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**WEST VIRGINIA STATE ANIMAL CODE REVISION 2024**

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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 Monongalia County Canine Adoption Center for sponsoring the printing of this valuable resource.**

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## **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, any employee of any nursing home or other residential facility, has reasonable cause to believe that a vulnerable adult

or facility resident is or has been neglected, abused, financially exploited or placed in an emergency situation, or if such person observes a vulnerable adult or facility resident being subjected to conditions that are likely to result in abuse, neglect, financial exploitation, or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of §9-6-11 of this code: *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, neglect, or financial exploitation of a vulnerable adult or facility resident, or the existence of an emergency situation, any other person may make such a report.

(c) The Department of Human Services shall develop and implement a procedure to notify any person mandated to report suspected abuse and neglect of a vulnerable adult or facility resident of whether an investigation into the reported suspected abuse, neglect, or financial exploitation has been initiated and when the investigation is completed.

(d) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4(13) of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

#### **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.**

#### **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.

## **TITLE 73 LEGISLATIVE RULE SERIES 1 LIVESTOCK CARE STANDARDS**

### **73-1-1. General.**

1.1. Scope. -- This legislative rule governs the care and well-being of livestock including, beef cattle, bison, veal, dairy cattle, equine, swine, small ruminant, and poultry, and captive cervids in the state of West Virginia.

1.2. Authority. -- West Virginia Code §19-1C-4.

1.3. Filing Date. -- April 13, 2021

1.4. Effective Date. -- May 3, 2021

1.5. Sunset Date. -- This rule will terminate and have no further force and effect August 1, 2031.

### **73-1-2. Definitions.**

2.1. "Ambulatory disabled" means being capable of walking, but with a physical impairment that severely limits or threatens the ability to walk.

2.2. "Best management practices" means procedures in livestock production to enhance animal production, comfort, safety, productivity and product acceptability.

2.3. "Biologicals" means products intended for diagnostic or therapeutic purposes in animals other than man.

2.4. "Bio-Security" means preventing introduction of new organisms to an operation, as well as controlling organisms already present on the operation.

2.5. "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.

2.6. "Captive cervid farming facility" means a facility which is licensed to hold cervids in a permanent enclosure.

2.7. "Cattle" means any bison or bovine raised for dairy or meat production.

2.8. "Cervid" means all members of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species, both native and exotic.

2.9. "Coggins" means the common name for the agar gel immunodiffusion test for diagnosis of the Equine Infectious Anemia (EIA).

2.10. "Distress" means a condition that occurs when livestock are injured, sick or in physical pain.

2.11. "Emergency situation" means a serious unexpected and often dangerous situation requiring immediate action.

2.12. “Equine” means an animal that is a member of the Equine genus including horses, ponies, mules, asses, donkeys, and zebras.

2.13. “Euthanasia” means the act of putting an animal to death by methods specified as acceptable for that species by the AVMA Guidelines for the Euthanasia of Animals 2013 Edition.

2.14. “General quarantine” means a confined area 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.

2.15. “Handling” means the moving, confining, or restraining of livestock for management practice, relocating, loading or unloading.

2.16. “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.

2.17. “Herd or flock” means a number of animals or birds that live, feed or travel together.

2.18. “Licensed and accredited veterinarian” means any veterinarian licensed to practice veterinary medicine in the state of West Virginia and accredited by the State Veterinarian, APHIS (Animal and Plant Health Inspection Service), VS (Veterinary Service) in accordance with provisions of Part 161, Title 9, CFR (Code of Federal Regulations) and pre-approved to perform certain functions of Federal and cooperative State-Federal programs.

2.19. “Livestock” means cattle, horses, swine, sheep, goats, cervids, or any other animal of the bovine, equine, porcine, ovine or caprine species, cervidae, and domestic poultry.

2.20. “Non-ambulatory disabled” means being unable to rise from a recumbent position or being unable to walk.

2.21. “Pharmaceuticals” means medication or medicine.

2.22. “Poultry” means any birds raised commercially or domestically for meat, eggs, feathers and pets.

2.23. “Quarantine” means a confined area., a minimum of 200 yards from any animal, 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.

2.24. “Responsible party” means a person who is the owner of the livestock or a person who has current responsibility of custody of the livestock.

2.25. “Shelter” means any cover man made or natural that gives livestock protection from the elements.

2.26. “Small Ruminants” means sheep and lambs, goats, alpacas and llamas.

2.27. “Soring” means an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse, any burn, cut or laceration has been inflicted by a person on any limb of horse; any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse; or any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer physical pain or distress, inflammation, or lameness when walking, trotting or otherwise moving, except that such term does not include such application, infliction, injection, use or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary care.

2.28. “Swine” means any various stout-bodied short-legged omnivorous artiodactyl mammals (family Suidae).

2.29. “Vaccination” means the inoculation of an animal with a vaccine.

2.30. “Vaccine” means a suspension of attenuated or killed microorganisms (viruses, bacteria, or rickettsiae) or of antigenic proteins derived from them, administered for the prevention, amelioration, or treatment of infectious diseases.

2.31. “Valid veterinarian-client-patient relationship” means a relationship where the veterinarian has assumed the responsibility for making judgments regarding the health of the animal and the need for veterinary treatment, and the client, whether owner or other caretaker has agreed to follow the instruction of the veterinarian; there is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and the practicing veterinarian is readily available or shall provide medical service for follow-up in case of adverse reactions or failure of the regimen of therapy. A new regimen of therapy shall be contingent only upon cooperation of the client and availability of the subject animal.

2.32. “Veal” means a young bovine raised for the purpose of veal meat production.

