

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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6 **Senate Bill No. 477**

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

9 _____
10 [Passed March 10, 2012; to take effect July 1, 2012.]
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14 AN ACT to amend the Code of West Virginia, 1931, as amended, by
15 adding thereto a new article, designated §20-9-1, §20-9-2,
16 §20-9-3, §20-9-4, §20-9-5, §20-9-6, §20-9-7 and §20-9-8, all
17 relating to regulating the possession of exotic animals;
18 expressing legislative intent; providing definitions;
19 directing the Division of Natural Resources to promulgate
20 legislative rules establishing permitting requirements and
21 criteria; authorizing the division to define scope of
22 applicability of act to assure human and environmental
23 protection and safety; authorizing the division to establish
24 permit criteria and liability insurance requirements by rule;
25 authorizing division to set permit fees by rule; providing for
26 distribution of fees; establishing special revenue account for

1 fees; providing general regulatory and rule-making authority
2 for the division, the Department of Agriculture and Bureau for
3 Public Health; establishing authority and procedural process
4 for inspection, confiscation, placement and destruction of
5 exotic animals; including county animal control officers or
6 sheriffs in enforcement process and providing them portion of
7 fee; establishing criminal penalties; and authorizing the
8 division to establish administrative penalties by rule.

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

10 That the Code of West Virginia, 1931, as amended, be amended by
11 adding thereto a new article, designated §20-9-1, §20-9-2, §20-9-3,
12 §20-9-4, §20-9-5, §20-9-6, §20-9-7 and §20-9-8, all to read as
13 follows:

14 **ARTICLE 9. EXOTIC ANIMAL ACT.**

15 **§20-9-1. Legislative Intent.**

16 The Legislature hereby finds and declares that it is the
17 public policy of this state to protect the public against the risks
18 associated with the introduction and possession of exotic animals
19 into the state due to the potential impacts of introduction of
20 species to the state's ecosystem, including harming native animal
21 and plant life both in natural and agricultural settings through
22 direct and indirect biological impacts associated with introduction
23 of non-native species, and that address potential for human health
24 and safety concerns possession of these animals can cause.
25 Therefore, it is necessary to establish regulatory requirements for
26 importation, ownership and possession of exotic animals.

1 **§20-9-2. Definitions.**

2 For the purposes of this article:

3 (1) "Bureau" means the West Virginia Bureau for Public Health;

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

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

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

13 (6) "Exotic animals", or the singular mean mammals, birds,
14 reptiles, amphibians and fish, including hybrids thereof, that are
15 physically and biologically dangerous to humans, other animals and
16 the environment due to their inherent nature. "Wildlife", as
17 defined by section two, article one of this chapter, "livestock",
18 as defined in section two, article ten-b and section two, article
19 twenty-nine, chapter nineteen of this code, and domestic animals
20 are excluded. A comprehensive list of "exotic animals" shall be
21 set forth by the division, in consultation with the department and
22 the bureau, pursuant to the rule-making authority of this
23 article. **§20-9-3. Regulatory authority.**

24 (a) The division shall regulate and protect the native
25 wildlife of this state as authorized by this chapter. The division
26 shall regulate the entry and intrastate movement, permitting, sale,

1 transfer, exhibition and possession of exotic animals. The
2 division is authorized to assess and implement restrictions to
3 prevent adverse environmental and disease consequences posed by
4 exotic animals to free-living native wildlife. The division may
5 require immediate examination and testing of exotic animals when
6 there is probable cause that the animals are harboring diseases or
7 parasites suspected of endangering free-living native wildlife,
8 including examination, testing, quarantine, seizure,
9 indemnification and destruction. Examination, testing and
10 destruction may be carried out independently of other state
11 agencies.

12 (b) The department shall control, suppress and eradicate
13 diseases endangering domestic and livestock animals and
14 agricultural, horticultural and forestry interests. The department
15 may require immediate examination, testing and destruction of
16 exotic animals when there is probable cause that the animals are
17 harboring diseases or parasites suspected of endangering domestic
18 and livestock animals or agricultural, horticultural and forestry
19 interests, including examination, testing, quarantine, seizure,
20 indemnification and destruction within the legislative authority of
21 the department. Examination and testing may be carried out
22 independently of other state agencies.

23 (c) The bureau may require immediate examination, testing and
24 destruction of exotic animals when there is probable cause that the
25 animals are harboring diseases or parasites suspected of
26 endangering public health. The bureau may take any necessary

1 action to protect the public health, including quarantine, seizure,
2 and destruction. Examination and testing may be carried out
3 independently of other state agencies.

4 (d) The division, department and bureau shall coordinate and
5 advise regulatory activities established pursuant to this section,
6 and solicit comments from the other regulatory agencies relating to
7 any rules or polices established to facilitate a unified and
8 coordinated regulatory approach. Actions taken by the division,
9 department and bureau may not violate any federal law and
10 regulation.

