

H. B. 4632

(Delegates Browning, Wysong and Campbell)

[Introduced February 18, 2008; referred to the
Committee on the Judiciary.

A BILL to repeal §19-20-20 and §19-20-21 the code of West Virginia, 1931, as amended; and to amend said code 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 §19-20-8 of said code, all relating to providing the Dangerous and Vicious Dog Act; defining terms; providing the powers of law enforcement and humane officers; providing for the determination of a dangerous and vicious dogs; providing for exceptions; providing for if the owner is a minor; providing registration and handling requirements for dangerous dogs, providing for the responsibilities of the owner; providing criminal penalties and providing a notice to the states political subdivisions.

Be it enacted by the Legislature of West Virginia:

That §19-20-20 and §19-20-21 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §19-20C-1, §19-20C-2, §19-20C-3, §19-20C-4, §19-20C-5, §19-20C-6 and §19-20C-7, all to read as follows:

ARTICLE 20. DOGS AND CATS

§20. Repeal of section relating to keeping of vicious dogs; humane officers may kill such dogs.

Section twenty, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§21. Repeal section relating to license fee for keeping vicious or dangerous dog.

Section twenty, article twenty-one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

ARTICLE 20C. DANGEROUS AND VICIOUS DOG ACT

§19-20C-1. Definitions.

For purposes of this article, the term:

(a) "dangerous dog" means any dog that has:

- (1) bitten or attacked or inflicted injury on a person;
- (2) bitten or attacked a companion animal that is a dog or cat;
- (3) killed a domestic animal that is a dog or cat;

(b) "vicious dog" means any dog that has:

- (1) Killed a person;
- (2) Inflicted serious injury to a person, including multiple bites, serious disfigurements, serious impairment of health or serious impairment of bodily function;
- (3) continued to exhibit behaviors that resulted in a previous finding by a court, on or before July 1, 2008, by a humane officer as authorized by local ordinance, that it is a dangerous dog, provided that its owner or custodian has been given notice of that finding.

§19-20C-2. Powers of law enforcement, humane officer.

(a) Any law enforcement officer or humane officer

who has reason to believe that a dog within his or her jurisdiction is a dangerous dog or vicious dog shall apply to the magistrate of the county for the issuance of a summons requiring the owner or custodian, if

known, to appear before a magistrate at a specified time. The summons shall advise the owner or custodian of the nature of the proceeding and the matters at issue. If the humane officer determines that the owner or custodian can confine the dog in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a decision rendered. If the humane officer determines that the owner or custodian cannot confine the dog in a manner that protects the public safety, then the humane officer shall take custody of the dog until a hearing is conducted, a decision rendered and any appeals are exhausted. The magistrate court may compel the owner or custodian of the dog to produce the dog. If after hearing the evidence, the magistrate finds that the dog is a dangerous dog, the magistrate shall order the dog's owner to comply with the provisions of this article. If after hearing the evidence, the magistrate finds that the animal is a vicious dog, the magistrate shall order the dog to be humanely destroyed. Any decision, determination or order made according to this section is subject to appellate review by the circuit court. The owner or custodian of a dog declared dangerous or vicious is liable to the jurisdiction for all costs and expenses of keeping the dog.

§19-20C-3. Exceptions.

No dog shall be declared dangerous or vicious if:

- (a) The dog was used by a law enforcement official for a legitimate law enforcement purpose.
- (b) The threat, injury, or damage was sustained by a person: (1) Who was committing, at the time, a willful trespass on the premises occupied by the animal's owner or custodian.
(2) Who was committing, at the time, a crime on the premises occupied by the animal's owner or custodian.
(3) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to repeatedly, in the past, provoked, tormented, abused, or assaulted the dog; or
- (c) at the time of the complaint, the dog was responding to:
 - (1) pain or injury;
 - (2) was protecting its kennel, its offspring, a person, or the owner's custodial property.

§19-20C-4. Owner is a minor.

If the owner of a dog found to be a dangerous dog is a minor, the custodial parent or legal guardian is responsible for complying with all the requirements of this article.

§19-20C-5. Registration and handling requirements of dangerous dogs.

- (a) The owner or custodian of any dog found to be a dangerous dog shall, within 15 days of such finding, obtain a dangerous dog registration certificate from the county assessor for a fee of fifty dollars, in addition to other fees that may be authorized by law. The assessor shall also provide the owner or custodian with a uniformly designed tag that identifies the dog as a dangerous dog. The owner or custodian shall affix the tag to the dog's collar and ensure that the dog wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.
- (b) All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence;
 - (1) of the dog's current rabies vaccination;
 - (2) that the dog has been spayed or neutered;
 - (3) that the dog is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed.
- (c) Owners or custodians who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property.

(d) While on the property of its owner or custodian, a dog found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the dog with shelter from the elements of weather.

(e) When off its owner's or custodian's property, a dog found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the dog or interfere with the dog's vision or respiration, but so as to prevent it from biting a person or another animal.

§19-20C-6. Notification required by owner.

(a) The owner or custodian shall notify the county humane officer promptly of:

- (1) the names, addresses, and telephone numbers of all owners or custodians;
- (2) all of the means necessary to locate the owner, custodian and the dog at any time;
- (3) any complaints or incidents of attack by the dog upon any person or cat or dog;
- (4) any claims made or lawsuits brought as a result of any attack;
- (5) the death of the dog.

(b) After an animal has been found to be a dangerous dog, the animal's owner or custodian shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal:

- (1) is loose or unconfined;
- (2) bites a person or attacks another animal;
- (3) is sold, given away, or dies.

(C) Any owner or custodian of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the humane officer for the old address from which the animal has moved and the new address to which the animal has been moved.

§19-20C-7. Punishment of the owner non-compliance with regulatory provisions Criminal penalties for owners of dangerous and vicious dogs causing serious injury or death to persons;

(a) Any owner or custodian of a dangerous or vicious dog, who violates the requirements of this act is guilty of misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than three hundred dollars.

(b) Any owner or custodian of a dangerous dog or vicious that causes serious injury to a human being without provocation is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred dollars or imprisoned in the regional jail for not more than ninety days, or both fined and imprisoned.

(c) Any owner or custodian of a dangerous or vicious dog that causes death to a human being without provocation is guilty of involuntary manslaughter, a misdemeanor, and upon conviction thereof, shall be fined not less than one thousand dollars or confined in a regional jail not to exceed one year, or both fine and imprisoned.

§19-20C-8. Notice to political subdivisions.

Nothing in this article shall prohibit a political subdivision of this state from adopting a rule or ordinance governing dangerous dogs.

NOTE: The purpose of this bill is to regulate dangerous and vicious dogs within the state of West Virginia and to provide regulatory requirements for owners or custodians of dangerous and criminal penalties for failing to comply with the provisions. The bill also creates misdemeanor penalties for owners or custodians of dangerous or vicious dogs that cause injury or death of a person or persons and domestic animals.

This article is new; therefore, strike-throughs have been omitted.