### **73-1-3. Addressing complaints regarding inhumane treatment of livestock.**

3.1. Complaints regarding the inhumane treatment of livestock shall be placed to the sheriff, humane officer, or county commission in the county in which the complaint originated.

3.2. The sheriff, humane officer, or county commission shall forward all information regarding this complaint to the West Virginia Department of Agriculture and the Livestock Care Standards Board.

### **73-1-4. Feed, water and ventilation.**

4.1. The responsible party shall provide its livestock with adequate feed, water and ventilation so as to maintain a body condition appropriate for its age, use, stage of production, and weather conditions.

4.2. A responsible party may withhold feed and water for the following reasons:

- 4.2.a. Specific management practices;
- 4.2.b. Health care purposes; or
- 4.2.c. Emergency situations.

### **73-1-5. Space.**

5.1. The responsible party shall provide livestock sufficient space which may consist of the following:

- 5.1.a. An enclosure to confine;
- 5.1.b. An enclosure to semi-confine; or
- 5.1.c. An outdoor lot or pasture.

5.2. If used, facilities may be environmentally controlled.

5.3. Individual animals may be separated.

5.4. Indoor stocking densities shall allow sufficient floor space for poultry to perch or rest based on poultry production standards, production type, management guides and housing type.

### **73-1-6. Health care.**

6.1. The responsible party shall promptly provide health care sufficient to maintain livestock which shall include:

- 6.1.a. Immunizations and vaccinations;
- 6.1.b. Use of pharmaceuticals and biologicals. Pharmaceuticals and biologicals shall be used in accordance with label directions or as directed by a licensed veterinarian; and

6.1.c. Prescription and extra-label medications. Prescription and extra-label medications shall be administered as directed by a licensed veterinarian with a valid-client-patient relationship.

**73-1-7. Preparing animals for exhibition.**

7.1. The responsible party shall train, fit and restrain livestock for exhibition in a manner that minimizes the risk of injury.

**73-1-8. Livestock handling.**

8.1. The responsible party shall do the following in a manner that minimizes the risk of injury:

8.1.a. Handling of livestock; and

8.1.b. Loading or unloading of livestock for or from transport.

**73-1-9. Transportation.**

9.1. Livestock must be able to stand in their natural posture or position or rest ; and have sufficient floor space for poultry to perch or rest based on poultry production standards, production type, management guides and housing type.

9.2. The transport driver is solely responsible for the welfare of livestock during transit.

9.3. The responsible party shall make the final decision in determining the fitness for livestock loading and transport and the load density. The density of a load shall be determined by the need to minimize injury and must allow fallen animals to rise.

9.4. During transit, livestock should be reasonably protected from adverse weather conditions.

9.5. Transporters shall stop every 28 hours, unload, and provide livestock with food, water and rest for at least five (5) consecutive hours, unless the transportation vehicle allows the livestock to lay down and rest and have access to feed and water.

**73-1-10. Handling of disabled livestock.**

10.1. The responsible party for ambulatory disabled, non-ambulatory disabled, or distressed livestock shall provide appropriate protection from other animals, predators and weather extremes as required by the condition of the animal.

10.2. The responsible party shall provide ambulatory disabled, non-ambulatory disabled or distressed livestock with access to water, and if maintained longer than twenty (24) hours, access to feed.

10.3. The responsible party shall handle and move ambulatory disabled, non-ambulatory disabled or distressed animals in a manner that minimizes the risk of additional distress.

10.4. The responsible party shall load disabled livestock only for transport for treatment.

10.5. The responsible party shall euthanize livestock in severe distress with an irreversible condition.

**73-1-11. Bio-security.**

11.1. The responsible party may enforce bio-security protocols and limit public access to farms.

11.2. The responsible party may use animals, devices or fencing for predator control.

**73-1-12. Exemptions.**

12.1. This rule does not apply during emergency situations or limit or prevent a veterinarian or person under the supervision of a veterinarian from providing necessary care for an animal. (*Animal Welfare Act, 7 U.S.C. 2131-2159.*)

**73-1-13. Standards of care for beef cattle, bison, and veal.**

13.1. The responsible party shall feed veal calves two (2) or more times per day following a regular routine, if the veal calves are not provided unlimited access to feed. On all farms that

house veal calves, there shall be access to hot water for the purpose of sanitation and mixing a milk-based liquid diet or milk replacer.

13.2. Body scoring evaluations shall be determined by using industry standards.

13.2.a. Evaluations shall be made using a scale of 1 – 5.

13.2.b. Any beef cattle, bison, or veal with a score of less than 2 and not under the care of a licensed and accredited veterinarian in West Virginia is in violation of the Department of Agriculture’s rule, Livestock Care Standards 73CSR1.

13.3. During calving, there shall be sufficient space to enable cows to separate themselves from other animals.

13.4. Sheltering systems shall allow animals access to feed and water.

13.5. Concerning beef cattle, bison and veal, the following are authorized practices:

13.5.a. Castration;

13.5.b. Disbudding;

13.5.c. Dehorning;

13.5.d. Identification, including:

13.5.d.1. tattoos;

13.5.d.2. tagging;

13.5.d.3. freeze branding;

13.5.d.4. hot branding; and

13.5.d.5. ear notching;

13.6. Supernumerary teat removal;

13.7. Hoof trimming;

13.8. Artificial insemination;

13.9. Embryo transfer;

13.10. Navel dipping;

13.11. Breeding soundness evaluations

13.12. Surgery; and

13.13. Nose rings.

#### **73-1-14. Standards of care for dairy cattle.**

14.1. Facilities shall be free of excessive manure.

14.2. Body scoring shall be determined by using industry standards.

14.2.a. Evaluations shall be made using a scale of 1 – 5.

