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Senate Bill No. 477

(SENATORS KESSLER (MR. PRESIDENT), UNGER,
BROWNING, YOST, KLEMPA AND BEACH, *original sponsors*)

[Passed March 10, 2012; to take effect July 1, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as 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 relating to regulating the possession of exotic animals; expressing legislative intent; providing definitions; directing the Division of Natural Resources to promulgate legislative rules establishing permitting requirements and criteria; authorizing the division to define scope of applicability of act to assure human and environmental protection and safety; authorizing the division to establish permit criteria and liability insurance requirements by rule; authorizing division to set permit fees by rule; providing for distribution of fees; establishing special revenue account for fees; providing general regulatory and rule-making authority for the division, the Department of Agriculture and Bureau of Public Health; establishing author-

ity and procedural process for inspection, confiscation, placement and destruction of exotic animals; including county animal control officers or sheriffs in enforcement process and providing them portion of fee; establishing criminal penalties; and authorizing the division to establish administrative penalties by rule.

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 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:

ARTICLE 9. EXOTIC ANIMAL ACT.

§20-9-1. Legislative Intent.

1 The Legislature hereby finds and declares that it is the
2 public policy of this state to protect the public against the
3 risks associated with the introduction and possession of
4 exotic animals into the state due to the potential impacts of
5 introduction of species to the state's ecosystem, including
6 harming native animal and plant life both in natural and
7 agricultural settings through direct and indirect biological
8 impacts associated with introduction of non-native species,
9 and that address potential for human health and safety
10 concerns possession of these animals can cause. Therefore, it
11 is necessary to establish regulatory requirements for impor-
12 tation, ownership and possession of exotic animals.

§20-9-2. 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 (5) "Person" means any individual, partnership, corpora-
9 tion, organization, trade or professional association, firm,
10 limited liability company, joint venture, association, trust,
11 estate or any other legal entity and any officer, member,
12 shareholder, director, employee, agent or representative
13 thereof; and

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

§20-9-3. Regulatory authority.

1 (a) The division shall regulate and protect the native
2 wildlife of this state as authorized by this chapter. The
3 division shall regulate the entry and intrastate movement,
4 permitting, sale, transfer, exhibition and possession of exotic
5 animals. The division is authorized to assess and implement
6 restrictions to prevent adverse environmental and disease
7 consequences posed by exotic animals to free-living native
8 wildlife. The division may require immediate examination
9 and testing of exotic animals when there is probable cause
10 that the animals are harboring diseases or parasites sus-
11 pected of endangering free-living native wildlife, including
12 examination, testing, quarantine, seizure, indemnification
13 and destruction. Examination, testing and destruction may
14 be carried out independently of other state agencies.

15 (b) The department shall control, suppress and eradicate
16 diseases endangering domestic and livestock animals and
17 agricultural, horticultural and forestry interests. The
18 department may require immediate examination, testing and
19 destruction of exotic animals when there is probable cause

20 that the animals are harboring diseases or parasites sus-
21 pected of endangering domestic and livestock animals or
22 agricultural, horticultural and forestry interests, including
23 examination, testing, quarantine, seizure, indemnification
24 and destruction within the legislative authority of the
25 department. Examination and testing may be carried out
26 independently of other state agencies.

27 (c) The bureau may require immediate examination,
28 testing and destruction of exotic animals when there is
29 probable cause that the animals are harboring diseases or
30 parasites suspected of endangering public health. The bureau
31 may take any necessary action to protect the public health,
32 including quarantine, seizure, and destruction. Examination
33 and testing may be carried out independently of other state
34 agencies.

35 (d) The division, department and bureau shall coordinate
36 and advise regulatory activities established pursuant to this
37 section, and solicit comments from the other regulatory
38 agencies relating to any rules or polices established to
39 facilitate a unified and coordinated regulatory approach.
40 Actions taken by the division, department and bureau may
41 not violate any federal law and regulation.

§20-9-4. Division rulemaking.

1 The division shall promulgate legislative rules establish-
2 ing the following requirements:

3 (1) Permit requirements and criteria for persons to own,
4 possess, breed, harbor, transport, sell, transfer, release or
5 have custody or control of an exotic animal;

6 (2) Requirements for liability insurance coverage for
7 damages stemming from destruction of property and death
8 and bodily injury to a person caused by an exotic animal;

9 (3) A permitting fee for each exotic animal. The division
10 shall retain fifty percent of the fee to administer its duties
11 and remit the remaining fifty percent of the fee to the county
12 humane or animal control officer in the county where the

13 permit is issued, or the sheriff in the alternative, to offset the
14 cost of assisting in inspecting and controlling these animals.
15 The amount of the fee shall be established by legislative rule
16 by the division. There is hereby created in the state treasury
17 a special revenue fund to be known as the “exotic animal
18 fees fund” which shall consist of all fees, civil penalties,
19 assessed costs, collected by the Director under this section,
20 and all interest or other return earned from investment of the
21 fund. Expenditures from the fund shall be made by the
22 Director for the purposes set forth in this article. Any
23 balance, including accrued interest and other returns, in the
24 fund at the end of each fiscal year shall not revert to the
25 general revenue fund but shall remain in the fund and be
26 expended as provided by this section.

27 (4) Standards for unique animal identification proce-
28 dures and methods for exotic animals;

29 (5) Exemptions to the regulation and permitting require-
30 ments for persons and entities that are not required to be
31 permitted; and

32 (6) All other requirements necessary for the safe and
33 effective regulation of exotic animals.

§20-9-5. State regulatory authority.

1 (a) The division, department or bureau may direct the
2 county humane and animal control officer, or sheriff in the
3 alternative, to inspect a permitted exotic animal and its
4 enclosure. An inspection may be required by the division
5 prior to issuing a permit. The possessor shall allow represen-
6 tatives of the division, department, bureau, county humane
7 and animal control officers, and sheriff to enter the premises
8 where the animal is kept to ensure compliance with this
9 article and other applicable laws.

10 (e) The division shall provide all possessor information
11 obtained in the application to the department, bureau,
12 county humane and animal control officers, or the sheriffs in
13 the alternative, and shall create a database tracking exotic
14 animals that these agencies can access.

15 (f) The division, department, bureau, county humane and
16 animal control officers, or the sheriffs in the alternative,
17 shall share information regarding exotic animals and to
18 devise emergency response plans for emergent situations
19 involving exotic animals. Emergency contact information
20 shall be provided to possessors in the application.

§20-9-6. Confiscation and Disposition.

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

9 (b) If an exotic animal is confiscated due to the animal
10 being kept in contravention of this article, the possessor
11 must post a security bond or cash with the division, depart-
12 ment or bureau in an amount sufficient to guarantee pay-
13 ment of all reasonable expenses expected to be incurred in
14 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 exotic animal
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 exotic animal cannot be confiscated or recap-
35 tured safely by the division, department or bureau, or if
36 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. Further 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.

7 (b) The division, department and bureau shall cooperate
8 to implement the provisions of this article and to take other
9 action as may be necessary for the proper and effective
10 enforcement of these provisions.

11 (c) The division shall report by January 1, 2013, to the
12 Joint Committee on Government and Finance on its actions
13 to effectuate and enforce the provisions of this article.

§20-9-8. Criminal penalties.

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

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

12 (b) The division shall by legislative rule establish
13 administrative penalties for violation of the provisions of this
14 article and the rules promulgated thereunder.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2012.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor