

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 477**

4 (By Senators Kessler (Mr. President), Unger, Browning, Yost,
5 Klempa and Beach)

6 _____
7 [Originating in the Committee on Natural Resources;
8 reported February 9, 2012.]
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11
12 A BILL to amend and reenact §20-2-51 and §20-2-52 of the Code of
13 West Virginia, 1931, as amended; and to amend said code by
14 adding thereto a new article, designated §20-9-1, §20-9-2,
15 §20-9-3, §20-9-4, §20-9-5, §20-9-6, §20-9-7 and §20-9-8, all
16 relating to limiting the possession of wild and exotic
17 animals; revising pet and roadside menagerie permits;
18 expressing legislative intent; stating agency jurisdiction;
19 defining certain terms; permitting expansion of the
20 definitions; limiting custody and control of wild and exotic
21 animals; permitting the Division of Natural Resources to issue
22 a permit for a wild and exotic animal legally possessed prior
23 to the effective date; setting forth permit requirements;
24 requiring a notarized permit application and fee; involving
25 the county animal control officer or the sheriff for
26 inspections; requiring an emergency plan; requiring

1 relinquishment of animal prior to euthanization; compliance
2 with the Animal Welfare Act; providing exemptions; providing
3 for confiscation and disposition of animals; requiring
4 interagency cooperation; providing rule-making and emergency
5 rule-making authority; requiring the division to report to the
6 Joint Committee of Government and Finance; and criminal
7 penalties and fines.

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

9 That §20-2-51 and §20-2-52 of the Code of West Virginia, 1931,
10 as amended, be amended and reenacted; and that said code be amended
11 by adding thereto a new article, designated §20-9-1, §20-9-2, §20-
12 9-3, §20-9-4, §20-9-5, §20-9-6, §20-9-7 and §20-9-8, all to read as
13 follows:

14 **CHAPTER 20. NATURAL RESOURCES.**

15 **ARTICLE 2. WILDLIFE RESOURCES.**

16 **§20-2-51. Permit for keeping pets.**

17 The director may issue a permit to a person to keep and
18 maintain in captivity as a pet, a wild animal or wild bird that has
19 been acquired from a commercial dealer or during the legal open
20 season. The fee therefor shall be \$2: Provided, That after the
21 first day of July, two thousand twelve, the division shall not
22 issue these permits and shall promulgate emergency rules pursuant
23 to the provisions of article three, chapter twenty-nine-a of this
24 code to establish a biennial permit application with owner and
25 animal identification information, permit fees and requirements, as
26 well as a system to track all permittees. All persons subject to

1 the emergency rules shall have one hundred eighty days to come into
2 compliance after promulgation of the rules.

3 **§20-2-52. Permits for roadside menageries.**

4 The director may issue a permit for the keeping and
5 maintaining in captivity of wild animals, wild birds, amphibians or
6 reptiles as a roadside menagerie. A permit shall not be issued
7 unless:

8 (1) The animals, birds, amphibians or reptiles have been
9 purchased from a licensed commercial dealer, either within or
10 without the state, or have been taken legally; or

11 (2) The director is satisfied that provisions for housing and
12 care of wildlife to be kept in captivity and for the protection of
13 the public are proper and adequate.

14 A fee of \$25 shall accompany each application for such permit:
15 Provided, That after the first day of July, two thousand twelve,
16 the division shall not issue these permits and shall promulgate
17 emergency rules pursuant to the provisions of article three,
18 chapter twenty-nine-a of this code to establish a biennial permit
19 application with owner and animal identification information,
20 permit fees and requirements, as well as a system to track all
21 permitees. All persons subject to the emergency rules shall have
22 one hundred eighty days to come into compliance after promulgation
23 of the rules.

24 **ARTICLE 9. WILD AND EXOTIC ANIMAL ACT.**

25 **§20-9-1. Legislative Intent.**

26 (a) It is the intent of the State of West Virginia to protect

1 the public against health and safety risks that wild and exotic
2 animals pose to the community, to protect the welfare of the
3 individual animals held in private possession, and to track wild
4 and exotic animal possession. Currently, West Virginia is one of
5 only eight states that lack any restrictions for wild and exotic
6 animals kept by private persons.

7 (b) Wild and exotic animals shall be regulated for the
8 following reasons:

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

12 (2) To ensure the physical safety of humans;

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

16 (4) To prevent the mistreatment of wild and exotic animals.