14.2.b. Any dairy cattle with a score of less than 2 and not under the care of a licensed and accredited veterinarian in West Virginia is in violation of the Department of Agriculture’s rule, Livestock Care Standards 73CSR1.

14.3. Calves shall be fed milk or milk replacer until they are weaned.

14.4. Concerning dairy cattle the following are authorized practices:

14.4.a. Tie stalls. Tie stalls may be used if:

14.4.a.1. Cattle are turned out routinely for exercise;

14.4.a.2. The tie stalls are designed and maintained so that their length and width provides space sufficient to accommodate the size of the animal’s body so that the animal is not forced to lie with the rear quarter contacting the alleyway or gutter; and

14.4.a.3. Cattle have room to stretch, eat, drink, and eliminate comfortably;

14.4.b. Free stalls. Free stalls may be used if:

14.4.b.1. The free stalls are designed and maintained so that their length and width provide space sufficient to accommodate the size of the animal's body so that the animal is not forced to lie with the rear quarter contacting the alleyway or gutter; and

14.4.b.2. Stocking rates allow for adequate time per animal for rest, exercise and feed and water consumption

14.4.c. Dehorning;

14.4.d. Debudding;

14.4.e. Tail switch trimming; and

14.4.f. Tail docking; Tail docking may be performed using an elastrator castration band if the following requirements are met:

14.4.f.1. It is performed no sooner than the first confirmation of pregnancy;

14.4.f.2. The animal is managed using a dairy herd management system that practices tail docking; and

14.4.f.3. The responsible party provides a fly control program.

14.4.f.4. Only a licensed veterinarian may perform other methods of tail docking.

14.4.g. Identification;

14.4.h. tattoo;

14.4.i. tagging, including

14.4.i.1. branding; and

14.4.i.2. ear notching.

14.4.j. Supernumerary teat removal;

14.4.k. Hoof trimming;

14.4.l. Artificial Insemination;

14.4.m. Embryo transfer;

14.4.n. Navel dipping;

14.4.o. Breeding soundness evaluations;

14.4.p. Surgery; and

14.4.q. Nose rings.

### **73-1-15. Standards of care for equine.**

15.1. Additional standards of care may be referenced by consulting *American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities.*

15.2. Drink. Water containers shall be cleaned regularly and free of any hazard.

15.3. Feed.

15.3.a. Horses shall be provided a diet sufficient to maintain a healthy weight and body condition. In evaluating herd health, any individual Henneke body score of less than "three" (3) is unacceptable; unless that animal is under the supervision of a licensed veterinarian. Geriatric or ill horses may have less than an ideal weight and body condition.

15.3.b. In the event of a communicable disease the state veterinarian shall place an equine quarantine which shall be a minimum of 200 yards from any animal.

15.4. Concerning weight and body condition of equine the following scoring method shall be used:

15.4.c. Poor. Body score is "one" (1). Animal is extremely emaciated, Spinous processes (portion of the vertebra of the backbone which project upward), ribs, tailhead, and bony protrusions of the pelvic girdle (hooks and pins) are prominent. Bone structure of withers, shoulders and neck are easily noticeable. No fatty tissues can be felt.



15.4.d. Very Thin. Body score is “two” (2). Animal is emaciated. Slight fat covering over base of the spinous processes. Transverse processes (portion of vertebrae which project outward) of lumbar (loam area) vertebrae feel rounded. Spinous processes ribs, shoulders and neck structures are faintly discernible.

15.4.e. Thin. Body score is “three” (3). Fat is built up about halfway on spinous processes. Transverse processes cannot be felt. Slight fat cover over ribs. Spinous processes and ribs are easily discernible. Tailhead is prominent, but individual vertebrae cannot be visually identified. Hook bones (protrusion of pelvic girdle appearing in upper, forward part of the hip) appear rounded, but are easily discernible. Pin bones (bony projections of pelvic girdle located toward rear, mid-section of the hip) are not distinguishable. Withers, shoulder and neck are accentuated.

15.4.f. Moderately Thin. Body score is “four” (4). Negative crease along back (spinous processes of vertebrae protrude slightly above surrounding tissue). Faint outline of ribs is discernible. Fat can be felt around tailhead (prominence depends on confirmation). Hook bones are not discernable. Withers, shoulders, and neck are not obviously thin.

15.4.g. Moderate. Body score is “five” (5). Back is level. Ribs cannot be visually distinguished, but can be easily felt. Fat around tailhead feels soft. Fat begins to be deposited along the sides of the withers, behind the shoulders, and along sides of neck.

15.4.h. Moderate to Fleishy. Body score is “six” (6). May have slight crease down back. Fat over ribs feels spongy. Fat around tailhead feels soft. Fat begins to be deposited along the sides of the withers, behind the shoulders, and along sides of neck.

15.4.i. Fleishy. Body score is “seven” (7). May have crease down back. Individual ribs can be felt, but with noticeable filling of fat between ribs. Fat around tailhead is soft. Fat is deposited along withers, behind shoulders, and along neck.

15.4.j. Fat. Body score is “eight” (8). Crease down back. Difficult to feel ribs. Fat around tailhead is very soft. Area along withers is filled with fat. Area behind shoulder is filled in flush with the rest of the body. Noticeable thickening of neck. Fat is deposited along inner buttocks.

15.4.k. Extremely fat. Body score is “nine” (9). Obvious crease down back. Patchy fat appears over ribs. Bulging fat around tailhead, along withers, behind shoulders, and along neck. Fat along inner buttocks may rub together. Flank is filled in flush with the rest of the body.