11 **§20-9-4. Division rulemaking.**

12 The division shall promulgate legislative rules establishing
13 the following requirements:

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

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

20 (3) A permitting fee for each exotic animal. The division
21 shall retain fifty percent of the fee to administer its duties and
22 remit the remaining fifty percent of the fee to the county humane
23 or animal control officer in the county where the permit is issued,
24 or the sheriff in the alternative, to offset the cost of assisting
25 in inspecting and controlling these animals. The amount of the fee
26 shall be established by legislative rule by the division. There is

1 hereby created in the state treasury a special revenue fund to be
2 known as the "exotic animal fees fund" which shall consist of all
3 fees, civil penalties, assessed costs, collected by the Director
4 under this section, and all interest or other return earned from
5 investment of the fund. Expenditures from the fund shall be made
6 by the Director for the purposes set forth in this article. Any
7 balance, including accrued interest and other returns, in the fund
8 at the end of each fiscal year shall not revert to the general
9 revenue fund but shall remain in the fund and be expended as
10 provided by this section.

11 (4) Standards for unique animal identification procedures and
12 methods for exotic animals;

13 (5) Exemptions to the regulation and permitting requirements
14 for persons and entities that are not required to be permitted; and

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

17 **§20-9-5. State regulatory authority.**

18 (a) The division, department or bureau may direct the county
19 humane and animal control officer, or sheriff in the alternative,
20 to inspect a permitted exotic animal and its enclosure. An
21 inspection may be required by the division prior to issuing a
22 permit. The possessor shall allow representatives of the division,
23 department, bureau, county humane and animal control officers, and
24 sheriff to enter the premises where the animal is kept to ensure
25 compliance with this article and other applicable laws.

26 (e) The division shall provide all possessor information

1 obtained in the application to the department, bureau, county
2 humane and animal control officers, or the sheriffs in the
3 alternative, and shall create a database tracking exotic animals
4 that these agencies can access.

5 (f) The division, department, bureau, county humane and animal
6 control officers, or the sheriffs in the alternative, shall share
7 information regarding exotic animals and to devise emergency
8 response plans for emergent situations involving exotic animals.
9 Emergency contact information shall be provided to possessors in
10 the application.

11 **§20-9-6. Confiscation and Disposition.**

12 (a) The division, department or bureau may immediately
13 confiscate any exotic animal if the animal is kept in contravention
14 of this article. The possessor is liable for the costs of
15 placement and care for the exotic animal from the time of
16 confiscation until the time of return to the possessor or until the
17 time the animal has been relocated to an exotic animal sanctuary or
18 an institution accredited by the Association of Zoos and Aquariums.

19 (b) If an exotic animal is confiscated due to the animal being
20 kept in contravention of this article, the possessor must post a
21 security bond or cash with the division, department or bureau in an
22 amount sufficient to guarantee payment of all reasonable expenses
23 expected to be incurred in caring and providing for the animal
24 including, but not limited to, the estimated cost of feeding,
25 medical care and housing for at least thirty days. The security
26 bond or cash does not prevent the division from disposing of the

1 animal after thirty days unless the person claiming the animal
2 posts an additional security bond or cash with the division,
3 department or bureau to secure payment of all reasonable expenses
4 expected to be incurred in caring and providing for the animal for
5 an additional thirty days and does so prior to the expiration of
6 the first thirty-day period. The amount of the security bond or
7 cash shall be determined by the division and based on the current
8 rate to feed, provide medical care and house the animal.

9 (c) If the possessor of a confiscated animal cannot be located
10 or if a confiscated animal remains unclaimed, the division,
11 department or bureau may contact a exotic animal sanctuary or an
12 institution accredited by the Association of Zoos and Aquariums,
13 may allow the animal to be adopted by a person who currently
14 possesses a permit or may euthanize the animal in compliance with
15 federal and state laws.

16 (d) If the exotic animal cannot be confiscated or recaptured
17 safely by the division, department or bureau, or if proper and safe
18 placement cannot be found, the division, department or bureau may
19 immediately euthanize the animal in compliance with federal and
20 state laws.

21 **§20-9-7. Further rule-making authority and agency cooperation.**

22 (a) The division, department and bureau may develop inter-
23 agency agreements or propose rules for legislative approval in
24 accordance with article three, chapter twenty-nine-a of this code
25 to implement the provisions of this article and to take other
26 action as may be necessary for the proper and effective enforcement

1 of these provisions.

2 (b) The division, department and bureau shall cooperate to
3 implement the provisions of this article and to take other action
4 as may be necessary for the proper and effective enforcement of
5 these provisions.

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

9 **§20-9-8. Criminal penalties.**

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

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

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