

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 477**

6 (By Senators Kessler (Mr. President), Unger, Browning, Yost,
7 Klempa and Beach)

8 _____
9 [Originating in the Committee on the Judiciary;
10 reported February 14, 2012.]

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

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

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

11 That §20-2-51 and §20-2-52 of the Code of West Virginia, 1931,
12 as amended, be amended and reenacted; and that said code be amended
13 by adding thereto a new article, designated §20-9-1, §20-9-2, §20-
14 9-3, §20-9-4, §20-9-5, §20-9-6, §20-9-7 and §20-9-8, all to read as
15 follows:

16 **CHAPTER 20. NATURAL RESOURCES.**

17 **ARTICLE 2. WILDLIFE RESOURCES.**

18 **§20-2-51. Permit for keeping pets.**

19 The director may issue a permit to a person to keep and
20 maintain in captivity as a pet a wild animal or wild bird that has
21 been acquired from a commercial dealer or during the legal open
22 season. The fee therefor shall be \$2: Provided, That after July 1,
23 2012, the division shall not issue these permits and shall
24 promulgate emergency rules pursuant to the provisions of article
25 three, chapter twenty-nine-a of this code to establish a biennial
26 permit application with owner and animal identification

1 information, permit fees and requirements, as well as a system to
2 track all permittees. All persons subject to the emergency rules
3 shall have one hundred eighty days to come into compliance after
4 promulgation of the rules.

5 **§20-2-52. Permits for roadside menageries.**

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

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

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

16 A fee of \$25 shall accompany each application for such permit:
17 Provided, That after July 1, 2012, the division shall not issue
18 these permits and shall promulgate emergency rules pursuant to the
19 provisions of article three, chapter twenty-nine-a of this code to
20 establish a biennial permit application with owner and animal
21 identification information, permit fees and requirements, as well
22 as a system to track all permittees. All persons subject to the
23 emergency rules shall have one hundred eighty days to come into
24 compliance after promulgation of the rules.

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

26 **§20-9-1. Legislative Intent.**

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

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

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

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

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

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

18 **§20-9-2. Jurisdiction.**

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

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

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

1 Department of Agriculture shall be compatible with the federal
2 Endangered Species Act and other federal laws.

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

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

18 **§20-9-3. Definitions.**

19 For the purposes of this article:

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

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

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

25 (4) "Domestic animal", or the plural, means an animal which,
26 through extremely long association with humans, has been bred to a

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

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

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

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

1 bureau, pursuant to the rule-making authority of this article;

2 (8) "Wildlife sanctuary" means a nonprofit organization, and
3 a 501(c)(3) tax-exempt public charity, IRS Section 170
4 (b)(1)(A)(vi), Internal Revenue Code 1986, and its subsequent
5 amendments, that operates a facility that is a place of refuge
6 where abused, neglected, unwanted, impounded, abandoned, orphaned
7 or displaced animals are provided care for their lifetime or
8 released back to their natural habitat and is a facility with the
9 following characteristics:

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

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

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

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

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

24 **§20-9-4. Possession of wild and exotic animals limited.**

25 (a) Unless the activity is specifically exempted, no person may
26 own, possess, breed, harbor, transport, sell, transfer, release or

1 have custody or control of a wild and exotic animal.

2 (b) *Permit.*-- The division may issue a permit for a wild and
3 exotic animal legally possessed prior to the effective date of this
4 article if the possessor completes a notarized permit application
5 for each wild and exotic animal biennially containing:

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

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

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

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

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

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

1 (7) A fee of \$200. The division shall keep fifty percent of
2 the fee for handling its duties and remit the remaining fifty
3 percent of the fee to the county humane or animal control officer,
4 or the sheriff in the alternative, to offset the cost of assisting
5 in inspecting and controlling these animals. This will also
6 provide the counties with important information about the wild and
7 exotic animals in their vicinities;

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

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

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

23 (d) The division shall provide all possessor information
24 obtained in the application to the department, bureau, county
25 humane and animal control officers, or the sheriffs in the
26 alternative, and shall create a database tracking wild and exotic

1 animals that these agencies can access.

2 (e) The division, department, bureau, county humane and animal
3 control officers, or the sheriffs in the alternative, shall work
4 together to share information regarding wild and exotic animals and
5 to devise emergency response plans for emergent situations
6 involving wild and exotic animals. Emergency contact information
7 shall be provided to possessors in the application.

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

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

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

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

25 (j) The division may refuse to issue a permit, may revoke a
26 permit or may confiscate an animal at any time if the possessor

1 violates this article.

2 **§20-9-5. Exemptions.**

3 The provisions of this article do not apply to:

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

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

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

11 (4) Licensed veterinary hospitals or clinics treating wild and
12 exotic animals;

13 (5) A wildlife sanctuary as defined herein;

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

15 (7) A research facility as defined in the Animal Welfare Act,
16 7 U. S. C. §2132(e), as amended;

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

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

21 (10) Licensed dealers, exhibitors and transporters under the
22 Animal Welfare Act, 7 U. S. C. §2132, as amended; and

23 (11) A person temporarily transporting a wild and exotic
24 animal through the state if the transit time is not more than
25 forty-eight hours and the animal is at all times confined
26 sufficiently to prevent the wild and exotic animal from escaping.

1 **§20-9-6. Confiscation and Disposition.**

2 (a) The division, department or bureau may immediately
3 confiscate any wild and exotic animal if the animal is kept in
4 contravention of this article. The possessor is liable for the
5 costs of placement and care for the wild and exotic animal from the
6 time of confiscation until the time of return to the possessor or
7 until the time the animal has been relocated to a wildlife
8 sanctuary or an institution accredited by the Association of Zoos
9 and Aquariums.

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

26 (c) If the possessor of a confiscated animal cannot be located

1 or if a confiscated animal remains unclaimed, the division,
2 department or bureau may contact a wildlife sanctuary or an
3 institution accredited by the Association of Zoos and Aquariums,
4 may allow the animal to be adopted by a person who currently
5 possesses a permit or may euthanize the animal in compliance with
6 federal and state laws.

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

12 **§20-9-7. Rule-making authority and agency cooperation.**

13 (a) The division, department and bureau may develop inter-
14 agency agreements or propose rules for legislative approval in
15 accordance with article three, chapter twenty-nine-a of this code
16 to implement the provisions of this article and to take other
17 action as may be necessary for the proper and effective enforcement
18 of these provisions: *Provided*, That on or before July 1, 2012, the
19 division shall promulgate emergency rules pursuant to the
20 provisions of article three, chapter twenty-nine-a of this code to
21 establish the list of domestic animals and wild and exotic animals
22 and other rules as necessary for the prompt implementation of this
23 article. All persons subject to the emergency rules shall have one
24 hundred eighty days to come into compliance after promulgation of
25 the rules.

26 (b) The division, department and bureau shall cooperate to

1 implement the provisions of this article and to take other action
2 as may be necessary for the proper and effective enforcement of
3 these provisions.

4 (c) The division shall report by July 1, 2012, to the Joint
5 Committee on Government and Finance its actions to effectuate and
6 enforce the provisions of this article.

7 **§20-9-8. Criminal penalties.**

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

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

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