17 **§20-9-2. Jurisdiction.**

18 (a) The Division of Natural Resources is empowered to regulate
19 and protect the native wildlife of this state, currently issues
20 certain permits for animals, and has natural resources police
21 officers to enforce its regulations and permitting requirements.
22 Therefore, the division will be the lead regulatory agency for
23 entry and intrastate movement, permitting, sale, transfer,
24 exhibition, possession and release of wild and exotic animals.
25 Determination of adverse environmental and disease consequences
26 posed by wild and exotic animals to free-living native wildlife is

1 the responsibility of the Division of Natural Resources. The
2 division reserves the right to immediate examination and testing of
3 wild and exotic animals when there is probable cause that the
4 animals are harboring diseases or parasites suspected of
5 endangering free-living native wildlife, including examination,
6 testing, quarantine, seizure, indemnification and destruction
7 within the legislative authority of the division, which may be
8 carried out independently of other state agencies. The Department
9 of Agriculture and the Bureau for Public Health will be advised of
10 these activities. Actions taken by the division shall be
11 compatible with the Federal Endangered Species Act and other
12 federal laws.

13 (b) The Department of Agriculture is empowered to control,
14 suppress and eradicate diseases endangering domestic and livestock
15 animals and agricultural, horticultural and forestry interests.
16 The department reserves the right to immediate examination and
17 testing of wild and exotic animals when there is probable cause
18 that the animals are harboring diseases or parasites suspected of
19 endangering domestic and livestock animals or agricultural,
20 horticultural and forestry interests, including examination,
21 testing, quarantine, seizure, indemnification and destruction
22 within the legislative authority of the Department of Agriculture,
23 which may be carried out independently of other state agencies.
24 The Division of Natural Resources and the Bureau for Public Health
25 will be advised of these activities. Actions taken by the
26 Department of Agriculture shall be compatible with the Federal

1 Endangered Species Act and other federal laws.

2 (c) The Bureau for Public Health reserves the right to an
3 immediate examination and testing of wild and exotic animals when
4 there is probable cause that the animals are harboring diseases or
5 parasites suspected of endangering public health. Measures deemed
6 necessary to protect the public health include quarantine, seizure,
7 and destruction may be carried out independently of other state
8 agencies within the legislative authority of the Bureau for Public
9 Health. The Division of Natural Resources and the State Department
10 of Agriculture will be advised of these activities. Actions taken
11 by the Bureau for Public Health shall be compatible with the
12 Federal Endangered Species Act and other federal laws.

13 (d) Any action taken by the Division of Natural Resources,
14 Department of Agriculture or the Bureau for Public Health is
15 subject to the provisions of the West Virginia Administrative
16 Procedures Act, chapter twenty-nine- a of this code.

17 **§20-9-3. Definitions.**

18 For the purposes of this article:

19 (1) "Bureau" means the West Virginia Bureau for Public Health;

20 (2) "Department" means the West Virginia Department of
21 Agriculture;

22 (3) "Division" means the West Virginia Division of Natural
23 Resources;

24 (4) "Domestic animal," or the plural, means an animal which,
25 through extremely long association with humans, has been bred to a
26 degree which has resulted in genetic changes affecting the

1 temperament, color, conformation or other attributes of the species
2 to an extent that makes them unique and distinguishable from wild
3 individuals of their species, and includes animals that have been
4 bred as companion animals and pets. A comprehensive list of
5 "domestic animals" shall be set forth by the division, in
6 consultation with the department and the bureau, pursuant to the
7 rulemaking authority of this article;

8 (5) "Person" means any individual, partnership, corporation,
9 organization, trade or professional association, firm, limited
10 liability company, joint venture, association, trust, estate or any
11 other legal entity and any officer, member, shareholder, director,
12 employee, agent or representative thereof.

13 (6) "Possessor" means any person who owns, possesses, breeds,
14 transports, releases or has custody or control of a wild and exotic
15 animal.

16 (7) "Wild and exotic animals," "animals," or the singular mean
17 mammals, birds, reptiles, amphibians and fresh water fish,
18 including hybrids thereof, that are dangerous to humans, other
19 animals and the environment due to their inherent nature.
20 Wildlife, as defined by section two, article one of this chapter,
21 agricultural animals, as defined in section two, article ten-b and
22 section two, article twenty-nine, chapter nineteen of this code,
23 and domestic animals, as defined herein, are excluded. A
24 comprehensive list of "wild and exotic animals" shall be set forth
25 by the division, in consultation with the department and the
26 bureau, pursuant to the rule-making authority of this article.

1 (8) "Wildlife sanctuary" means a nonprofit organization as
2 described in Section 170(b)(1)(A)(vi), Internal Revenue Code 1986,
3 and its subsequent amendments, that operates a facility that is a
4 place of refuge where abused, neglected, unwanted, impounded,
5 abandoned, orphaned or displaced animals are provided care for
6 their lifetime or released back to their natural habitat and is a
7 facility with the following characteristics:

8 (i) No activity that is not inherent to the animal's nature,
9 natural conduct or the animal in its natural habitat is conducted
10 except as needed for routine animal husbandry;

11 (ii) No commercial activity involving any animal occurs
12 including, but not limited to, the sale of or trade in animals,
13 animal parts, animal by-products or animal offspring or the sale of
14 photographic opportunities involving any animal or the use of any
15 animal for any type of entertainment purpose;

16 (iii) No unescorted public visitations or direct contact
17 between the public and any animal;

18 (iv) No breeding of animals occurs at the facility; and

19 (v) The sanctuary has filed their official incorporation
20 papers and contact information with the division and is willing to
21 be inspected by the division.

22 **§20-9-4. Possession of Wild and Exotic Animals Limited.**

23 (a) Unless the activity is specifically exempted, no person may
24 own, possess, breed, harbor, transport, sell, transfer, release or
25 have custody or control of a wild and exotic animal.

26 (b) **Permit.**-- The division may issue a permit for a wild and

1 exotic animal legally possessed prior to the effective date of this
2 article if the possessor completes a notarized permit application
3 for each wild and exotic animal biennially containing:

4 (1) The name, address, telephone number and date of birth of
5 the possessor;

6 (2) A description of each animal the applicant possesses,
7 including the scientific name, sex, age, color, weight and any
8 distinguishing marks or coloration that would aid in the
9 identification of the animal;

10 (3) The exact location where the animal is kept and an
11 accurate description of the secure, safe and humane enclosure where
12 the animal is housed;

13 (4) The names, addresses and telephone number of the person
14 from whom the possessor obtained the animal, if known;

15 (5) The name, address, and phone number of the veterinarian
16 providing veterinary care to the animal and a certificate of good
17 health, including proof that the animal has been sterilized when
18 feasible, from the possessor's veterinarian;

19 (6) Certification that the possessor is eighteen years of age
20 or older and that the possessor has not been convicted of or found
21 responsible for violating a local or state law prohibiting cruelty,
22 neglect, or mistreatment of an animal and has not within the past
23 ten years been convicted of a felony or been convicted for
24 possession, sale or use of illegal narcotics;

25 (7) A fee of \$200. The division shall keep fifty percent of
26 the fee for handling its duties and remit the remaining fifty

1 percent of the fee to the county humane or animal control officer,
2 or the sheriff in the alternative, to offset the cost of assisting
3 in inspecting and controlling these animals. This will also
4 provide the counties with important information about the wild and
5 exotic animals in their vicinities;

6 (8) A plan for the quick and safe recapture of the wild and
7 exotic animal if the animal escapes; and

8 (9) Documentation that the possessor maintains liability
9 insurance coverage in an amount of not less than \$250,000 per
10 animal for up to an aggregate of \$1 million for multiple animals,
11 for damages stemming from destruction of property and death and
12 bodily injury to a person caused by a wild and exotic animal.

13 (c) The county humane and animal control officers, or the
14 sheriffs in the alternative, may be asked by the above agencies to
15 inspect the wild and exotic animal and its enclosure. An inspection
16 may be required by the division prior to issuing a permit. The
17 possessor shall allow the division, department, bureau, county
18 humane and animal control officers, and sheriffs, and their agents,
19 to enter the premises where the animal is kept to ensure compliance
20 with this article and other applicable laws.

21 (d) The division shall provide all possessor information
22 obtained in the application to the department, bureau, county
23 humane and animal control officers, or the sheriffs in the
24 alternative, and shall create a database tracking wild and exotic
25 animals that these agencies can access.

26 (e) The division, department, bureau, county humane and animal

1 control officers, or the sheriffs in the alternative, shall work
2 together to share information regarding wild and exotic animals and
3 to devise emergency response plans for emergent situations
4 involving wild and exotic animals. Emergency contact information
5 shall be provided to possessors in the application.

6 (f) The possessor shall follow the emergency plan and use the
7 emergency contact information immediately if it suspects the wild
8 or exotic animal has a disease, injures a person, escapes or if any
9 emergency arises involving the animal.

10 (g) Any possessor granted a permit shall notify the division
11 of any changes to the stated information in the permit application
12 at any time. Any changes will be disseminated to the other
13 agencies.

14 (h) The possessor shall state in its notarized application
15 that it will contact the division, the department, a wildlife
16 sanctuary or an Association of Zoos and Aquariums accredited
17 facility if the possessor can no longer care for the wild and
18 exotic animal prior to relinquishing the animal to the division, or
19 euthanizing the animal.

20 (i) Possessors that exhibit wild and exotic animals for public
21 viewing shall comply with the Animal Welfare Act, 7 U.S.C. § 2132,
22 as amended.

23 (j) The division may refuse to issue a permit, may revoke a
24 permit or may confiscate an animal at any time if the possessor
25 violates this article.

