

COMMITTEE SUBSTITUTE

for

H. B. 2515

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(Originating in the House Committee on Finance.)
[February 27, 2015]

A BILL to amend and reenact §20-2-4 and §20-2-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-5h, all relating to wildlife generally; requiring persons required to deliver wildlife to an official checking station to electronically register that wildlife in lieu of its delivery to an official checking station; establishing a fine for the illegal taking of elk; requiring the Division of Natural

Resources to take an active role in the reintroduction of the elk species; authorizing the director to propose legislative rules; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

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

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

12 Migratory wild birds may be possessed only in accordance
13 with the “Migratory Bird Treaty Act” and regulations
14 thereunder.

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

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

28 Persons required to deliver wildlife to an official checking
29 station ~~may~~, shall, in accordance with rules promulgated by the
30 director, electronically register the wildlife in lieu of the delivery
31 to an official checking station. “Electronically register” means

32 submission of all necessary and relevant information to the
33 division, in the manner designated by rule, in lieu of delivery of
34 the wildlife to an official checking station. The director may
35 promulgate rules, pursuant to article three, chapter twenty-nine-a
36 of this code, governing the electronic registration of wildlife.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(11)~~ (12) For any other game or protected species of animal,
22 \$100.

23 (b) In addition to the replacement value for deer in
24 ~~subsection (a)~~ subdivision (3), subsection (a) of this section, the
25 following cost shall also be forfeited to the state by any person
26 who is convicted of violating any criminal law of this state and
27 the violation causes the injury or death of antlered deer:

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

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

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

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

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

44 (c) Upon conviction, the court shall order the person to
45 forfeit to the state the amount set forth in this section for the
46 injury or death of the game or protected species of animal. If two
47 or more defendants are convicted for the same violation causing
48 the injury or death of game or protected species of animal, the
49 forfeiture shall be paid by each person in an equal amount. The
50 forfeiture shall be paid by the person so convicted within the
51 time prescribed by the court not to exceed sixty days. In each
52 instance, the court shall pay the forfeiture to the Division of
53 Natural Resources to be deposited into the License

54 Fund-Wildlife Resources (~~3200~~) and used only for the
55 replacement, habitat management or enforcement programs for
56 injured or killed game or protected species of animal.

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

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

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

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

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

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

15 (5) Section two, article one of this chapter defines elk as a
16 game animal. However there is currently no open hunting season

17 for this species due to population levels that would not sustain
18 hunting.

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

21 (b) The division, as the agency charged with preserving the
22 hunting heritage in the state, shall take an active role in the
23 reintroduction of the elk species in the elk management area and
24 shall establish an effective, science-based elk management plan
25 which shall include strategies to address the migration of and
26 prevent the establishment of elk north of U.S. Route 60. The
27 director shall propose rules for legislative approval in
28 accordance with the provisions of article three, chapter twenty-
29 nine-a of this code to designate the elk management area. The
30 area must be composed of all of Logan County, Mingo County,
31 McDowell County and Wyoming County; and part of Boone
32 County, Lincoln County and Wayne County. Neither the director
33 nor any officer, employer or agent of the division may expand
34 the elk management area without statutory authorization.

35 (c) The director shall propose rules for legislative approval
36 in accordance with the provisions of article three, chapter

37 twenty-nine-a of this code establishing the conditions under
38 which depredation permits may be issued to persons suffering
39 damage from elk to allow the taking of elk and to develop
40 protocols for the management of elk outside the elk management
41 area.

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

48 (e) There is hereby created a special account in the State
49 Treasury to be known as the “Elk Damage Fund.” Ten percent of
50 all permit fees for the hunting of elk are to be deposited into the
51 “Elk Damage Fund.” Expenditures from the fund shall be for the
52 payment of damages caused to agricultural crops, agricultural
53 fences and personal food gardens by elk and are not authorized
54 from collections but are to be made only in accordance with
55 appropriation by the Legislature and in accordance with the
56 provisions of article three, chapter twelve of this code. The

57 director shall propose rules for legislative approval in
58 accordance with the provisions of article three, chapter twenty-
59 nine-a of this code to establish a procedure for the
60 reimbursement from the fund to those with damage to
61 agricultural crops, agricultural fences and personal food gardens
62 caused by elk.

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

67 (g) Criminal penalties.

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

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

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

