

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2515**

4 (By Delegates R. Phillips, J. Nelson, Eldridge, H. White, Marcum, Reynolds, L. Phillips, R.  
5 Smith, Sobonya, Hill and Arvon)

7 (Originating in the House Committee on Finance.)

8 [February 27, 2015]

9  
10 A BILL to amend and reenact §20-2-4 and §20-2-5a of the Code of West Virginia, 1931, as  
11 amended; and to amend said code by adding thereto a new section, designated §20-2-5h, all  
12 relating to wildlife generally; requiring persons required to deliver wildlife to an official  
13 checking station to electronically register that wildlife in lieu of its delivery to an official  
14 checking station; establishing a fine for the illegal taking of elk; requiring the Division of  
15 Natural Resources to take an active role in the reintroduction of the elk species; authorizing  
16 the director to propose legislative rules; and providing for criminal penalties.

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

18 That §20-2-4 and §20-2-5a of the Code of West Virginia, 1931, as amended, be amended and  
19 reenacted; and that said code be amended by adding thereto a new section, designated §20-2-5h, all  
20 to read as follows:

21 **ARTICLE 2. WILDLIFE RESOURCES.**

22 **§20-2-4. Possession of wildlife.**

1        Except for wildlife, lawfully taken, killed or obtained, no person may have in his or her  
2        possession any wildlife, or parts thereof, during closed seasons. It is unlawful to possess any  
3        wildlife, or parts thereof, which have been illegally taken, killed or obtained. Any wildlife illegally  
4        taken, killed or possessed shall be forfeited to the state and shall be counted toward the daily,  
5        seasonal, bag, creel and possession limit of the person in possession of, or responsible for, the illegal  
6        taking or killing of any wildlife.

7              Wildlife lawfully taken outside of this state is subject to the same laws and rules as that taken  
8        within this state.

9              Migratory wild birds may be possessed only in accordance with the "Migratory Bird Treaty  
10      Act" and regulations thereunder.

11             The restrictions in this section do not apply to the director or duly authorized agents, who  
12        may, in any manner, take or maintain in captivity, at any time, any wildlife for the purpose of  
13        carrying out the provisions of this chapter.

14             Wildlife, except protected birds, elk, spotted fawn, and bear cubs, killed or mortally wounded  
15        as a result of being accidentally or inadvertently struck by a motor vehicle may be lawfully possessed  
16        if the possessor of the wildlife provides notice of the claim within twelve hours to a relevant  
17        law-enforcement agency, and obtains a nonhunting game tag within twenty-four hours of possession.  
18             The director shall propose administrative policy which addresses the means, methods and  
19        administrative procedures for implementing the provisions of this section.

20             Persons required to deliver wildlife to an official checking station ~~may~~, shall, in accordance  
21        with rules promulgated by the director, electronically register the wildlife in lieu of the delivery to

1 an official checking station. "Electronically register" means submission of all necessary and relevant  
2 information to the division, in the manner designated by rule, in lieu of delivery of the wildlife to  
3 an official checking station. The director may promulgate rules, pursuant to article three, chapter  
4 twenty-nine-a of this code, governing the electronic registration of wildlife.

5 **§20-2-5a. Forfeiture by person causing injury or death of game or protected species of**  
6 **animal; additional replacement costs for antlered deer; forfeiture procedures**  
7 **and costs.**

8 (a) Any person who is convicted of violating a criminal law of this state that results in the  
9 injury or death of game, as defined in section two, article one of this chapter, or a protected species  
10 of animal, in addition to any other penalty to which he or she is subject, shall forfeit the cost of  
11 replacing the game or protected species of animal to the state as follows:

12 (1) For each game fish or each fish of a protected species taken illegally other than by  
13 pollution kill, \$10 for each pound and any fraction thereof;

14 (2) For each bear, ~~or elk~~, \$500;

15 (3) For each deer or raven, \$200;

16 (4) For each wild turkey, hawk or owl, \$100;

17 (5) For each beaver, otter or mink, \$25;

18 (6) For each muskrat, raccoon, skunk or fox, \$15;

19 (7) For each rabbit, squirrel, opossum, duck, quail, woodcock, grouse or pheasant, \$10;

20 (8) For each wild boar, \$200;

21 (9) For each bald eagle, \$5,000;

1                         (10) For each golden eagle, \$5,000; and

2                         (11) For each elk, \$4,500; and

3                         (11) (12) For any other game or protected species of animal, \$100.

4                         (b) In addition to the replacement value for deer in subsection (a) subdivision (3), subsection

5                         (a) of this section, the following cost shall also be forfeited to the state by any person who is  
6                         convicted of violating any criminal law of this state and the violation causes the injury or death of  
7                         antlered deer:

8                         (1) For any deer in which the inside spread of the main beams of the antlers measured at the  
9                         widest point equals 14 inches or greater but less than 16 inches, \$1,000;

10                         (2) For any deer in which the inside spread of the main beams of the antlers measured at the  
11                         widest point equals 16 inches or greater but less than 18 inches, \$1,500;

12                         (3) For any deer in which the inside spread of the main beams of the antlers measured at the  
13                         widest point equals 18 inches or greater but less than 20 inches, \$2,000; and

14                         (4) For any deer in which the inside spread of the main beams of the antlers measured at the  
15                         widest point equals 20 inches or greater, \$2,500.

