

H. B. 4344

(By Delegates Manypenny, Fragale, Guthrie, Mahan
and Talbott)

[Introduced January 30, 2012; referred to the
Committee on Natural Resources then the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §7-10-6, relating to
the control of potentially dangerous wild animals, as
specified, to protect the public against health and safety
risks and to establish criminal 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 section, designated §7-10-6, to read as
follows:

ARTICLE 10. HUMANE OFFICERS.

§7-10-6. Dangerous wild animals.

(a) The purpose of this section is to protect the public
against the serious health and safety risks that dangerous wild
animals pose to the community.

(b) The following words and phrases when used in this section
have the meanings given to them unless the context clearly

1 indicates otherwise:

2 "Animal control authority" means humane officer as described
3 in article ten of this code.

4 "Potentially dangerous wild animal" means one of the animals
5 identified in subsection (c) of this section.

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

11 "Possessor" means any person who owns, possesses, keeps,
12 harbors, brings into the state or has custody or control of a
13 potentially dangerous wild animal.

14 "Wildlife sanctuary" means a nonprofit organization, that
15 cares for animals defined as potentially dangerous and: (1) No
16 activity that is not inherent to the animal's nature, natural
17 conduct or the animal in its natural habitat is conducted; (2) no
18 commercial activity involving an animal occurs including, but not
19 limited to, the sale of or trade in animals, animal parts, animal
20 by-products or animal offspring or the sale of photographic
21 opportunities involving an animal or the use of an animal for any
22 type of entertainment purpose; (3) no unescorted public visitations
23 or direct contact between the public and an animal; or (4) no
24 breeding of animals occurs in the facility.

1 (c) Potentially dangerous wild animals are the following
2 types of animals, whether bred in the wild or in captivity, and any
3 or all hybrids thereof:

4 (1) Lions, tigers, cougars, jaguars, cheetahs, leopards, snow
5 leopards and clouded leopards;

6 (2) Wolves, excluding wolf-hybrids;

7 (3) All bears;

8 (4) Animals from the family hyaenidae, such as hyenas;

9 (5) Rhinoceroses;

10 (6) All nonhuman primate species;

11 (7) All elephant species;

12 (8) All species of the atractaspidae family of the squamata
13 order from the reptilia class and the dispholidus typus of the
14 colubridae family of the same order and same class;

15 (9) All species of the elapidae family of the squamata order
16 from the reptilia class, such as cobras, mambas, kraits, coral
17 snakes, and Australian tiger snakes;

18 (10) All species of the hydrophiidae family of the squamata
19 order from the reptilia class, such as sea snakes;

20 (11) Water monitors and crocodile monitors from the varanidae
21 family of the squamata order from the reptilia class;

22 (12) All species of the viperidae family of the squamata
23 order from the reptilia class, such as rattlesnakes, cottonmouths,
24 bushmasters, puff adders, and gaboon vipers; and

1 (13) All species of the crocodilia order from the reptilia
2 class, such as crocodiles, alligators, calmans and gavials.

3 (d) The provisions of this section do not apply to:

4 (1) Institutions accredited or certified by the American Zoo
5 and Aquarium Association or a facility with a current signed
6 Memorandum of Participation with an Association of Zoos and
7 Aquariums Species Survival Plan for breeding of species listed as
8 threatened or endangered pursuant to 16 U.S.C. § 1533;

9 (2) Duly incorporated nonprofit animal protection
10 organizations, such as humane societies and shelters, housing an
11 animal at the written request of the animal control authority or
12 acting under the authority of this section;

13 (3) Animal control authority, law-enforcement officers or
14 county sheriffs acting under the authority of this section;

15 (4) Veterinary hospitals or clinics;

16 (5) A holder of a valid wildlife rehabilitation permit issued
17 by the West Virginia Division of Natural Resources;

18 (6) Any wildlife sanctuary as defined subsection (b) of this
19 section;

20 (7) A research facility as defined by the animal welfare act,
21 7 U.S.C.A. 2131, as amended, for the species of animals for which
22 they are registered. This includes, but is not limited to,
23 universities, colleges, and laboratories holding a valid class R
24 license under the animal welfare act;