26 **§20-9-5. Exemptions.**

1 The provisions of this article do not apply to:

2 (1) Institutions accredited by the Association of Zoos and
3 Aquariums (AZA) or any AZA-certified facility;

4 (2) Duly incorporated nonprofit animal protection
5 organizations housing a wild and exotic animal at the written
6 request of the division;

7 (3) Animal control or law-enforcement agencies or officers
8 acting under the authority of this article;

9 (4) Licensed veterinary hospitals or clinics treating wild
10 and exotic animals;

11 (5) A wildlife sanctuary;

12 (6) A licensed or accredited research or medical institution;

13 (7) A research facility as defined in the Animal Welfare Act,
14 7 U.S.C. § 2132(e), as amended;

15 (8) A circus that is an incorporated, class C licensee under
16 Animal Welfare Act, 7 U.S.C. § 2132, as amended;

17 (9) A person displaying wild an exotic animals at a fair or
18 festival approved by the department; and

19 (10) A person temporarily transporting a wild and exotic
20 animal through the state if the transit time is not more than
21 forty-eight hours and the animal is at all times confined
22 sufficiently to prevent the wild and exotic animal from escaping.

23 **§20-9-6. Confiscation and Disposition.**

24 (a) The division, department or bureau may immediately
25 confiscate any wild and exotic animal if the animal is kept in
26 contravention of this article. The possessor is liable for the

1 costs of placement and care for the wild and exotic animal from the
2 time of confiscation until the time of return to the possessor or
3 until the time the animal has been relocated to a wildlife
4 sanctuary or an institution accredited by the Association of Zoos
5 and Aquariums.

6 (b) If a wild and exotic animal is confiscated due to the
7 animal being kept in contravention of this article, the possessor
8 must post a security bond or cash with the division, department or
9 bureau in an amount sufficient to guarantee payment of all
10 reasonable expenses expected to be incurred in caring and providing
11 for the animal including, but not limited to, the estimated cost of
12 feeding, medical care and housing for at least thirty days. The
13 security bond or cash does not prevent the division from disposing
14 of the animal after thirty days unless the person claiming the
15 animal posts an additional security bond or cash with the division,
16 department or bureau to secure payment of all reasonable expenses
17 expected to be incurred in caring and providing for the animal for
18 an additional thirty days and does so prior to the expiration of
19 the first thirty day period. The amount of the security bond or
20 cash shall be determined by the division and based on the current
21 rate to feed, provide medical care and house the animal.

22 (c) If the possessor of a confiscated animal cannot be located
23 or if a confiscated animal remains unclaimed, the division,
24 department or bureau may contact a wildlife sanctuary or an
25 institution accredited by the Association of Zoos and Aquariums;
26 may allow the animal to be adopted by a person who currently

1 possesses a permit; or, may euthanize the animal in compliance with
2 federal and state laws.

3 (d) If the wild and exotic animal cannot be confiscated or
4 recaptured safely by the division, department or bureau, or if
5 proper and safe placement cannot be found, the division, department
6 or bureau may immediately euthanize the animal in compliance with
7 federal and state laws.

8 **§20-9-7. Rule-making authority and agency cooperation.**

9 (a) The division, department and bureau may develop inter-
10 agency agreements or propose rules for legislative approval in
11 accordance with article three, chapter twenty-nine-a of this code
12 to implement the provisions of this article and to take other
13 action as may be necessary for the proper and effective enforcement
14 of these provisions: *Provided, That* on or before the first day of
15 July, two thousand twelve, the division shall promulgate emergency
16 rules pursuant to the provisions of article three, chapter
17 twenty-nine-a of this code to establish the list of domestic
18 animals and wild and exotic animals and other rules as necessary
19 for the prompt implementation of this article. All persons subject
20 to the emergency rules shall have one hundred eighty days to come
21 into compliance after promulgation of the rules.

22 (b) The division, department and bureau shall cooperate to
23 implement the provisions of this article and to take other action
24 as may be necessary for the proper and effective enforcement of
25 these provisions.

26 (c) The division shall report by July 1, 2012, to the Joint

1 Committee on Government and Finance its actions to effectuate and
2 enforce the provisions of this article.

3 **§20-9-8. Criminal penalties.**

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

8 (b) A person who knowingly and intentionally releases multiple
9 wild and exotic animals endangering the public, or knowingly and
10 intentionally releases a wild and exotic animal that injures a
11 person, is guilty of a felony and, upon conviction, may be
12 imprisoned in a state correctional facility for not less than one
13 year nor more than three years, or fined not more than \$5,000, or
14 both.

NOTE: The purpose of this bill is to prohibit the possession of wild and exotic animals. The bill provides for a permit and fee for those in possession on the effective date, for limited exemptions, and for confiscation, placement or euthanizing if the animals become a danger to the public or kept in violation of this article. Rules are to be promulgated. Misdemeanor and felony penalties are also included

Article 9 is new; therefore, strike-throughs and underscoring have been omitted.