension and revocation of permits.

(a) A law-enforcement officer, county humane officer or the state veterinarian may immediately confiscate or euthanize any dangerous wild animal if the animal poses an immediate risk to public health or safety regardless of whether the owner of the animal has a permit issued under this article.

(b) The board may summarily suspend a permit issued under this article if one of the following conditions exists:

(1) An animal whose owner has a permit issued under this article is in a position to harm another animal;

(2) A permitted animal poses a risk to public health or safety; or

(3) The permittee has violated a provision of this article

(c) In the event of the suspension of a permit or confiscation of an animal pursuant to this section, the dangerous wild animal may be transferred to another permittee in compliance with the provisions of this article, if the transfer would abate the imminent harm to the animal or the public as determined by the responding law-enforcement officer, county humane officer or state veterinarian. If the transfer of the dangerous wild animal cannot be accomplished without additional risk to public safety, or if no suitable facility is available for transfer, the responding law-enforcement officer, county humane officer or veterinarian may humanely euthanize the animal.

(d) Upon conviction of an offense under this article or any other animal cruelty statute, the board shall revoke that person's permit.

(e) The board may, for cause, revoke a permit.

(f) A person aggrieved by action of the board may appeal to circuit court.

19-34-8. Exemptions.

(a) The permitting provisions of this article do not apply to:

- (1) Institutions accredited by the Association of Zoos and Aquariums (AZA) or an AZA-certified facility;
- (2) An animal control or law-enforcement agency or officer acting under the authority of this article;
- (3) Licensed veterinary hospitals or clinics treating dangerous wild animals;
- (4) A licensed or accredited research medical institution
- (5) A research facility as defined in the Animal Welfare Act, 7 U.S.C. 2132(e), as amended;
- (6) A circus that is an incorporated, Class c licensee under the Animal Welfare Act, 7 U.S.C. 2132(e), as amended;
- (7) A person displaying dangerous wild animals at a fair or festival that is a licensed exhibitor under the Animal Welfare Act, 7 U.S.C. 2132(e), as amended; and
- (8) A person temporarily transporting a dangerous wild animal through the state, if the transit time is not more than forty-eight hours and the animal is at all times confined sufficiently to prevent escape.

(b) Qualified exemption. — The permitting provisions of this article do not apply to exhibitors or dealers licensed as of January 1, 2014, under the Animal Welfare Act, 7 U.S.C. 2132(e), as amended, and at the time the rules become effective and who continue to have a valid exhibitor or dealer license. The board may revoke this exemption as to exhibitors or dealers that have repeated, uncorrected citations in violation of the Animal Welfare Act, a conviction for violation of an animal cruelty statute or a violation of sections seven or nine of this article.

19-34-9. Criminal and civil penalties.

(a) A person who violates a provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$2,000 for each animal with respect to which there is a violation.

b) A person who knowingly and intentionally or recklessly releases a dangerous wild animal or unlawfully possesses a dangerous wild animal that does not cause injury to an individual is guilty of a misdemeanor and, upon conviction, may be confined in jail for not more than one year or fined not less than \$500 nor more than \$2,500, or both confined and fined.

(c) A person who knowingly and intentionally or recklessly releases a dangerous wild animal or unlawfully possesses a dangerous wild animal that injures an individual is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional institution for not less than one year nor more than three years, or fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

(d) Civil penalty. — A person convicted of an offense under this article is liable for all costs, including personnel costs, expended by the county or state agencies involved with the capture, confinement, transfer or euthanasia of a dangerous wild animal.

(e) The civil liability imposed by this section is in addition to any other legal remedies for damages to person or property caused by a dangerous wild animal.

TITLE 74

LEGISLATIVE RULE

WEST VIRGINIA DIVISION OF LABOR

SERIES 1 DANGEROUS WILD ANIMALS

74-1-1. General.

1.1. Scope. This legislative rule establishes the West Virginia Dangerous Wild Animals list, caging requirements, permit fees, as well as establishes a date for the Dangerous Wild Animal Board to annually review the list of prohibited Dangerous Wild Animals to determine if animals should be added to the list.

1.2. Authority. -- W. Va. Code §19-34-3.

1.3. Filing Date. – May 17, 2017

1.4. Effective Date. -- June 4, 2017.

1.5 Sunset Date. – This rule shall terminate and no further force or effect on June 5, 2033. (this date was changed in 2022 for a 10 year period)

74-1-2. Definitions.

2.1. “Animal Welfare Act” means a law passed by the United States Congress in 1966 7 U.S.C. §2132 (e) in which sets for caging standards to help protect animals from inhumane treatment.

2.2. “Applicant” means any person who requests permission from the Dangerous Wild Animal Board to possess a Dangerous Wild Animal.

2.3. “Cage” means an enclosure of wires, bars, or a glass sided container, which is used to confine mammals, birds, reptiles, amphibians or aquatic animals to prevent escape.

2.4. “Caging Requirements” means standards which a cage must meet to confine mammals, birds, reptiles, amphibians, or aquatic animals to prevent escape.

2.5. “Dangerous Wild Animal Board” or “Board” means a board of consisting of the Commissioner of Agriculture, the Secretary of the West Virginia Department of Health and Human Services, and the Director of the West Virginia Division of Natural Resources, or their respective designees, which oversees and regulates dangerous wild animals, and issues and revokes permits

2.6. “Dangerous Wild Animal List” means a list of mammals, birds, reptiles, amphibians, or aquatic animals, including hybrids, that are considered dangerous to humans, other animals, or to the environment to their inherent nature and capability to do significant harm.

2.7. “Permit” means approval or permission granted to an applicant by the Dangerous Wild Animal Board to possess a Dangerous Wild Animal in the state of West Virginia.

74-1-3. Dangerous Wild Animal List.