1 (8) Circuses, defined as incorporated, class C licensees under
2 the animal welfare act, 7 U.S.C.A. 2131, as amended, that are
3 temporarily in this state and that offer performances by live
4 animals, clowns, and acrobats for public entertainment;

5 (9) A person temporarily transporting a legally owned
6 dangerous wild animal through the state if the transit time is not
7 more than twenty-four hours, the dangerous wild animal is not
8 exhibited and the dangerous wild animal is maintained at all times
9 in a species-appropriate cage or other travel container such that
10 there is no opportunity for physical contact with any member of the
11 public; or

12 (10) A person displaying animals at a fair approved by the
13 West Virginia Department of Agriculture.

14 (e) This section does not require a city or county that does
15 not have an animal control authority to create that office.

16 (f) Behaviors prohibited under this section are as follows:

17 (1) A person may not own, possess, keep, harbor, bring into
18 the state or have custody or control of a potentially dangerous
19 wild animal, except as provided in subsection (d) of this section;

20 (2) A person may not breed a potentially dangerous wild animal;

21 (3) A person in legal possession of a potentially dangerous
22 wild animal prior to January 1, 2013, and who is the legal
23 possessor of the animal may keep possession of the animal for the
24 remainder of the animal's life and shall:

1 (A) Maintain veterinary records, acquisition papers for the
2 animal, if available, or other documents or records that establish
3 that the person possessed the animal prior to January 1, 2013; and

4 (B) Present the paperwork to an animal control or law
5 enforcement authority upon request. The person has the burden of
6 proving that he or she possessed the animal prior to January 1,
7 2013.

8 (g) The animal control authority or a law-enforcement officer
9 may immediately confiscate a potentially dangerous wild animal if:

10 (1) The animal control authority or law-enforcement officer
11 has probable cause to believe that the animal was acquired after
12 January 1, 2013;

13 (2) The animal poses a public safety or health risk;

14 (3) The animal is in poor health and condition as a result of
15 the possessor; or

16 (4) The animal is being held in contravention of this section.

17 (h) A potentially dangerous wild animal that is confiscated
18 under subsection (g) of this section may be returned to the
19 possessor only if the animal control authority or law-enforcement
20 officer establishes that the possessor had possession of the animal
21 prior to January 1, 2013, and the return does not pose a public
22 safety or health risk.

23 (i) When the animal control authority or law enforcement acts
24 under subsection (g) of this section, the animal control authority

1 or law-enforcement officer shall serve notice upon the possessor in
2 person or by regular and certified mail, return receipt requested,
3 notifying the possessor of the confiscation, that the possessor is
4 responsible for payment of reasonable costs for caring and
5 providing for the animal during the confiscation and that the
6 possessor must meet the requirements of subsection (h) of this
7 section in order for the animal to be returned to the possessor.

8 (j) If a potentially dangerous wild animal confiscated under
9 this section is not returned to the possessor, the animal control
10 authority or law-enforcement officer may release the animal to a
11 facility such as a wildlife sanctuary or a facility exempted in
12 subsection (d) of this section. If the animal control authority or
13 law-enforcement officer is unable to relocate the animal within a
14 reasonable period of time, the animal may be euthanized but only
15 when all reasonable placement options, including relocation to a
16 wildlife sanctuary, are unavailable.

17 (k) This section applies to animal confiscations on or after
18 January 1, 2013.

19 (l) A city or county may adopt an ordinance governing
20 potentially dangerous wild animals that is more restrictive than
21 this section. However, nothing in this section requires a city or
22 county to adopt an ordinance to be in compliance with this section.

23 (m) A person who violates the provisions of this section is
24 guilty of a misdemeanor and, upon conviction thereof, shall be

1 fined not less than \$200 nor more than \$2,000 for each animal with
2 respect to which there is a violation and for each day the
3 violation continues.

4 (n) The animal control authority and its staff and agents,
5 local law-enforcement agents and county sheriffs are authorized and
6 empowered to enforce the provisions of this section.

NOTE: The purpose of this bill is to provide for the control of specific potentially dangerous wild animals to protect the public against health and safety risks and to establish criminal penalties.

§7-10-6 is new; therefore, it has been completely underscored.