#### 15.5. Space.

15.5.a. Stalls in which horses are housed untethered for more than four (4) hours shall be large enough to allow horses to turn around completely, lie down comfortably and stand completely erect. Stalls shall have adequate ventilation and drainage and be kept free of excessive waste.

15.5.b. If a horse is tethered, it shall be done in a way and under supervision sufficient to minimize the risk of injury.

15.5.c. Pastures shall be routinely monitored for the presence of hazards.

15.5.d. Space shall be provided for exercise that is sufficient to maintain a horse’s health.

15.6. Authorized practices. The following are authorized practices;

15.6.a. Castration;

15.6.b. Identification;

15.6.c. Hoof trimming;

15.6.d. Shoeing;

- 15.6.e. Artificial insemination;
- 15.6.f. Embryo transfer;
- 15.6.g. Navel dipping;
- 15.6.h. Breeding soundness evaluations;
- 15.6.i. Surgery;
- 15.6.j. Dental care; and
- 15.6.k. Restraint by use of a twitch.

15.7. The following shall be unauthorized practices:

15.7.a. Soring shall be prohibited as referenced in §73-1-2. 2.24 of this legislative rule.

**73-1-16. Standards of care for small ruminants.**

16.1. Body scoring shall be determined by using industry standards.

16.1.a. Evaluations shall be made using a scale of 1 – 5.

16.1.b. Any small ruminant with a score of less than 2 and not under the care of a licensed and accredited veterinarian in West Virginia is in violation.

16.2. The following are authorized practices:

16.2.a. Ovine.

- 16.2.a.1. Castration;
- 16.2.a.2. Hoof trimming;
- 16.2.a.3. Tail docking;
- 16.2.a.4. Identification;
- 16.2.a.5. Shearing;
- 16.2.a.6. Artificial insemination; and
- 16.2.a.7. Embryo transfer;

16.2.b. Caprine.

- 16.2.b.1. Castration;
- 16.2.b.2. Dehorning;
- 16.2.b.3. Disbudding;
- 16.2.b.4. Hoof trimming;
- 16.2.b.5. Identification;
- 16.2.b.6. Shearing;
- 16.2.b.7. Artificial insemination; and
- 16.2.b.8. Embryo transfer

16.2.c. Camelids.

- 16.2.c.1. Hoof trimming;
- 16.2.c.2. Identification; and
- 16.2.c.3. Shearing.

**73-1-17. Standards of care concerning swine.**

17.1. Body scoring shall be determined by using the National Pork Board Pork Quality Assurance Guidelines.

17.2. If being transported, swine must be able to stand in their natural position without touching the top of the transport conveyance.

17.3. The following are authorized practices:

- 17.3.a. Castration;
- 17.3.b. Needle teeth clipping;
- 17.3.c. Boar tusk removal;
- 17.3.d. Tail docking;

- 17.3.e. Identification, using ear notching, tattooing, or ear tagging;
- 17.3.f. Environmentally controlled housing. Swine may be raised in environmentally controlled housing designed in a manner that minimizes the effects of adverse weather conditions;
- 17.3.g. Stalls, pens or outdoor lots with shelters for gestating sows; and
- 17.3.h. Crates, pens or outdoor huts for farrowing and lactating sows.
- 17.3.i. Nose rings;
- 17.3.j. Surgery; and
- 17.3.k. Artificial insemination.

**73-1-18. Standards of care concerning poultry.**

18.1. Stocking densities shall allow sufficient floor space for poultry to perch or rest based on poultry production standards, production type, management guides and housing type.

18.2. Ambulatory disabled and non-ambulatory disabled poultry that cannot reach feed or water shall be euthanized.

18.3. The following are authorized practices:

18.3.a. Non-feed withdrawal molt methods for layers and breeder;

18.3.b. Trimming of the beak;

18.3.c. The partial or complete removal of the comb, snood or toe nail;

18.3.d. Withholding of feed or water in circumstances such as:

18.3.d.1. Preparation for administration of vaccines or medication in the water; or

18.3.d.2. Preparation for transportation; and

18.3.e. Housing methods, including

18.3.e.1. A caged egg production system in an enclosed or open-sided building having some openwork for confining poultry. Types of caged housing systems include conventional, belt-battery, enriched and reverse;

18.3.e.2. A cage-free egg production system in an enclosed or open-sided building in which the poultry are free to move within the building. Types of cage-free housing systems include slat floor, litter floor, partial slat or litter floor, stretched wire floor and aviary systems; and

18.3.e.3. A Free-Roam or Free-Range egg production system where poultry have access to the outside or range and are provided shelter.

18.4. Euthanasia or Depopulation. Authorized euthanasia or depopulation methods for poultry shall include inhalants such as carbon dioxide, nitrogen or argon, manual cervical dislocation, gunshot, blunt force trauma, decapitation, non-penetrating captive bolt, electrocution, maceration, water based foam and barbiturates.

**73-1-19. Standards of care concerning captive cervids.**

19.1. The responsible party shall maintain captive cervids in accordance with the Department of Agriculture's rule Captive Cervid Farming 61CSR34.

19.2. Body scoring shall be determined by using the Canadian system or Purina Mills.

19.2.a. Evaluations shall be made using a scale of 1-5.

19.2.b. Any owner of a captive cervid with a score of less than 2 and not under the care of a licensed and accredited veterinarian in West Virginia is in violation of this rule.