3.1. A person may not possess any dangerous wild animal on the following list without first obtaining a permit from the Board:

- 3.1.a. Hyenas;
- 3.1.b. Gray wolves, excluding hybrids;
- 3.1.c. Lions;
- 3.1.d. Tigers;
- 3.1.e. Jaguars;
- 3.1.f. Leopards, including clouded leopards, Sunda clouded leopards, and snow leopards; and
- 3.1.g. All of the following, including hybrids with domestic cats unless otherwise specified:
 - 3.1.g.1. Cheetahs;
 - 3.1.g.2. Lynxes, including Canadian lynxes, Eurasian lynxes, and Iberian lynxes;
 - 3.1.g.3. Cougars, also known as pumas or mountain lions; and
 - 3.1.g.4. Caracals.
- 3.1.h. Bears; (excluding black bears native to this state);
- 3.1.i. Elephants;
- 3.1.j. Rhinoceroses;
- 3.1.k. Hippopotamuses;
- 3.1.l. Cape buffalo;
- 3.1.m. African wild dogs;
- 3.1.n. Komodo dragons;
- 3.1.o. Nonhuman primates, excluding:
 - 3.1.o.1. Lemurs;
 - 3.1.o.2. Golden lion, black faced lion, golden-rumped lion, cotton top, emperor, saddlebacked, blackmantled, and Geoffroys tamarins;
 - 3.1.o.3. Southern and northern night monkeys;
 - 3.1.o.4. Dusky titi and masked titi monkeys;
 - 3.1.o.5. Muriquis;
 - 3.1.o.6. Goeldi’s monkeys;
 - 3.1.o.7. White-faced, black-bearded, white-nose bearded, and monk sakis;
 - 3.1.o.8. Bald and black uakaris;
 - 3.1.o.9. Black-handed, white-bellied, brown-headed, and black spider monkeys;

- 3.1.o.10. Common woolly monkeys; and
- 3.1.o.11. Red, black, and mantled howler monkeys.

74-1-4. Caging.

4.1. Animals listed in this section shall be caged in accordance with Zoological Association of American (ZAA) Animal Care & Enclosure Standards, 2014 Edition.

74-5-5. Fees.

5.1. Any person possessing an animal on the Dangerous Wild Animals List shall annually submit an a \$10.00 application fee to the West Virginia Department of Agriculture in order to register all dangerous wild animals in his or her possession and shall also submit an annual fee of \$150 tto the WV Dept. of Agriculture for a permit to possess each animal in his or her possession.

74-1-6. Annual Review.

6.1. The Dangerous Wild Animal Board shall meet annually by June 1st to review the list of prohibited Dangerous Wild Animals set forth in section three of this rule.

6.2. The Dangerous Wild Animal Board shall meet annually on or by December 1st to review current permits in order to make permits effective for the next calendar year beginning January 1st.

6.2.a. On or by December 1st each year the board shall meet to determine if animals should be added to the list.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

20-2-5j. Leashed dogs for tracking mortally wounded deer or bear.

(a) Notwithstanding any provision of this chapter to the contrary, a person who is legally hunting and reasonably believes he or she has mortally wounded a deer or bear may use leashed dogs to track and locate the mortally wounded deer or bear. The hunter is also permitted to use a dog handler of leashed dogs to track and locate the mortally wounded deer or bear. The hunter or the dog handler shall maintain physical control of the leashed dogs at all times.

(b) The act of tracking a mortally wounded deer or bear with a dog is hunting and the hunter and handler are subject to all applicable laws and rules. It is unlawful for a hunter or dog handler to track deer or bear with leashed dogs under the provisions of this section unless he or she is in possession of a valid hunting license issued pursuant to this article or is a person excepted from licensing requirements pursuant to this article, and all other lawful authorizations as prescribed in this article. The hunter shall accompany the dog

handler and only the hunter may kill a mortally wounded deer or bear. The deer or bear shall count toward the bag limit of the hunter.

(c) Any dog handler providing tracking services for profit must be licensed as an outfitter or guide pursuant to 20-2-23 of this code.

20-2-16. Dogs chasing deer.

Except as provided in 20-2-5j of this code, no person may permit or use his or her dog to hunt or chase deer. A natural resources police officer shall take into possession any dog known to have unlawfully hunted or chased deer. If the owner of the dog can be determined, the dog shall be returned to the owner. If the owner of the dog cannot be determined, the natural resources police officer shall deliver the dog to the appropriate county humane officer or facility consistent with the provisions of this code.

20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) A person may not hunt, capture, or kill any bear, or have in his or her possession any bear or bear parts, except during the hunting season for bear in the manner designated by rule or law. For the purposes of this section, bear parts include, but are not limited to, the pelt, gallbladder, skull and claws of bear.

(b) A person who kills a bear shall, within twenty-four hours after the killing, electronically register the bear. A game tag number shall be issued to the person and recorded in writing with the person's name and address, or on a field tag and shall remain on the skin until it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal to a charitable institution, school or as otherwise designated by the director.

(c) Training dogs on bears or pursuing bears with dogs is the hunting of bear for all purposes of this chapter, including all applicable regulations and license requirements.

(d) It is unlawful:

(1) To hunt bear without a bear damage stamp, as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with:

(A) A shotgun using ammunition loaded with more than one solid ball; or

(B) A rifle of less than twenty-five caliber using rimfire ammunition;

(3) To kill or attempt to kill, or wound or attempt to wound, any bear through the use of bait, poison, explosives, traps or deadfalls or to feed bears at any time. For purposes of this section, bait includes, but is not limited to, corn and other grains, animal carcasses or

animal remains, grease, sugars in any form, scent attractants and other edible enticements, and an area is considered baited for ten days after all bait has been removed;

(4) To shoot at or kill:

(A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed weight, after removal of all internal organs;

(B) Any bear accompanied by a cub; or

(C) Any bear cub so accompanied, regardless of its weight;

(5) To transport or possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section; or

(7) - Except as provided in 20-2-5j of this code, to organize for commercial purposes or to professionally outfit a bear hunt, or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt, notwithstanding the provisions of sections twenty-three and twenty-four of this article.

