

COMMITTEE SUBSTITUTE

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Senate Bill No. 477

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

[Originating in the Committee on the Judiciary;
reported February 14, 2012.]

A BILL to amend and reenact §20-2-51 and §20-2-52 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §20-9-1, §20-9-2, §20-9-3, §20-9-4, §20-9-5, §20-9-6, §20-9-7 and §20-9-8, all relating to limiting the possession of wild and exotic animals; revising pet and roadside menagerie permits; expressing legislative intent; stating agency jurisdiction; defining certain terms; permitting expansion of the definitions; limiting custody

and control of wild and exotic animals; permitting the Division of Natural Resources to issue a permit for a wild and exotic animal legally possessed prior to the effective date; setting forth permit requirements; requiring a notarized permit application and fee; involving the county animal control officer or the sheriff for inspections; requiring an emergency plan; requiring relinquishment of animal prior to euthanization; compliance with the Animal Welfare Act; providing exemptions; providing for confiscation and disposition of animals; requiring interagency cooperation; providing rule-making and emergency rule-making authority; requiring the division to report to the Joint Committee of Government and Finance; and providing criminal penalties and fines.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-51. Permit for keeping pets.

1 The director may issue a permit to a person to keep and
2 maintain in captivity as a pet a wild animal or wild bird that
3 has been acquired from a commercial dealer or during the
4 legal open season. The fee therefor shall be \$2: Provided,
5 That after July 1, 2012, the division shall not issue these
6 permits and shall promulgate emergency rules pursuant to
7 the provisions of article three, chapter twenty-nine-a of this
8 code to establish a biennial permit application with owner
9 and animal identification information, permit fees and
10 requirements, as well as a system to track all permittees. All
11 persons subject to the emergency rules shall have one
12 hundred eighty days to come into compliance after promul-
13 gation of the rules.

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

1 The director may issue a permit for the keeping and
2 maintaining in captivity of wild animals, wild birds, amphib-
3 ians or reptiles as a roadside menagerie. A permit shall not
4 be issued unless:

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

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

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

ARTICLE 9. WILD AND EXOTIC ANIMAL ACT.

§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
3 exotic animals pose to the community, to protect the welfare
4 of the individual animals held in private possession and to
5 track wild and exotic animal possession. Currently, West
6 Virginia is one of only eight states that lack any restrictions
7 for wild and exotic animals 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,
12 native 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 injuri-
15 ous to or competitive with agricultural, horticultural,
16 forestry, native wildlife and other natural resources; and

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

§20-9-2. Jurisdiction.

1 (a) The Division of Natural Resources is empowered to
2 regulate and protect the native wildlife of this state, cur-
3 rently issues certain permits for animals and has natural
4 resources police officers to enforce its regulations and
5 permitting requirements. Therefore, the division will be the
6 lead regulatory agency for entry and intrastate movement,
7 permitting, sale, transfer, exhibition, possession and release
8 of wild and exotic animals. Determination of adverse
9 environmental and disease consequences posed by wild and
10 exotic animals to free-living native wildlife is the responsi-

11 bility of the Division of Natural Resources. The division
12 reserves the right to immediate examination and testing of
13 wild and exotic animals when there is probable cause that
14 the animals are harboring diseases or parasites suspected of
15 endangering free-living native wildlife, including examina-
16 tion, testing, quarantine, seizure, indemnification and
17 destruction within the legislative authority of the division,
18 which may be carried out independently of other state
19 agencies. The Department of Agriculture and the Bureau for
20 Public Health will be advised of these activities. Actions
21 taken by the division shall be compatible with the federal
22 Endangered Species Act and other federal laws.

23 (b) The Department of Agriculture is empowered to
24 control, suppress and eradicate diseases endangering
25 domestic and livestock animals and agricultural, horticult-
26 tural and forestry interests. The department reserves the
27 right to immediate examination and testing of wild and
28 exotic animals when there is probable cause that the animals
29 are harboring diseases or parasites suspected of endangering
30 domestic and livestock animals or agricultural, horticultural
31 and forestry interests, including examination, testing,
32 quarantine, seizure, indemnification and destruction within

33 the legislative authority of the Department of Agriculture,
34 which may be carried out independently of other state
35 agencies. The Division of Natural Resources and the Bureau
36 for Public Health will be advised of these activities. Actions
37 taken by the Department of Agriculture shall be compatible
38 with the federal Endangered Species Act and other federal
39 laws.