**73-1-20. Animal morbidity and mortality data.**

20.1. Animal morbidity and mortality data shall be referenced in the USDA FSA West Virginia Livestock Mortality Rates.

**73-1-21. Penalties.**

21.1. A person who violates any provision of this rule is subject to the penalties prescribed in West Virginia Code §61-8-19.

## **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.

#### **CHAPTER 19 ARTICLE 20D. PRIVATE CAUSE OF ACTION FOR THE HUMANE DESTRUCTION OF A DOG.**

##### **19-20D-1. Purpose.**

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

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

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

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

(2) That the petitioner was:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the court orders euthanasia, a specific date upon which the owner of the dog must have the euthanasia performed and a direction that documentation be mailed to the petitioner and filed with the court by a specific date showing that the procedure was performed.

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

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

## **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 show 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 to 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 1<sup>st</sup> 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 1<sup>st</sup> to review current permits in order to make permits effective for the next calendar year beginning January 1<sup>st</sup>.

6.2.a. On or by December 1<sup>st</sup> 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 and establishes approved methods of animal euthanasia and expands as well as defines qualifications for certified animal euthanasia.

1.2. Authority. -- W. Va. Code §30-10-6.

1.3. Filing Date. -- April 23, 2018.

1.4. Effective Date. -- July 1, 2018.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on July 1, 2028.

#### **26-5-2. Application for Certified Animal Euthanasia Technicians.**

2.1. Before any person may take the examination for certification in the state of WV, he or she shall submit an application along with the non-refundable fees to the Board. The application shall contain the following information, which shall be retained in the applicant's file:

2.1.a. Applicant's name, address, and certified copy of the applicant's birth certificate or official record of birth;

2.1.b. Verification of US citizenship or documentation of applicant's authority to reside and work in the United States;

2.1.c. Proof of high school diploma or equivalent;

2.1.d. Certified written verification of name changes;

2.1.e. A current photograph. Applicant shall be alone in the photo;

2.1.f. Applicant shall indicate whether he or she has ever been denied a certification or had a certification restricted or disciplined in any other state or jurisdiction with the name of the state or jurisdiction;

2.1.g. Verification of applicant's status as a certification from each state or jurisdiction where he or she now holds or ever held a certificate;

2.1.h. The applicant shall tender the required fees as contained in the Schedule of Fees with the application;

2.1.i. The applicant shall certify that he or she will abide by the laws of this State regulating the practice of animal euthanasia technology and that he or she will abide by the rules of the Board;

2.1.j. The application shall be signed by the applicant.

2.2. An applicant furnishing false information in an application shall be denied the right to take the examination. If the applicant has been certified before the Board becomes aware of the falseness of the information, the certificate is subject to disciplinary action including, but not limited to, suspension, and or revocation.

2.3. Once the application is complete and all fees have been received, the Board will notify the applicant of their eligibility to take the written practical, practical skills, and jurisprudence examinations.

2.4. If an applicant is found not qualified to take the examination, the Board shall notify the applicant in writing at the applicant's address as listed on the application, of the finding and the grounds upon which the finding is based. An applicant found not qualified may demand a hearing. The application fee of any applicant found not qualified to take the examination is non-refundable.

#### **26-5-3. Certified Animal Euthanasia Technicians Program.**

3.1. The Board may formulate and administer programs 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 technicians.

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.

The Certified Animal Euthanasia Technician Training Manual is incorporated by reference.

3.3. The Board shall annually appoint 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 examination to a veterinarian or veterinarians licensed to practice in this state.

3.4. The Board member or members, or authorized veterinarian shall conduct the practical skills examination to determine the applicants' ability in meeting the requirements for animal euthanasia technology in the State of WV.

3.5. The Board member or members or authorized veterinarian who administer the practical examination shall determine failure or passing of the practical examination.

3.6. The Board shall offer the certified animal euthanasia technician training program and the written and practical skills examination at least once a year.

#### **26-5-4. Certified Animal Euthanasia Technician Jurisprudence Examination.**

4.1. Jurisprudence examinations shall cover the laws governing animal euthanasia technology in the State of West Virginia.

4.2. Examinations are the property of the Board and shall not be duplicated in any form.

#### **26-5-5. Certified Animal Euthanasia Technician Certificate Holder.**

5.1. The Board shall issue a certificate to a qualified candidate who passes the examinations and meets the requirements of the Board to practice the profession of animal euthanasia technology and upon payment of the certification fee. If any certified animal euthanasia technician desires that a duplicate registration be issued, the Board shall issue a duplicate registration upon payment of the fee as set forth in the Schedule of Fees.

5.2. The certificate issued by the Board shall include the certificate holder's full name, registration number, the Board seal, the effective date and the expiration date and shall bear the signatures of the Chairperson and Secretary-Treasurer of the Board.

#### **26-5-6. Certified Animal Euthanasia Technician Registration Renewal.**

6.1. The Board shall notify each certified animal euthanasia technician that his or her certification will expire on December 31 but failure to receive the notification does not exempt a certificate holder from meeting the requirements of this rule.

6.2. A certified animal euthanasia technician who desires to continue to be certified shall, starting October 1 through December 31 of each year, renew his or her certification by completing the required certification renewal, paying the annual renewal fee as specified in the Schedule of Fees, and certify to the Board that he or she has completed all continuing education requirements.

6.3. A certified animal euthanasia technician who desires to continue his or her

certification in good standing to practice animal euthanasia technology shall undertake at least 6 (50 minute) units of Board approved continuing education units in the field of animal euthanasia technology during each calendar year. Classroom or online courses will be permitted. No periods may be accumulated, carried forward, or held over past the calendar year in which the hours of continuing education were completed.

6.4. The Board may provide a continuing education course annually for certified animal euthanasia technicians as specified in the Schedule of Fees.

6.5. Certificate holders are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal.

6.6. The Board may grant continuing education hardship extensions by request of the certificate holder. The Board shall only consider hardship extensions from certificate holders who the Board determines were prevented from completing the required continuing education hours within the year due to verified medical emergencies or military obligations beyond the certificate holder's control. Requests for a hardship extension must be received in the Board's office by December 15.

6.7. If an extension is granted by the Board for completion of approved continuing education hours, the technician shall file the renewal application with the renewal fee. The Board shall renew the certificate contingent upon the certificate holder completing the mandatory continuing education within a period determined by the Board from the current year's expiration date of December 31.

6.8. The renewal certificate in hardship extension, shall be issued for the period required to complete the mandatory continuing education, and shall be extended to December 31 upon receipt of acceptable written documentation of completing the continuing education. The continuing education hours completed during the extension period shall not be applied toward satisfaction of continuing education in the year completed and shall be separate from continuing education requirements for current year renewals.

6.9. An animal euthanasia technician issued a hardship extension for completion of continuing education shall submit documentation of completion prior to the end of the Board approved extension period. Continued practice past the authorized extension period without a written renewal certificate from the Board constitutes the practice of animal euthanasia technology without a certificate.

6.10. Upon receipt of the completed renewal application and fee, the Board shall issue a renewal certificate bearing the number of the certification, the period for which the certification is renewed, and any other information the Board considers necessary.

6.11. Certifications issued by the Board shall be posted in a place conspicuous to the public at the establishment where animal euthanasia technology is being provided.

6.12. Certified animal euthanasia technicians shall notify the Board of any change of address, and forward the notice to the Board no later than the effective date of the change of address.

#### **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.

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

#### **26-5-8. Animal Euthanasia Technician Disciplinary Action.**

8.1. The Board may deny, suspend or revoke a certification, impose a civil penalty, place a person's certificate on probation, reprimand a certificate holder, refuse to examine an applicant or issue a certification or renew a certification, as provided by law and as provided by this rule if it finds an applicant or certificate holder:

8.1.a. Has presented to the Board false or fraudulent evidence of qualification or has been found to be guilty of fraud or deception in the process of securing a certificate;

8.1.b. Is chronically or habitually intoxicated, has a chemical dependency or is addicted to drugs;

8.1.c. Has engaged in dishonest, unethical, or illegal practices in or connected with the practice of animal euthanasia technology, or has been convicted of a misdemeanor related to the practice of animal euthanasia technology or animal abuse or neglect;

8.1.d. Has been convicted of a felony under the laws of state, jurisdiction, or federal government of the United States or any other crime involving moral turpitude;

8.1.e. Has engaged in practices or conduct in connection with the practice of animal euthanasia technology which violate the standards of professional conduct as established by the Board;

8.1.f. Has permitted or allowed another to use his or her certification to practice animal euthanasia in this or any other state;

8.1.g. Has committed fraud in the application or record keeping of any animal;

8.1.h. 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 9 of this rule;

8.1.i. Has performed unnecessary or unauthorized treatment;

8.1.j. Has participated in any unlawful, unethical or inhumane act;

8.1.k. Used Sodium Pentobarbital, Sodium Pentobarbital compounds or any other Board approved euthanasia solutions, sedatives, or tranquilizers for pre-euthanasia administration 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 Board approved euthanasia solutions, sedatives, or tranquilizers for pre-euthanasia administration; or

8.1.l. Has received disciplinary action in another jurisdiction, including the suspension, probation or revocation of a certificate holder as an animal euthanasia technician issued by another jurisdiction.

8.2. The Board may also suspend or revoke the certificate of a certificate holder who is found to be mentally incompetent by a court of competent jurisdiction. If the certificate holder is later determined to be mentally competent by a court, the Board may reinstate the certificate.

8.3. On conviction of or determination of conviction of a person certified by the Board of a felony, the Board may, after an administrative hearing in which the facts of conviction

are determined, suspend or revoke the person's certificate. The Board may not reinstate or reissue a certificate holder to a person whose certification is suspended or revoked under this section except on an express determination of the Board based on substantial evidence contained in an investigative report, indicating that the reinstatement or reissuance of the certificate holder is in the best interests of the public and of the person whose certification has been suspended or revoked.

8.4. If a person violates this rule in a manner that constitutes grounds for disciplinary action by the Board, the Board may assess the costs of the investigation, hearing, hearing examiner, legal fees, and all other reasonable and necessary costs incurred by or on behalf of the Board to the certificate holder who was the subject of the disciplinary action.

8.5. The Board may inspect an 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 approved euthanasia solutions, or sedatives or tranquilizers for pre-euthanasia administration, as established by the Board.

#### **26-5-9. Record keeping.**

9.1. Certified animal euthanasia technicians that have a Federal Drug Enforcement Administration (DEA) number and administer controlled substances shall comply with the federal and state laws pertaining to the usage of controlled substances; including maintaining a register, which shall indicate the following:

- 9.1.a. Identification of the animals euthanized;
- 9.1.b. Method utilized for the euthanasia of each animal;
- 9.1.c. Drugs administered, including dosage;
- 9.1.d. Date of euthanasia;
- 9.1.e. Method of sanitary disposal of animal's remains; and
- 9.1.f. An inventory of all receipts, administrations and distributions of all euthanasia solutions, sedatives and tranquilizers.

9.2. The certified animal euthanasia technician and the administrators of the animal control facility, humane society or animal shelter shall maintain the records on the business premises for a period of 3 years.