(e) The following provisions apply to bear damaging or destroying property:

(1)(A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any natural resources police officer of the division for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated wildlife biologist may issue a permit to kill the bear that caused the property damage or may authorize the owner and other residents to proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the natural resources police officer or the wildlife biologist may recommend other measures to end or minimize property damage: Provided, however, That, if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2)(A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the director of the division. A bear damage report shall be completed by a representative of the division and shall state whether or not the bear was hunted and destroyed or killed under authorization of a depredation permit and, if so, the sex and weight shall be recorded and a premolar tooth collected from the bear, all of which shall be submitted with the report. The report shall also include an appraisal of the property damage occasioned by the bear fixing the value

of the property lost. Bear damage claims will not be accepted for personal and real property which is commonly used for the purposes of feeding, baiting, observing or hunting wildlife, including, but not limited to, hunting blinds, tree stands, artificial feeders, game or trail cameras and crops planted for the purposes of feeding or baiting wildlife.

(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims, issuing bear depredation permits and organizing bear hunts under this section in accordance with 29A-3-1 et seq. of this code.

(D) All claims shall be paid in the first instance from the Bear Damage Fund provided in section forty-four-b of this article: Provided, That the claimant shall submit accurate information as to whether he or she is insured for the damages caused by the acts of bear on forms prescribed by the director, and all damage claims shall first be made by the claimant against any insurance policies before payment may be approved from the Bear Damage Fund. Claims for an award of compensation from the Bear Damage Fund shall be reduced or denied in the amount the claimant is actually reimbursed by insurance for the economic loss upon which the claim is based. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the division.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value is the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born.

(f) Criminal penalties. (1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, which is not subject to suspension by the court, confined in jail not less than 10 nor more than 30 days, or both fined and confined. Further, the person's hunting and fishing licenses shall be assigned six points, however, the hunting and fishing licenses of any person convicted of a violation of this section which results in the killing or death of a bear shall be suspended for two years.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000, which is not subject to suspension by the court, confined in jail not

less than 30 days nor more than 100 days, or both fined and confined. The person's hunting and fishing licenses shall be suspended for five years.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor more than \$5,000, which is not subject to suspension by the court, confined in jail not less than six months nor more than one year, or both fined and confined. The person's hunting and fishing licenses shall be suspended for 10 years.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 10. VETERINARIANS.

30-10-12. Requirements to be a certified animal euthanasia technician.

(a) To be eligible to be a certified animal euthanasia technician a person must:

- (1) Apply at least thirty days prior to the date the next written examinations are scheduled, using a form prescribed by the board;
- (2) Have a high school diploma or GED;
- (3) Pay application and examination fees;
- (4) Complete the certified animal euthanasia technician's program established by the board;
- (5) Pass the written and practical skills examinations;
- (6) Pass the prescribed background check; and
- (7) Complete all the other requirements established by the board.

(b) A certified animal euthanasia technician may practice animal euthanasia at a legally operated animal control facility.

(c) A person certified as an animal euthanasia technician by the board prior to July 1, 2010, shall for all purposes be considered certified under this article and may renew pursuant to the provisions of this article.

(d) A person certified by another state or jurisdiction with certification requirements equivalent to, or exceeding, the certification standards of this state may be issued a certification under this section upon the submission of a completed application and the appropriate fees, as established by the board in legislative rules.

30-10-13. Requirements for certified animal euthanasia technicians program.

(a) The board shall create a certified animal euthanasia technician's program. The board shall design this program to teach applicants for certification record keeping and the legal, safety and practical information needed to become a certified animal euthanasia technician.

(b) (1) The board shall administer written examinations to an applicant for certification. The written examinations shall test the applicant's knowledge of the following:

- (A) Animal restraint;

- (B) Drug enforcement agency regulations;
- (C) Record keeping requirements for controlled substances;
- (D) Handling, inventory, security and proper storage of euthanasia drugs, solutions and syringes;
- (E) The certification process;
- (F) Legal requirements;
- (G) Stress management;
- (H) Approved animal euthanasia drug usage;
- (I) Jurisprudence; and
- (J) Other subject areas specified by the board in a legislative rule.

(2) The applicant shall pass the written examinations with a minimum correct score, as determined by the board, in order to be eligible to take the practical skills examination provided in subsection (c) of this section.

(c) In addition to the written examinations provided under subsection (b) of this section, the board shall administer a practical skills examination to an applicant who has successfully passed the written examinations. The board shall conduct the practical skills examination in a manner that tests an applicant's ability to properly restrain an animal, measure a correct dosage of euthanasia solution, locate an injection site and perform an injection. In order to pass the practical skills examination, an applicant shall exhibit to the board that he or she can locate an injection site and perform an injection and also perform euthanasia correctly and humanely.

(d) An applicant who successfully passes the written examinations and the practical skills examination required by this section shall sign a form authorizing the board to make inquiries through the United States Department of Justice, or any other legal jurisdiction or entity, for the purpose of determining the character and reputation of the applicant and other matters relating to the certification of the applicant.

30-10-14. Scope of practice for an animal euthanasia technician.

(a) A certified animal euthanasia technician may euthanize animals assigned to the care of an animal control facility.

(b) A certified animal euthanasia technician shall practice euthanasia within the limitations imposed by this article and rules promulgated by the board under this article.

(c) A certified animal euthanasia technician may not practice or offer to practice his or her profession outside the direct authority of the animal control facility which employs him or her or otherwise contracts for his or her services.