40 (c) The Bureau for Public Health reserves the right to an
41 immediate examination and testing of wild and exotic
42 animals when there is probable cause that the animals are
43 harboring diseases or parasites suspected of endangering
44 public health. Measures deemed necessary to protect the
45 public health include quarantine, seizure, and destruction
46 may be carried out independently of other state agencies
47 within the legislative authority of the Bureau for Public
48 Health. The Division of Natural Resources and the State
49 Department of Agriculture will be advised of these activities.
50 Actions taken by the Bureau for Public Health shall be
51 compatible with the federal Endangered Species Act and
52 other federal laws.

53 (d) Any action taken by the Division of Natural Re-
54 sources, Department of Agriculture or the Bureau for Public

55 Health is subject to the provisions of the West Virginia
56 Administrative Procedures Act, chapter twenty-nine-a of
57 this code.

§20-9-3. Definitions.

1 For the purposes of this article:

2 (1) “Bureau” means the West Virginia Bureau for Public
3 Health;

4 (2) “Department” means the West Virginia Department
5 of Agriculture;

6 (3) “Division” means the West Virginia Division of
7 Natural Resources;

8 (4) “Domestic animal”, or the plural, means an animal
9 which, through extremely long association with humans, has
10 been bred to a degree which has resulted in genetic changes
11 affecting the temperament, color, conformation or other
12 attributes of the species to an extent that makes them unique
13 and distinguishable from wild individuals of their species,
14 and includes animals that have been bred as companion
15 animals and pets. A comprehensive list of “domestic ani-
16 mals” shall be set forth by the division, in consultation with
17 the department and the bureau, pursuant to the rulemaking
18 authority of this article;

19 (5) "Person" means any individual, partnership, corpora-
20 tion, organization, trade or professional association, firm,
21 limited liability company, joint venture, association, trust,
22 estate or any other legal entity and any officer, member,
23 shareholder, director, employee, agent or representative
24 thereof;

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

28 (7) "Wild and exotic animals", "animals", or the singular
29 mean mammals, birds, reptiles, amphibians and fresh-water
30 fish, including hybrids thereof, that are dangerous to
31 humans, other animals and the environment due to their
32 inherent nature. "Wildlife", as defined by section two, article
33 one of this chapter, "agricultural animals", as defined in
34 section two, article ten-b and section two, article twenty-
35 nine, chapter nineteen of this code, and "domestic animals",
36 as defined herein, are excluded. A comprehensive list of
37 "wild and exotic animals" shall be set forth by the division,
38 in consultation with the department and the bureau, pursu-
39 ant to the rule-making authority of this article;

40 (8) “Wildlife sanctuary” means a nonprofit organization,
41 and a 501(c)(3) tax-exempt public charity, IRS Section 170
42 (b)(1)(A)(vi), Internal Revenue Code 1986, and its subsequent
43 amendments, that operates a facility that is a place of refuge
44 where abused, neglected, unwanted, impounded, abandoned,
45 orphaned or displaced animals are provided care for their
46 lifetime or released back to their natural habitat and is a
47 facility with the following characteristics:

48 (i) No activity that is not inherent to the animal’s nature,
49 natural conduct or the animal in its natural habitat is
50 conducted except as needed for routine animal husbandry;

51 (ii) No commercial activity involving any animal occurs
52 including, but not limited to, the sale of or trade in animals,
53 animal parts, animal byproducts or animal offspring or the
54 sale of photographic opportunities involving any animal or
55 the use of any animal for any type of entertainment purpose;

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

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

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

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

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

5 (b) *Permit.* — The division may issue a permit for a wild
6 and exotic animal legally possessed prior to the effective
7 date of this article if the possessor completes a notarized
8 permit application for each wild and exotic animal bienni-
9 ally containing:

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

12 (2) A description of each animal the applicant possesses,
13 including the scientific name, sex, age, color, weight and any
14 distinguishing marks or coloration that would aid in the
15 identification of the animal;

16 (3) The exact location where the animal is kept and an
17 accurate description of the secure, safe and humane enclo-
18 sure where the animal is housed;

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

22 (5) The name, address and phone number of the veteri-
23 narian providing veterinary care to the animal and a certifi-
24 cate of good health, including proof that the animal has been
25 sterilized when feasible, from the possessor's veterinarian;

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

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

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

42 (9) Documentation that the possessor maintains liability
43 insurance coverage in an amount of not less than \$250,000

44 per animal for up to an aggregate of \$1 million for multiple
45 animals, for damages stemming from destruction of property
46 and death and bodily injury to a person caused by a wild and
47 exotic animal.