9.3. In the case of the cancellation of certification of an animal euthanasia technician, the records shall be maintained by the facility's administrators.

#### **26-5-10. Storage.**

10.1. 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.

10.2. Only the certified animal euthanasia technician shall have access to the drug storage container.

10.3. The manufacturers' instructions shall be followed in the preparation of all lethal injections or chemical restraint drugs.

10.4. 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.

10.5. Syringes shall be of medical quality. They may be reused if they are properly cleaned.

10.6. Needles and syringes shall be kept in the same secure storage as the lethal drugs and chemical restraint drugs.

10.7. Needles and syringes shall be disposed of in a proper container, as required by state law.

#### **26-5-11. Facility Inspections and Registration.**

11.1. A new animal euthanasia facility shall submit a facility registration application along with the non-refundable required fee to the Board.

11.2. A registered animal euthanasia facility that is euthanizing animals shall be inspected by the Board on a rotating basis every 2 years, except when the Board requires a re-inspection due to the facility not meeting all requirements for that type of facility at the routine inspection. Additionally, the Board may inspect a facility at any time for just cause after the Board determines that the facility meets the respective provisions for operation under this rule may it lawfully operate.

11.3. A registered animal euthanasia facility operating shall complete and file annually, on or before June 30, on a form approved by the Board, an annual animal euthanasia facility registration, and shall pay the animal euthanasia facility annual permit fee, as prescribed in the Schedule of Fees.

11.4. The Board shall not issue a renewal certificate to an animal euthanasia technician of an animal euthanasia facility that has not filed an annual facility registration, or that has refused to allow a representative of the Board to inspect the euthanasia facility during the facility's regular business hours.

11.5. The Board may revoke or suspend a facility registration for not being in compliance with this Rule.

#### **26-5-12. Termination of Employment.**

12.1. Certified animal euthanasia technicians who cease employment with the animal control facility or humane society listed on their DEA registration shall notify the Board in writing immediately, regardless of the reason.

#### **26-5-13. Criminal History Record Check.**

13.1. Beginning July 1, 2018, and in addition to all of the requirements for certification, an applicant for an initial certification to practice as an animal euthanasia technician in West Virginia shall request and submit to the Board the results of a state and a national criminal history record check.

13.2. The purpose of the criminal history record check is to assist the Board in obtaining information that may relate to the applicant's fitness for certification.

13.3. In addition to the State Police, the Board may contract with and designate a company specializing in the services required by this section instead of requiring the applicant to apply directly to the West Virginia State Police or similar out-of-state agency for the criminal history records checks; provided, that any such company must utilize protocols consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact.



13.4. The applicant shall furnish to the State Police, or other organization designated by the Board, a full set of fingerprints and any additional information required to complete the criminal history record check.

13.5. The applicant is responsible for any fees required by the State Police, or other organization duly designated by the Board, for the actual costs of the fingerprinting and the actual costs of conducting a complete criminal history record check.

13.6. The Board may require the applicant to obtain a criminal history records check from a similar Board approved agency or organization in the state of the applicant's residence, if outside of West Virginia.

13.7. The applicant shall authorize the release of all records obtained by the criminal history record check to the Board.

13.8. A criminal history record check submitted in support of an application for certification must have been requested by the applicant no earlier than twelve (12) months immediately prior to the Board's receipt of the application for certification.

13.9. An initial certification application is not complete until the Board receives the results of a state and a national criminal history record check conducted by the State Police or another entity duly authorized by the Board. The Board shall not grant an application for certification submitted by any applicant who fails or refuses to submit the criminal history record check required by this section.

13.10. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for certification. Criminal history record checks shall be verified by a source acceptable to the Board, other than the applicant.

13.11. The results of the state and national criminal history record check may not be released to or by a private entity except:

13.11.a. To the individual who is the subject of the criminal history record check;

13.11.b. With the written authorization of the individual who is the subject of the criminal history record check; or

13.11.c. Pursuant to a court order.

13.12. Criminal history record checks and related records are not public records for the purposes of chapter 29B of the West Virginia Code.

## **CHAPTER 44D. UNIFORM TRUST CODE.**

### **ARTICLE 4. CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST.**

#### **44D-4-408. Trust for care of animal.**

(a) A trust may be created to provide for the care of an animal alive during the grantor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the grantor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the

court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor's successors in interest.

## **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 2 REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.**

**49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

(a) 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, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services. 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 to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: Provided, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect.

(b) County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirements contained in this section and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement.

(c) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect 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 that 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.

(d) The provisions of this section are not applicable to persons under the age of 18.

#### **49-2-806. 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 eight hundred two and eight hundred three 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 Resources**

### **Animal Legal Defense Fund (ALDF)**

<https://aldf.org/>

### **Michigan State University Animal Legal & Historical Center**

[animallaw.info](http://animallaw.info)

[animallaw.info/site/maps-us-laws](http://animallaw.info/site/maps-us-laws)

### **Best Friends**

<https://bestfriends.org/>

### **Shelter Pet Data Alliance** (Best Friends shelter data partner)

[shelterpetdata.org](http://shelterpetdata.org)

### **GREY2K USA Worldwide** (Ending Greyhound Racing)

<https://www.grey2kusa.org/index.php>

### **ASPCA** (Emergency Response/Assistance)

<http://aspcapro.org>

[publicinformation@aspcapro.org](mailto:publicinformation@aspcapro.org) or 888.666.2279