(d) A certified animal euthanasia technician is not qualified and may not indicate that he or she is qualified to act in any capacity relative to animals beyond his or her specified and regulated authority to euthanize animals at the instruction of the animal control facility by which he or she is employed.

(e) Annually, before January 15, a certified animal euthanasia technician shall report to the board the number of animals euthanized at his or her facility during the previous calendar year.

30-10-15. Renewal requirements.

(a) All persons regulated by the article shall annually or biennially before January 1, renew his or her license, registration or certification by completing a form prescribed by the board, paying all applicable fees and submitting any other information required by the board.

(b) At least thirty days prior to January 1, the board shall mail to every person regulated by the article an application for renewal.

(c) The board shall charge a fee for each renewal and a late fee for any renewal not properly completed and received with the appropriate fee by the due date.

(d) The board shall require as a condition of renewal that each licensee, registrant and certificate holder complete continuing education.

(e) The board may deny an application for renewal for any reason which would justify the denial of an original application.

(f) The board may authorize the waiving of the renewal fee of a licensed veterinarian or registered veterinarian technician during the period when he or she is on active duty with any branch of the armed services or the public health service of the United States or a declared emergency.

(g) After July 1, 2010, a previously certified animal euthanasia technician may renew his or her certification without having obtained a high school degree or GED.

**TITLE 26 - LEGISLATIVE RULE - WEST VIRGINIA BOARD OF
VETERINARY MEDICINE
SERIES 5 - CERTIFIED ANIMAL EUTHANASIA TECHNICIANS**

26-5-1. General

1.1. Scope. - This rule establishes guidelines for the training, examination and procedures by which Animal Euthanasia Technicians may be certified by the West Virginia Board of Veterinary Medicine. Further, it establishes approved methods of animal euthanasia and expands as well as defines qualifications for Certified Animal Euthanasia Technicians.

1.2. Authority. - W.Va. Code 30-10

1.3. Filing Date. – June 16, 2011

1.4. Effective Date. – June 16, 2011

26-5-2. Application and Exam Fees

2.1. Payment. An applicant shall pay the application, examination and certification fee, as well as the fees for the training program, background check and printed copy of the

practice act and rules as set forth in the Board's rule, Schedule of Fees, 26CSR6 prior to the training program.

2.2. Refunds. Fees are non-refundable.

26-5-3. Certified Animal Euthanasia Technicians program

3.1. The Board may formulate and administer a program to teach applicants the legal, safety and practical information necessary to perform the duties of a Certified Animal Euthanasia Technician. The Board may also approve programs sponsored by professional training organizations to provide the training for Certified Animal Euthanasia Technician's.

3.2. The administration of the program sponsored by a professional training organization shall be in accordance with the laws, rules, practices, policies, or procedures prescribed by the Board or its designees.

3.3. Applicants for certification as animal euthanasia technicians shall complete the required training program within 6 months preceding the written and practical examinations.

26-5-4. Written examination

4.1. The written examination shall test the applicants knowledge on the subjects set forth in WV Code 30-10-13 as well as the provisions of West Virginia Code 30-10-1 et. seq. pertaining to Certified Animal Euthanasia Technicians.

4.2. The minimum passing score on the written examinations for Certified Animal Euthanasia Technician's is 70 percent.

26-5-5. Practical skills examination

5.1. The Board shall annually appoint from its membership a minimum of 1 or a maximum of 2 board members who are veterinarians for the purpose of administering the practical skills examination to applicants for certification as an Animal Euthanasia Technician, or may assign administration of the exam to a veterinarian or veterinarians licensed to practice in this state.

5.2. The Board member or members, or authorized veterinarian shall conduct the practical skills examination to determine the applicants' ability in meeting the requirements in WV Code 30-10-1 et seq.

5.3. The Board member or members who administer the practical examination shall determine failure or passing of the practical examination following report of scores by the test administrator or administrators. 3

26-5-6. Testing date

6.1. The Board shall offer the Certified Animal Euthanasia Technician training program at least once a year.

6.2. The Certified Animal Euthanasia Technician written and practical skills examinations shall be conducted at least once a year. The examinations shall consist of written examinations, followed by a practical examination.

6.3. An applicant who fails any portion or portions of the Certified Animal Euthanasia Technician examination is ineligible to be certified as a Certified Animal Euthanasia Technician.

6.4. Any application not completed within 90 days after the state examination is administered shall be closed with no issuance of certification.

26-5-7. Chemical Restraint Drugs

7.1. Chemical Restraint Drugs are those drugs approved by the Board for administration prior to lethal injection of an animal to reduce aggressiveness and/or mobility of the animal being euthanized. The approved chemical restraint drugs for use in animal euthanasia are:

- (1) Injectable acetylpromazine (acepromazine)
- (2) Oral acetylpromazine (acepromazine).

7.2. Recordkeeping requirements for approved chemical restraint drugs shall be identical to the recordkeeping requirements for animal euthanasia drugs.

26-5-8. Requirements for Animal Euthanasia by Carbon Monoxide

8.1 Any county which has a gas chamber manufactured and installed by August 27, 2009, may continue to use such method for animal euthanasia, if desired.

8.2 Animal control facilities that euthanize animals with a gas chamber must be inspected annually by a Board approved health and safety organization, with knowledge of safety requirements for a carbon monoxide gas chamber. This inspection must provide proof that the chamber is properly sealed with no leaks or cracked seals, and is capable of rapidly achieving a uniform carbon monoxide concentration of at least 6%, after the animals are placed in the chamber. A copy of the inspection form and certification must be submitted to the Board of Veterinary Medicine by the Certified Animal Euthanasia Technician responsible for the chamber within 30 days of the inspection.

