

Senate Bill No. 274

(By Senators Unger, Hunter and Kessler)

[Introduced January 21, 2008; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating to prescribing minimum requirements relative to tethering or chaining any animal; including the length and weight of chains or tethering devices, as well as other requirements, all of which are intended to protect animals from cruel treatment; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That §61-8-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

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

(a) ~~If any~~ (1) A person who cruelly mistreats, abandons or withholds proper sustenance, including food, water, a shelter consisting of three sides and a roof that protects from the elements of weather or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandons any animal to die, or intentionally, knowingly or recklessly leaves an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result, or rides an animal when it is physically unfit, or baits or harasses any animal for the purpose of making it perform for a person's amusement, or cruelly chains or cruelly tethers any animal or uses, trains or possesses any domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal, ~~he or she~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than two thousand dollars or confined in jail not more than six months, or both.

(2) For purposes of subdivision (1) of this subsection an animal is cruelly tethered if:

(A) A person uses a chain, leash, rope, collaring device, tether or any assembly or attachments thereto to tether an animal that weighs more than one eighth of the animal's body weight, or due to weight, inhibits the free movement of the animal within the area tethered;

(B) The animal is tethered in a manner as to cause injury, strangulation or entanglement of the animal on fences, trees, other man made or natural obstacles or other animals;

(C) The tether is not at least ten feet in length, unless that length allows the animal to be on property other than its owner's property;

(D) The tether is not long enough for the animal to move around or be able to urinate or defecate in an area separate from where it must eat, drink or lie down and allows the animal convenient access to food, water, dry ground or shelter; or

(E) The tether is not attached to the animal by means of a well-fitted humane collar using swivel hooks on both ends of the tether.

(b) ~~If any~~ A person who 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~~ A 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 ~~shall forfeit~~ forfeits his or her interest in any animal and all interest in the animal ~~shall vest~~ vests in the humane society or county pound of the county in which the conviction was rendered and the person ~~shall~~ is, in addition to any fine imposed, ~~be~~ 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~~ (a) 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 ~~shall be~~ 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~~ is responsible for the cost of ~~said~~ 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~~ is 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.

NOTE: The purpose of this bill is to prescribe minimum requirements relative to tethering or chaining animals, including the length and weight of chains or tethering devices, as well as other requirements, all of which are intended to protect animals from cruel treatment.

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