16                         (5) Any person convicted of a second or subsequent violation of any criminal law of this state  
17                         which violation causes the injury or death of antlered deer is subject to double the authorized range  
18                         of cost to be forfeited.

19                         (c) Upon conviction, the court shall order the person to forfeit to the state the amount set  
20                         forth in this section for the injury or death of the game or protected species of animal. If two or more  
21                         defendants are convicted for the same violation causing the injury or death of game or protected

1 species of animal, the forfeiture shall be paid by each person in an equal amount. The forfeiture shall  
2 be paid by the person so convicted within the time prescribed by the court not to exceed sixty days.  
3 In each instance, the court shall pay the forfeiture to the Division of Natural Resources to be  
4 deposited into the License Fund-Wildlife Resources (3200) and used only for the replacement,  
5 habitat management or enforcement programs for injured or killed game or protected species of  
6 animal.

7 **§20-2-5h. . Elk restoration; depredation permits; rule-making; providing criminal penalties.**

8       (a) The Legislature hereby finds and declares that:

9           (1) Pursuant to section one, article one of this chapter, the division is charged with  
10 developing comprehensive programs for the exploration, conservation, development, protection,  
11 enjoyment and use of the natural resources of the State of West Virginia.

12           (2) Hunting is a valued natural heritage of the citizens of the state.

13           (3) Eastern Elk were once common native elk species in the State prior to and following its  
14 formation, but historical records indicate native elk were extirpated from the State of West Virginia  
15 around 1875.

16           (4) Until recently, free roaming elk have not been present in the state.

17           (5) Section two, article one of this chapter defines elk as a game animal. However there is  
18 currently no open hunting season for this species due to population levels that would not sustain  
19 hunting.

20           (6) The citizens have expressed a desire for, and would benefit from, active elk restoration  
21 in the state.

1                   (b) The division, as the agency charged with preserving the hunting heritage in the state,  
2 shall take an active role in the reintroduction of the elk species in the elk management area and shall  
3 establish an effective, science-based elk management plan which shall include strategies to address  
4 the migration of and prevent the establishment of elk north of U.S. Route 60. The director shall  
5 propose rules for legislative approval in accordance with the provisions of article three, chapter  
6 twenty-nine-a of this code to designate the elk management area. The area must be composed of all  
7 of Logan County, Mingo County, McDowell County and Wyoming County; and part of Boone  
8 County, Lincoln County and Wayne County. Neither the director nor any officer, employer or agent  
9 of the division may expand the elk management area without statutory authorization.

10                  (c) The director shall propose rules for legislative approval in accordance with the provisions  
11 of article three, chapter twenty-nine-a of this code establishing the conditions under which  
12 depredation permits may be issued to persons suffering damage from elk to allow the taking of elk  
13 and to develop protocols for the management of elk outside the elk management area.

14                  (d) The director shall propose rules for legislative approval in accordance with the provisions  
15 of article three, chapter twenty-nine-a of this code establishing the conditions and permits, including  
16 permit fees, that would allow the management and future hunting of elk, which, upon reintroduction,  
17 shall be wild animals for all purposes of this chapter.

18                  (e) There is hereby created a special account in the State Treasury to be known as the "Elk  
19 Damage Fund." Ten percent of all permit fees for the hunting of elk are to be deposited into the "Elk  
20 Damage Fund." Expenditures from the fund shall be for the payment of damages caused to  
21 agricultural crops, agricultural fences and personal food gardens by elk and are not authorized from

1       collections but are to be made only in accordance with appropriation by the Legislature and in  
2       accordance with the provisions of article three, chapter twelve of this code. The director shall  
3       propose rules for legislative approval in accordance with the provisions of article three, chapter  
4       twenty-nine-a of this code to establish a procedure for the reimbursement from the fund to those with  
5       damage to agricultural crops, agricultural fences and personal food gardens caused by elk.

6           (f) It shall be unlawful for any person to hunt, capture or kill any elk, or have in his or her  
7       possession any elk or elk parts, except for elk lawfully taken, killed or obtained, during an  
8       established open hunting season for elk.

9           (g) Criminal penalties.

10          (1) Any person who commits a violation of the provisions of this section is guilty of a  
11       misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000,  
12       or confined in jail not less than thirty nor more than one hundred days, or both fined and confined.

13          (2) Any person who commits a second violation of the provisions of this section is guilty of  
14       a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,000 nor more than  
15       \$7,500, or confined in jail not less than thirty days nor more than one year, or both fined and  
16       confined.

17          (3) Any person who commits a third or subsequent violation of the provisions of this section  
18       is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than  
19       \$10,000, or imprisoned in a state correctional facility not less than one year nor more than five years,  
20       or both fined and imprisoned.