8.3 Euthanasia of animals by use of a gas chamber must meet the following requirements:

- (a) The person administering the euthanasia by use of the gas chamber must be a Certified Animal Euthanasia Technician in this state;
- (b) All such gas chambers in operation for animal euthanasia shall be registered with the Board of Veterinary Medicine;
- (c) The gas chamber must be in compliance with all the following requirements in order to be in operation, and shall at a minimum;
 1. Be properly constructed and maintained;
 2. Be a commercially manufactured and installed, purpose built chamber;
 3. Be constructed of durable and easily cleanable material;
 4. Have sufficient external and internal lighting in conjunction with at least 1 clean and transparent viewing port or window for use by the Certified Animal Euthanasia Technician to directly observe and monitor the animals during euthanasia to ensure that the euthanasia is occurring properly and humanely;
 5. Be properly sealed, with such seals being properly maintained to enable at least a 6% concentration of the gas to be attained in the chamber within 20 seconds, and to maintain this chamber concentration of the gas until death has occurred;
 6. Be located in a well ventilated area, preferably out of doors where the toxic hazards of gas exposure to the Certified Animal Euthanasia Technician, the animal control facility personnel and animals will be avoided. If the chamber is located inside the animal control facility, OSHA approved monitors, with an alarm system are required

to warn personnel of hazardous concentrations. The alarm system must sound both in the room where the chamber is located and elsewhere in the facility where other staff may be.

7. Be operated outside the open business hours of the animal control facility.

8. Any electrical equipment such as lights and fans that may be exposed to the CO gas shall be explosion proof.

9. Utilize only commercial grade carbon monoxide gas, dispensed from a cylinder.

10. Have the commercial grade carbon monoxide gas dispensed from a cylinder into an appropriately constructed, sealed and maintained carbon monoxide chamber at a pressure and rate that achieves a 6% concentration of gas within the chamber within 20 seconds.

11. Have the carbon monoxide gas stored in a well ventilated area, where the toxic hazards of gas exposure to the Certified Animal Euthanasia Technician operating the chamber, the other animal control facility staff and animals will be avoided.

12. Utilize pre-anesthesia sedation approved for this use by the Board for use as deemed necessary or appropriate.

13. Must allow for the separation of individual animals by partitions or by placing individual animals in separate cages or carriers within the chamber. All partitions, cages or carriers used shall have solid bottoms, with the sides of the partitions, cages or carriers being solid or a small mesh to minimize contact and stress.

14. Have all partitions, cages and carriers used in the chamber thoroughly cleaned after each use before placing another animal into them, to minimize the animal's fear and stress.

(d) All animals euthanized with a carbon monoxide gas chamber shall;

1. Be healthy and free of any major injury or disease which could interfere with the animals' ability to breathe and properly circulate oxygen and carbon monoxide.

2. Be at least 16 weeks of age.

3. Be placed in the chamber only with compatible animals of the same species.

4. Not be placed into the chamber with other animals that have already been euthanized.

(e) The Certified Animal Euthanasia Technician administering the carbon monoxide into the gas chamber shall:

1. Leave the animals in the chamber for at least 10 minutes after death has occurred before opening the chamber.

2. Open the door only in a well-ventilated area, and leave the animals in the chamber for another 10 minutes after the chamber is opened before trying to remove the animals.

3. Carefully examine the animals for cardiac standstill to ensure that death has indeed occurred prior to disposal of the carcass.

26-5-9. Inspection requirements for animal euthanasia gas chambers

9.1 All animal control facilities in this state which have a gas chamber in operation for euthanasia of animals shall have the gas chamber inspected annually by an inspector that is authorized by the board to conduct such inspections.

9.2 The report on the gas chamber inspection shall be submitted by the inspector to the board and shall be received no later than 30 days after the inspection.

- 9.3 The cost of the gas chamber inspection is to be paid directly to the inspector by the animal control facility within 30 days of the inspection. Failure to pay the required inspection fee may result in termination of authority to operate the gas chamber.
- 9.4 The board shall charge a fee as set forth in 26CSR6 Schedule of Fees to the animal control facility for the implementation, recordkeeping and administrative duties of the board in the processing of the gas chamber inspection. This fee shall be paid to the board no later than 30 days from the inspection.
- 9.5 If the gas chamber does not pass the inspection, the board shall immediately be notified by the inspector. The board shall proceed without delay to notify the animal control facility that use of the gas chamber shall cease at once.
- 9.6 The inspector shall file a written notice of the results of the inspection which shall be received by the board within four working days after the inspection.
- 9.7 The board shall notify any other entities of federal or state government which require such notification of the infractions and/or shutdown of an animal euthanasia gas chamber.
- 9.8 Upon the correction of any deficiencies in the gas chamber a reinspection shall be conducted on the orders of the board and the costs of the reinspection shall be paid to the inspector within 30 days of the reinspection.
- 9.9 A certified animal euthanasia technician who continues to euthanize animals in a gas chamber that has been ordered shut down either temporarily or permanently shall be suspended from certification as an animal euthanasia technician by the board. This emergency action is due to the potential hazards in the continued operation of the gas chamber that may result in extreme risks or death to humans and animals.

26-5-10.Revocations, suspensions

10.1. Removal of Certification - The Board has the power to deny, suspend or revoke a certification as an Animal Euthanasia Technician or to take other disciplinary action for a violation of the provisions of the law or this rule. It may also deny, suspend or revoke a certification if the person:

- a. Is chronically or habitually intoxicated, has a chemical dependency or is addicted to drugs;
- b. Has permitted or allowed another to use his or her certification to practice animal euthanasia in this or any other state;
- c. Has committed fraud in the application or record keeping of any animal;
- d. Has failed to maintain records at the place of business of the Certified Animal Euthanasia Technician which shall include, but not be limited to those specified in Section 13 of this rule; or
- e. Has performed unauthorized treatment.