48 (c) The county humane and animal control officers, or the
49 sheriffs in the alternative, may be asked by the above
50 agencies to inspect the wild and exotic animal and its
51 enclosure. An inspection may be required by the division
52 prior to issuing a permit. The possessor shall allow the
53 division, department, bureau, county humane and animal
54 control officers, and sheriffs, and their agents, to enter the
55 premises where the animal is kept to ensure compliance with
56 this article and other applicable laws.

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

62 (e) The division, department, bureau, county humane and
63 animal control officers, or the sheriffs in the alternative,
64 shall work together to share information regarding wild and

65 exotic animals and to devise emergency response plans for
66 emergent situations involving wild and exotic animals.
67 Emergency contact information shall be provided to possess-
68 ors in the application.

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

73 (g) Any possessor granted a permit shall notify the
74 division of any changes to the stated information in the
75 permit application at any time. Any changes will be dissemi-
76 nated to the other agencies.

77 (h) The possessor shall state in its notarized application
78 that it will contact the division, the department, a wildlife
79 sanctuary or an Association of Zoos and Aquariums accred-
80 ited facility if the possessor can no longer care for the wild
81 and exotic animal prior to relinquishing the animal to the
82 division or euthanizing the animal.

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

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

§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
6 written request of the division;

7 (3) Animal control or law-enforcement agencies or
8 officers 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 as defined herein;

12 (6) A licensed or accredited research or medical institu-
13 tion;

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

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

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

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

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

§20-9-6. Confiscation and Disposition.

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

9 (b) If a wild and exotic animal is confiscated due to the
10 animal being kept in contravention of this article, the
11 possessor must post a security bond or cash with the division,
12 department or bureau in an amount sufficient to guarantee

13 payment of all reasonable expenses expected to be incurred
14 in caring and providing for the animal including, but not
15 limited to, the estimated cost of feeding, medical care and
16 housing for at least thirty days. The security bond or cash
17 does not prevent the division from disposing of the animal
18 after thirty days unless the person claiming the animal posts
19 an additional security bond or cash with the division,
20 department or bureau to secure payment of all reasonable
21 expenses expected to be incurred in caring and providing for
22 the animal for an additional thirty days and does so prior to
23 the expiration of the first thirty-day period. The amount of
24 the security bond or cash shall be determined by the division
25 and based on the current rate to feed, provide medical care
26 and house the animal.

27 (c) If the possessor of a confiscated animal cannot be
28 located or if a confiscated animal remains unclaimed, the
29 division, department or bureau may contact a wildlife
30 sanctuary or an institution accredited by the Association of
31 Zoos and Aquariums, may allow the animal to be adopted by
32 a person who currently possesses a permit or may euthanize
33 the animal in compliance with federal and state laws.

34 (d) If the wild and exotic animal cannot be confiscated or
35 recaptured safely by the division, department or bureau, or
36 if proper and safe placement cannot be found, the division,
37 department or bureau may immediately euthanize the animal
38 in compliance with federal and state laws.

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

1 (a) The division, department and bureau may develop
2 inter-agency agreements or propose rules for legislative
3 approval in accordance with article three, chapter twenty-
4 nine-a of this code to implement the provisions of this article
5 and to take other action as may be necessary for the proper
6 and effective enforcement of these provisions: *Provided*, That
7 on or before July 1, 2012, the division shall promulgate
8 emergency rules pursuant to the provisions of article three,
9 chapter twenty-nine-a of this code to establish the list of
10 domestic animals and wild and exotic animals and other
11 rules as necessary for the prompt implementation of this
12 article. All persons subject to the emergency rules shall have
13 one hundred eighty days to come into compliance after
14 promulgation of the rules.

15 (b) The division, department and bureau shall cooperate
16 to implement the provisions of this article and to take other

17 action as may be necessary for the proper and effective
18 enforcement of these provisions.

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

§20-9-8. Criminal penalties.

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

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

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