### **Red Rover** (Emergency Response/Assistance)

<https://redrover.org/>

916.429.2457

### **HSUS** (Emergency Response/Assistance)

<http://www.humanesociety.org>

(General Inquiries) 1.866.720.2676

### **National Animal Care & Control Association (NACA)**

[nacanet.org](http://nacanet.org)

### **Petsmart Charities**

[petsmartcharities.org](http://petsmartcharities.org)

800.423.7387

### **American Humane Association (AHA)**

<https://www.americanhumane.org/>

800.227.4645

### **Animal Wellness Action**

<https://animalwellnessaction.org/>

### **Animal Welfare Institute**

<https://awionline.org/>

## **WV Resources**

Federation of Humane Organizations of WV (FOHO WV)

<https://fohowv.org/>

WV Voters for Animal Welfare (WVVAW)

<https://www.wvvaw.org/>

**West Virginia Dept. of Agriculture (WVDA)**

1900 Kanawha Blvd., East

Charleston, WV 25305

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

<https://agriculture.wv.gov/>

304.558.3550

**WV DH, DHF, DoHS**

[www.dhhr.wv.gov](http://www.dhhr.wv.gov) (DHHR divided into 3 agencies in 2024)

**WV DNR**

<http://www.wvdnr.gov>

304.558.2754 WV

**WV Secretary of State**

[www.sos.wv.gov](http://www.sos.wv.gov)

866.767.8683

**West Virginia Board of Veterinary Medicine (Euthanasia Technician Certification)**

5509 Big Tyler Road, Suite 3

Cross Lanes, WV 25313

<https://www.wvbvm.gov/>

304.776.8032

The 2024 edition of the WV Animal Law Book is dedicated to Betty Burkett and Sylvia Shafer, both of whom were founders of The Federation of Humane Organizations Of West Virginia (FOHO WV). Betty and Sylvia both passed on 1.24.24 and will be remembered for their dedicated support of animal welfare throughout our state. The best legacy for these champions of our cause would be the passage of the spay neuter funding legislation beyond its sunset year of 2027. Here are Senate Resolutions memorializing them at FOHO's request from the 2024 Legislative Session.

## **SENATE RESOLUTION 62**

Memorializing the life of **Betty Burkett**, guardian through nursing and lifelong dedication to animal welfare throughout the State of West Virginia.

**Whereas**, Betty Burkett's work in animal rescue and protection is lengthy, and included founding the March for Mutts to support the Rescue League, and active leadership in the Marshall County Animal Rescue League; and

**Whereas**, Betty Burkett was chair of the Moundsville Animal Task Force and a board member of the Olive Branch Animal Rescue and Refuge in Sistersville; and Whereas Betty Burkett was a coordinator with Moundsville SNAP and Marshall County CAT-SNIP; and

**Whereas**, Betty Burkett was a lay member of the West Virginia Veterinary Licensing Board; and

**Whereas**, Betty Burkett was helpful with transporting animals for rescue and spay neuter; and

**Whereas**, Betty Burkett's contributions to the betterment of the welfare of animals in our state continue her legacy through these many organizations, but maybe none more so than her co-founding of the Federation of Humane Organizations (FOHO) of West Virginia, together with Sylvia Shafer, in 1994; and

**Whereas**, Betty Burkett felt that education of the public about the law surrounding animals was important, she coordinated a book compendium of all the state animal laws, which is still in production today through FOHO WV; and

**Whereas**, Betty Burkett left this world on January 24, 2024, still a champion of her cause, and is deeply missed; and

**Whereas**, It is fitting that the Senate honor the life and legacy of Betty Burkett for her many years of dedicated public service; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of Betty Burkett, guardian through nursing and lifelong dedication to animal welfare throughout the State of West Virginia; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the family of Betty Burkett.

### **SENATE RESOLUTION 63**

Memorializing the life of **Sylvia Shafer**, animal welfare advocate and beloved wife.

**Whereas**, Sylvia Shafer spent decades dedicated to animal welfare, beginning in 1982 with her membership in Kanawha Action for Animals; and

**Whereas**, Sylvia Shafer continued with her work as a board member and later, executive director for the Kanawha/Charleston Humane Association, the largest animal shelter in our state, where she prioritized the prosecution of animal cruelty; and

**Whereas**, Sylvia Shafer was passionate about improving the laws in West Virginia to protect animals; and

**Whereas**, Sylvia Shafer was active in the Legislature since 1989, working tirelessly with legislators and private citizens to make changes to our laws to improve animal welfare in our state; and

**Whereas**, Sylvia Shafer was the primary lobbyist for West Virginia Voters for Animal Welfare; and

**Whereas**, Sylvia Shafer was a member of the Department of Agriculture Advisory Committee for the WVSNP program since 2017; and

**Whereas**, Sylvia Shafer invested enormous amounts of time and effort into learning the law and the legislative process, and became an expert in both to further the animal welfare cause;

**Whereas**, Sylvia Shafer, together with Betty Burkett, formed the Federation of Humane Organizations, West Virginia in 1994; and

**Whereas**, Sylvia Shafer worked tirelessly for our state, and together with Betty Burkett, blazed a trail for those in animal welfare and a framework upon which others continue to build; and

**Whereas**, Sylvia Shafer left this world on January 24, 2024, and is deeply missed; and

**Whereas**, It is fitting that the Senate honor the life and legacy of Sylvia Shafer for her many years of dedicated public service; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of Sylvia Shafer, animal welfare advocate, and beloved wife; and, be it

*Further Resolved*, That the Senate extends its most sincere condolences to the family of Sylvia Shafer on her passing; and, be it

*Further Resolved*, That the Clerk is directed to forward a copy of this resolution to the family of Sylvia Shafer.