10.2. The Board shall afford a hearing to any applicant who is denied certification and who requests a hearing within 30 days of notification of the denial, or to any person against whom disciplinary action has been taken by the Board. The Board shall conduct the hearing in accordance with the provisions of Board Rule titled "Contested Case Hearing Procedure" 26 CSR 2A. 8

10.3 The Board may revoke or suspend the certification of any Certified Animal Euthanasia Technician if the Board determines that Sodium Pentobarbital, Sodium Pentobarbital compound or the Board approved sedatives or tranquilizers for pre-euthanasia administration are being used for any purpose other than humane animal

euthanasia or that the permitted facility has failed to abide by the rules for the safe and efficient purchase, possession, or administration of Sodium Pentobarbital, Sodium Pentobarbital compound or the Board approved sedatives or tranquilizers for pre-euthanasia administration.

10.4. The Board may inspect any animal control facility, animal shelter or humane society which employs a Certified Animal Euthanasia Technician to determine if it complies with the requirements for possession, administration, purchase or storage of Sodium Pentobarbital, Sodium Pentobarbital compound or the approved sedatives or tranquilizers for pre-euthanasia administration, as established by the Board.

26-5-11. Continuing education requirement

11.1. All Certified Animal Euthanasia Technician's shall complete at least 6 hours of continuing education in courses approved by the Board during each calendar year. No hours may be accumulated, carried forward, or held over past the calendar year in which the hours were completed.

11.2. Until the Board determines appropriate continuing education courses are available in the field of animal euthanasia, the Board may provide continuing education courses annually for Certified Animal Euthanasia Technicians in meeting the requirements of this section. The fee for such continuing education is set forth in the Board's Rule Schedule of Fees 26 CSR 6.

11.3. By December 31 of each year, each Certified Animal Euthanasia Technician shall certify to the Board on forms to be provided by the Board, that he or she has successfully completed the continuing education requirement for that calendar year.

11.4. The Board shall not issue a certification renewal to an animal euthanasia technician who does not present to the Board sufficient proof that he or she has successfully undertaken and completed the required hours of continuing education. 9

26-5-12. Certification annual renewal

12.1. The Board shall make every reasonable effort to notify Certified Animal Euthanasia Technician's of the renewal requirements as set forth in W. Va. Code 30-10-15, but failure to receive notification does not exempt anyone from meeting the requirements of this rule.

12.2. Certified Animal Euthanasia Technician's shall notify the Board of any change of address, and to forward the notice to the Board no later than the effective date of the change of address.

26-5-13. Record keeping

13.1. Certified Animal Euthanasia Technicians shall maintain records at their place of business including, but not limited to;

- (a) Identification of the animal euthanized;
- (b) The drug administered, and its dosage;
- (c) The date of euthanasia;
- (d) The method of sanitary disposal of the animal's remains;
- (e) An inventory of all receipts, administrations and distributions of Sodium

Pentobarbital and/or Sodium Pentobarbital compound or the approved replacement drug of choice; and

- (f) The method utilized for the euthanasia of each animal.
- 13.2. The Certified Animal Euthanasia Technician and the animal control facility, humane society or animal shelter shall maintain the records in a current status on the business premises for a period of 3 years. 10
- 13.3. In the case of the cancellation of certification of an animal euthanasia technician, the records shall be maintained by the facility's administrators.

26-5-14. Storage

- 14.1. The Certified Animal Euthanasia Technician shall maintain all controlled substances, sedatives and tranquilizers under his or her authority in a properly secure and locked storage container when the Certified Animal Euthanasia Technician is not in the same room with the drug.
- 14.2. Only the Certified Animal Euthanasia Technician shall have access to the drug storage container.
- 14.3. The manufacturer's instructions shall be followed in the preparation of all lethal injections or chemical restraint drugs.
- 14.4. Needles shall be of medical quality, and shall not be used if they are dirty, clogged, barbed, or might otherwise cause unnecessary discomfort for the animal. Needles may not be used more than 5 times.
- 14.5. Syringes shall be of medical quality. They may be reused if they are properly cleaned.
- 14.6. Needles and syringes shall be kept in the same secure storage as the lethal drugs and chemical restraint drugs.
- 14.7. Needles and syringes shall be disposed of in a proper container, as required by state law.

26-5-15. Minimum standards

- 15.1. The Certified Animal Euthanasia Technician shall maintain all controlled substances, chemical restraint drugs, needles and syringes in compliance with state and federal laws.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 1. GENERAL PROVISIONS.

48-27-503. Permissive provisions in protective order.

The terms of a protective order may include:

- (1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;
- (2) Ordering the respondent to refrain from entering or being present in the immediate environs of the residence of the petitioner;
- (3) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;
- (4) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

- (5) Ordering the noncustodial parent to pay to the caretaker parent a sum for temporary support and maintenance of the petitioner and children, if any;
- (6) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;
- (7) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;
- (8) Ordering the respondent to participate in an intervention program for perpetrators;
- (9) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;
- (10) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;
- (11) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic violence, including, but not limited to, medical expenses, transportation and shelter;
- (12) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property;
- (13) Awarding the petitioner the exclusive care, possession, or control of any animal owned, possessed, leased, kept or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and prohibiting the respondent from taking, concealing, molesting, physically injuring, killing or otherwise disposing of the animal and limiting or precluding contact by the respondent with the animal; and (14) Ordering any other relief the court deems necessary to protect the physical safety of petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article.

48-27-702. Law-enforcement officers to provide information, transportation and to report suspicions of animal cruelty.

(a) Any law-enforcement officer responding to an alleged incident of domestic violence shall inform the parties of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.

