

## H. B. 3112

(By Delegates Campbell and Canterbury)

[Introduced January 9, 2008; referred to the

Committee on Agriculture and Natural Resources then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20C-1, §19-20C-2, §19-20C-3, §19-20C-4, §19-20C-5, §19-20C-6, §19-20C-7 and §19-20C-8, all relating to providing for the Dangerous Dog Act; defining terms; providing for the determination of a potentially dangerous dog; providing for the determination of a dangerous dog; providing exceptions; providing consequences of a dangerous or potentially dangerous dog determination; providing registration and handling requirements for dangerous and potentially dangerous dogs; setting forth responsibilities of owners of dangerous and potentially dangerous dogs; and providing criminal and civil penalties.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-20C-1, §19-20C-2, §19-20C-3, §19-20C-4, §19-20C-5, §19-20C-6, §19-20C-7 and §19-20C-8, all to read as follows:

### **ARTICLE 20C. DANGEROUS DOG ACT.**

#### **§19-20C-1. Definitions.**

For purposes of this chapter, the term:

(a) "Dangerous dog" means any dog that:

(1) Causes a serious injury to a person or domestic animal; or

(2) Has been designated as a potentially dangerous dog and engages in behavior that poses a threat to public safety as described in paragraph (f) of this section.

(b) "Serious injury" means any physical injury that results in broken bones or lacerations that require multiple sutures or cosmetic surgery.

(c) "Proper enclosure" means secure confinement indoors or secure confinement in a locked pen, fenced yard or structure measuring at least six feet in width, twelve feet in length, and six feet in height, capped if there is a dog house inside or if dog can climb fence, with secure sides, which provides proper protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner's property.

(d) "Owner" mean any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of a dog.

(e) "Impound" means taken into the custody of the county dog warden.

(f) "Potentially dangerous dog" means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by any of the following behaviors:

(1) Causing an injury to a person or domestic animal that is less severe than a serious injury;

(2) Without provocation, chasing or menacing a person or domestic animal in an aggressive manner;

(3) Running at large and impounded or owners cited by the county dog warden two or more times within any twelve-month period.

(4) Acts in a highly aggressively manner within a fenced yard/enclosure and appears to a reasonable person able to jump over or escape.

(g) "Responsible person" means a person at least eighteen years old who is familiar with the dog and has the size and experience to be able to keep the dog under complete control at all times.

### **§19-20C-2. Determination of a potentially dangerous dog.**

(a) After an investigation which must be initiated within five days after the situation becomes known to the, the county dog warden is authorized to make a determination whether a dog is potentially dangerous based on the factors listed in section one(f) and shall notify the owner of the dog in writing by certified mail

or hand delivery with signature of that status within five days after completion of the investigation.

(b) Following notice to the owner, if the county dog warden or has probable cause to believe that a dog is a potentially dangerous dog and may pose a threat to public safety, the county dog warden

may obtain a search warrant pursuant to this jurisdiction's Rules of Civil Procedure and impound the dog pending disposition of the case or until the dog owner has fulfilled the requirements of section six. The owner of the dog may be liable to this jurisdiction for the costs and expenses of keeping the dog.

(c) Upon notice, the owner may, within five business days after a determination that a dog is a potentially dangerous dog, bring a petition in this jurisdiction seeking review of the determination. A decision by this jurisdiction overturning the county dog warden's determination shall not affect the county dog warden's right to later declare a dog to be a potentially dangerous dog or a dangerous dog, or to determine that the dog poses a threat to public safety, for the dog's subsequent behavior.

### **§19-20C-3. Determination of a dangerous dog.**

(a) After an investigation which must be initiated within five days after the situation becomes known to the county dog warden, the county dog warden's is authorized to make a determination whether a dog is dangerous based on the factors listed in section one(a) and shall notify the owner of the dog in writing by

certified mail or hand delivery with signature of that status within five days after completing the investigation.

(b) Following notice to the owner and prior to the hearing, if the county dog warden has probable cause and believes the dog to be a dangerous dog and that the animal poses an imminent threat to public safety, the county dog warden may impound the dog pending disposition of the case or until the dog owner has fulfilled the requirements set forth in section six of this article. The owner of the dog shall be liable for the costs and expenses of keeping the dog if the dog is determined to be a dangerous dog.

(c) The owner may, within five business days after a determination that a dog is dangerous, petition the circuit court for any relief he or she considers appropriate. A decision by the circuit court overturning the county dog warden's determination shall not affect the county dog warden's right to later declare a dog to be a dangerous dog or to determine that the dog poses a threat to public safety, for the dog's subsequent behavior.

### **§19-20C-4. Exceptions.**

No dog shall be declared a dangerous or potentially dangerous dog if:

(a) The dog was used by a law-enforcement official for legitimate law enforcement purposes.

(b) The threat, injury or damage was sustained by a person:

(1) Who was committing, at the time, willful trespass or other

wrongful or criminal act upon the premises lawfully occupied by the owner of the dog.

(2) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the dog; or

(3) Who was committing or attempting to commit a crime; or

(c) The dog was:

(1) Responding to pain or injury, or was protecting itself, its offspring; or

(2) Protecting or defending a human being within the immediate vicinity of the dog from an attack or assault.