(b) If there is reasonable cause to believe that a person is a victim of domestic violence or is likely to be a victim of domestic violence, a law-enforcement officer responding to an alleged incident of domestic violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim, upon the request of such victim, to a shelter or an appropriate court.

(c) Whenever a law-enforcement officer, pursuant to a response to an alleged incident of domestic violence, forms a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, he or she shall report the suspicion and the grounds therefor to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

49-5-13f. Animal Cruelty Early Intervention Program.

(a) Notwithstanding any provision of this article to the contrary, a juvenile who has been alleged to have committed an act of delinquency which involved causing harm to an animal shall be given the option of proceeding in the Animal Cruelty Early Intervention Program as an alternative to the filing of a formal petition under section seven of this article, as the case may be. The decision to extend the option to enter the Animal Cruelty Early Intervention Program shall be made by the circuit court if the court finds that the offender is a suitable candidate for the program. No juvenile may enter the Animal Cruelty Early Intervention Program unless he or she and his or her parent or guardian consent. Any juvenile who does not successfully cooperate in and complete the Animal Cruelty Early Intervention Program shall be returned to the circuit court for further disposition as provided by section eleven-a or thirteen of this article, as the case may be.

(b) The Department of Juvenile Services shall establish a task force to create an Animal Cruelty Early Intervention Program. Services provided by the Department for Juvenile Services in the Animal Cruelty Early Intervention Program shall be consistent with the provisions of article five-b of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles who have engaged in animal cruelty. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

(c) The effective date for this section is the first day of July, two thousand six.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances

or cause a report to be made to the Department of Health and Human Resources: Provided, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint: Provided, however, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

49-6A-2b. Mandatory reporting of suspected animal cruelty by child protective service workers.

In the event a child protective service worker, in response to a report mandated by section two of this article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis therefor to the county humane officer provided under section one, article ten, chapter seven of this code within twenty-four hours of the response to the report.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.
ARTICLE 3. CRIMES AGAINST PROPERTY.**

61-3-27. Malicious killing of animals by poison or otherwise; penalty.

If a person maliciously administers poison to, or exposes poison with the intent that it should be taken by, any horse, cow or other animal of another person, or if any person maliciously maims, kills, or causes the death of any horse, cow or other animal of another person, of the value of one hundred dollars or more, the person is guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not less than one year nor more than ten years; and, if the horse, cow or other animal is of less value than one hundred dollars, the person is guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than three months and fined not more than five hundred dollars: Provided, That this section shall not be construed to include dogs.

ARTICLE 3B. TRESPASS.

61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.

(a) As used in this section:

(1) "Animal" means poultry, livestock, domestic animals, and captive cervids owned and possessed by persons licensed pursuant to 19-2H-1 *et seq.* of this code. The term does not include an animal used for illegal gaming.

(2) “Animal or crop facility” means a facility that is used in the production, management, sale, or processing of animals or crops. The term includes, but is not limited to

(A) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or premises where animals or crops are located;

(B) A managed bee colony;

(C) A livestock market;

(D) A facility used for the preparation of, or processing of, animals, crops, or value-added foods for sale; and

(E) A facility used to carry out any agritourism activity, as that term is defined and used in 19-36-1 et seq. of this code.

(3) “Crop” means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

(b) Any person who willfully trespasses on the property of another which constitutes an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility is guilty of willful trespass upon an animal or crop facility.

(c) Any person who conspires with one or more persons to violate subsection (b) of this section and commits an overt act in furtherance thereof is guilty of conspiracy to willfully trespass upon an animal or crop facility.

(d) Any person who violates subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail not more than 30 days, or both fined and confined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person convicted of a second or subsequent violation of subsection (b) or a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs, or causes damage to property in the course of, a willful trespass in violation of this section is liable to the owner or operator of the animal or crop facility in the amount of twice any damage caused.

(g) The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages in, or threatens to engage in, conduct that constitutes a violation of this section:

(1) The action may be brought in the circuit court of any county in which any part of the conduct or threatened conduct occurs or is threatened to occur.

(2) The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, preliminary

injunction, or permanent injunction.

(3) The circuit court may issue injunctive relief without the owner or operator of an animal or crop facility giving security for its issuance

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

61-3E-6. Causing death or injury to an explosives detection animal; penalty.

Any person who violates the provisions of this article which violation causes death, serious or debilitating bodily injury to an explosives detection animal owned or used by a law-enforcement agency, shall be guilty of a felony and, upon conviction thereof, be committed to the custody of the division of corrections for not less than one year nor more than five years or fined not more than five thousand dollars, or both.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

61-8-19. Cruelty to animals; penalties; exclusions.

(a) (1) It is unlawful for any person to intentionally, knowingly or recklessly,

- (A) Mistreat an animal in cruel manner;
- (B) Abandon an animal;
- (C) Withhold;
 - (i) Proper sustenance, including food or water;
 - (ii) Shelter that protects from the elements of weather; or
 - (iii) Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
- (D) Abandon an animal to die;
- (E) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
- (F) Ride an animal when it is physically unfit;
- (G) Bait or harass an animal for the purpose of making it perform for a person's amusement;
- (H) Cruelly chain or tether an animal; or
- (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

(2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined in jail not more than six months, or both.

(b) If any person intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than five years and be fined not less than one thousand dollars nor more than five thousand dollars. For the purposes of this

subsection, "torture" means an action taken for the primary purpose of inflicting pain.

(c) Any person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than two thousand dollars.

(d) Any person convicted of a violation of this section forfeits his or her interest in any animal and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(e) For the purpose of this section, the term "controlled substance" has the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U. S. C. 2131, *et seq.*, and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of said subsection is guilty of a misdemeanor and shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than three thousand dollars, or both. The incarceration set forth in this subsection is mandatory unless the provisions of subsection (h) of this section are complied with.

(h) (1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of the evaluation.

(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of the program.

(i) In addition to any other penalty which can be imposed for a violation of this

section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding two thousand dollars and forfeiture of the animal.

61-8-19a. Animal fighting ventures prohibited.

(a) For the purpose of this article, "animal fighting venture" means any event that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment: *Provided*, That it shall not be deemed to include any lawful activity the primary purpose of which involves the use of one or more animals in racing or in hunting another animal: *Provided, however*, That "animal fighting venture" does not include the lawful use of livestock as such is defined in section two, article ten-b, chapter nineteen of this code or exotic species of animals bred or possessed for exhibition purposes when such exhibition purposes do not include animal fighting or training therefore.

(b) It is unlawful for any person to conduct, finance, manage, supervise, direct, engage in, be employed at, or sell an admission to any animal fighting venture or to knowingly allow property under his care, custody or control to be so used.

(c) It is unlawful for any person to possess an animal with the intent to engage the animal in an animal fighting venture.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or confined in the county jail not exceeding one year, or both so fined and confined: *Provided*, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,500 and not more than \$5,000, and imprisoned in a state correctional facility for not less than two nor more than five years, or both fined and imprisoned.

(e) Any person convicted of a violation of this section shall be divested of ownership and control of such animals and liable for all costs of their care and maintenance pursuant to section four, article ten, chapter seven of this code.

61-8-19b. Attendance at animal fighting ventures prohibited; penalty.

(a) It is unlawful for any person to knowingly attend or knowingly cause an individual who has not attained the age of eighteen to attend, an animal fighting venture involving animals as defined in section nineteen-a, article eight of this chapter.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or

confined in the county or regional jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person convicted of a third or subsequent violation of subsection (a) of this section is guilty of a felony and, shall be fined not less than \$2,500 and not more than \$5,000, imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

61-8-19c. Wagering at animal fighting venture prohibited; penalty.

(a) It is unlawful for any person to bet or wager money or any other thing of value in any location or place where an animal fighting venture occurs.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or confined in jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person who is convicted of a third or subsequent violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,500 and not more than \$5,000, or imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

61-8-20. Keeping or using live birds to be shot at; penalty.

Whoever keeps or uses a live bird to be shot at either for amusement or as a test of skill in marksmanship, or shoots at a bird kept or used as aforesaid, or is a party to such shooting, or lets any building, room, field, or premises, or knowingly permits the use thereof, for the purpose of such shooting, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not more than fifty dollars or by imprisonment for not more than one month, or by both. Nothing herein contained shall apply to the shooting of wild game.

61-8-21. Search warrants relating to cruelty to animals.

If complaint is made to a court or magistrate which is authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that the laws relative to cruelty to animals have been or are violated in any particular building or place, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer to search such building or place; but no such search shall be made after sunset, unless specially authorized by the magistrate upon satisfactory cause shown.

61-8-22. Search warrants relating to birds and animals kept for fighting.

If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that preparations are being made for an exhibition of the fighting of birds, dogs, or other animals, or that such exhibition is in progress, or that birds, dogs, or other animals are kept or trained for

fighting at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable, or police officer, to search such place, building, or tenement at any hour of the day or night, and take possession of all such birds, dogs or other animals there found, and to arrest all persons there present at any such exhibition or where preparations for such an exhibition are being made, or where birds, dogs, or other animals are kept or trained for fighting.

61-8-23. Search without warrant where there is an exhibition of the fighting of birds or animals.

Any officer authorized to serve criminal process may, without warrant, enter any place, building, or tenement in which there is an exhibition of the fighting of birds, dogs, or other animals, or in which preparations are being made for such an exhibition and arrest all persons there present and take possession of and remove from the place of seizure the birds, dogs, or other animals engaged in fighting or there found and intended to be used or engaged in fighting, or kept or trained for fighting and hold the same in custody subject to the order of the court as hereinafter provided.

National Contacts

AHA

Info@americanhumane.org

800.227.4645

ASPCA (Emergency Response/Assistance)

<http://aspca.org>

publicinformation@aspca.org or 888.666.2279

ALDF Animal Legal Defense Fund
Info@aldf.org

GREY2K USA (Greyhound Cruelty)
Info@grey2kusa.org

HSUS (Emergency Response/Assistance)
<http://www.humanesociety.org>
(General Inquiries) 1.866.720.2676
HSUS Dog fighting and Cock Fighting Tipline: 1.877.TIP.HSUS
Puppy Mill Tipline: 1.877.MILL.TIP

Red Rover (Emergency Response/Assistance)
info@redrover.org
916.429.2457

Petsmart Charities
petsmartcharities.org
Info@petsmartcharities.org
800.423.7387

State Resources

FOHO WV
<http://www.fohowv.org>

WV DHHR
www.dhhr.wv.gov

WV DNR
<http://www.wvdnr.gov>
304.558.2754 WV

WV Secretary of State

www.sos.wv.gov

866.767.8683

West Virginia Dept. of Agriculture (WVDA)

1900 Kanawha Blvd., East

Charleston, WV 25305

(State Veterinarian/ Livestock/WV Spay Neuter Assistance Program)

<http://www.agriculture.wv.gov>

304.558.3550

West Virginia Board of Veterinary Medicine (Euthanasia Technician Certification)

5509 Big Tyler Road, Suite 3

Cross Lanes, WV 25313

304.776.8032

This book will not be updated each year. The Federation of Humane Organizations of West Virginia provides a listing of annual law changes to animal code on its website. Please check for any new animal law that may pass before our next printing. Please contact FOHO WV for any additional copies of the WV Animal Law Book. FOHO WV would like to recognize the ASPCA & Best Friends for sponsoring the printing of this invaluable resource.

www.fohowv.org