#### **§19-20C-5. Consequences of a dangerous or potentially dangerous dog determination.**

(a) If the county dog warden or his or her designee determines that a dog is a potentially dangerous dog under the provision of section two of this article, the owner shall comply with the provisions of subsections (a) and (d), sections five and six of this article and any other special security or care requirements the county dog warden may establish.

(b) If the county dog warden determines that a dog is a dangerous dog under section three of this article, the owner shall comply with the provisions of sections five and six of this article and any other special security or care requirements the county dog warden may establish.

(c) The county dog warden may require impoundment of the dog until the owner of the dog has satisfied all the requirements of the certificate of registration holding permit. The requirements must be met within thirty days. If, after thirty days, the owner has not satisfied all the requirements of the holding permit, the animal may be humanely destroyed on the thirty-first day.

#### **§19-20C-6. Dangerous dog and potentially dog registration and handling requirements.**

(a) The county dog warden shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner established to the satisfaction of the county dog warden that:

(1) The owner of the potentially dangerous dog is twenty-one years of age or older;

(2) A valid license has been issued for the potentially dangerous dog pursuant to jurisdiction;

(3) The potentially dangerous dog has a current rabies vaccination;

(4) The owner has a proper enclosure to prevent the entry of any person or animal and the escape of the potentially dangerous dog;

(5) The owner has paid to the county dog warden an annual fee of fifteen dollars in addition to regular dog licensing fees, to register the potentially dangerous dog.

(6) The potentially dangerous dog has been spayed or neutered;

(7) The potentially dangerous dog has been implanted with a microchip containing owner identification information. The microchip information must be registered with the county dog warden.

(8) The potentially dangerous dog owner shall enter the dog in a socialization, behavior program approved or offered by the county dog warden.

(b) The county dog warden shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to satisfying the requirements for registration of a potentially dangerous dog establishes to the satisfaction of the county dog warden that:

(1) The owner of the dangerous dog has written permission of the property owner or homeowner's association where the dangerous dog will be kept if applicable;

(2) The owner will maintain the dangerous dog exclusively on the owner's property except for medical treatment of examination; and

(3) The owner of the dangerous dog has posted on the premises a clearly visible written warning sign that there is a dangerous dog on the property with a conspicuous warning symbol that informs children of the presence of a dangerous dog. The sign shall be visible from the public roadway for a distance of fifty feet.

(c) The county dog warden may order the immediate impoundment or humane destruction of a dangerous dog if the owner fails to abide by the conditions for registration or confinement or handling of a dangerous dog.

(d) If any dog previously determined to be a potentially dangerous dog has not exhibited any dangerous behaviors within the thirty-six months since the date of the potentially dangerous dog determination, then that dog is eligible for a review of the determination with the potential for lifting the requirements of this section: *Provided*, That same dog may again be declared a dangerous or potentially dangerous dog if it again exhibits any dangerous behaviors.

#### **§19-20C-7. Dangerous or potentially dangerous dog owner responsibility.**

It shall be unlawful to:

(a) Keep a dog determined to be dangerous or potentially dangerous without a valid certificate or registration issued under section six of this article:

(b) Permit a potentially dangerous dog to be outside a proper enclosure unless the potentially dangerous dog is under the control of a responsible person, muzzled, and restrained by a leash not exceeding four feet in length. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any human being or animal;

(c) Fail to maintain a dangerous dog exclusively on the owner's property as required except for medical treatment or examination. When removed from the owner's property for medical treatment or examination, the dangerous dog shall be caged or under the control of a responsible person, muzzled and restrained with a leash not exceeding four feet in length. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any human being or animal;

(d) Fail to notify the county dog warden immediately upon escape if a dangerous or potentially dangerous dog is on the loose, is unconfined, has attacked another domestic animal, has attacked a human being; within five business days if the dog has died; within twenty-four hours if the dog has been sold, or has been given away. If the dangerous or potentially dangerous dog has been sold or given away the owner shall also provide the county dog warden with the name, address, and telephone number of the new owner of the dangerous or potentially dangerous dog;

(e) Fail to surrender a dangerous or potentially dangerous dog to the county dog warden for safe confinement pending a disposition of the case when there is a reason to believe that the dangerous or potentially dangerous dog poses an imminent threat to public safety; or

(f) Fail to comply with any special security or care requirements for a dangerous or potentially dangerous dog the county dog warden may have established.

**§19-20C-8. Penalties.**

(a) An owner of a dangerous or potentially dangerous dog who violates the provisions of sections six and seven of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not to exceed five hundred dollars or confinement to jail not to exceed ninety days, or both, for a first offense and not more than one thousand dollars or confinement to jail not to exceed ninety days, or both, for a second offense.

(b) An owner of a dangerous or potentially dangerous dog that causes serious injury to or kills a human being or a domestic animal without provocation shall be fined up to ten thousand dollars.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this article.

NOTE: The purpose of this bill is to address the regulation by counties of dangerous dogs and potentially dangerous dogs. Toward this end the bill contains provisions which address the following: (1)Defining terms; (2)providing for the determination of a potentially dangerous dog; (3)providing for the determination of a dangerous dog; (4)providing exceptions; (5)providing consequences of a dangerous or potentially dangerous dog determination; (6) providing registration and handling requirements for dangerous and potentially dangerous dogs; (7)setting forth responsibilities of owners of dangerous and potentially dangerous dogs; and (8)providing criminal and civil penalties.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.