

Senate Bill No. 477

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

[Introduced February 1, 2012; referred to the Committee on
Natural Resources; and then to the Committee on the Judiciary.]

A BILL to repeal §20-2-51 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 and §20-9-7, all relating to limiting the possession of wild and exotic animals; expressing legislative intent; stating agency jurisdiction; defining certain terms; permitting expansion of the definitions; limiting custody and control of wild and exotic animals; providing a permit for persons who possess a wild and exotic animal prior to effective date; setting forth permit requirements; requiring a notarized permit application and fee; splitting of fee with Division of Natural Resources and county humane and animal control officer or the sheriff, in the alternative; stating

1 exemptions; requiring interagency cooperation; and providing
2 rule-making authority.

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

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5 be repealed; and that said code be amended by adding thereto a new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

8 **ARTICLE 9. LIMITING POSSESSION OF WILD AND EXOTIC ANIMALS.**

9 §20-9-1. Intent.

10 (a) It is the intent of the State of West Virginia to protect
11 the public against health and safety risks that wild and exotic
12 animals pose to the community and to protect the welfare of the
13 individual animals held in private possession. Currently, West
14 Virginia is one of only eight states that lack any restrictions for
15 wild and exotic animals kept by private individuals.

16 (b) Wild and exotic animals should be regulated for the
17 following reasons:

18 (1) To prevent the introduction or spread of disease or
19 parasites harmful to humans, domestic livestock and poultry, native
20 wildlife, and captive wild and exotic animals;

21 (2) To ensure the physical safety of humans;

22 (3) To prevent the escape or release of an animal injurious to
23 or competitive with agricultural, horticultural, forestry, native

1 wildlife and other natural resource interests;

2 (4) To prevent the mistreatment of wild and exotic animals;

3 and

4 (5) To prevent the removal and use of native wildlife taken
5 from the public domain.

6 **§20-9-2. Jurisdiction.**

7 (a) The Division of Natural Resources will be the lead
8 regulatory agency for entry and intrastate movement, sale,
9 transfer, exhibition, possession and release of wild and exotic
10 animals. Determination of adverse environmental and disease
11 consequences posed by wild and exotic animals to free-living native
12 wildlife is the responsibility of the Division of Natural
13 Resources. In regard to disease implications, the Division of
14 Natural Resources should consult with other agencies and
15 authorities.

16 (b) The Department of Agriculture reserves the right to
17 immediate examination and testing of wild or exotic animals when
18 there is probable cause that the animals are harboring diseases or
19 parasites suspected of endangering domestic animals. Measures
20 deemed necessary to protect domestic animals and agricultural,
21 horticultural and forestry interests, including quarantine,
22 seizure, indemnification and destruction within the legislative
23 authority of the Department of Agriculture, may be carried out

1 independently of other state agencies. The Division of Natural
2 Resources and the Bureau for Public Health will be advised of these
3 activities. Actions taken by the Department of Agriculture will be
4 compatible with the Federal Endangered Species Act and other
5 federal laws.

6 (c) The Bureau for Public Health reserves the right to an
7 immediate examination and testing of wild or exotic animals when
8 there is probable cause that the animals are harboring diseases or
9 parasites suspected of endangering public health. Measures deemed
10 necessary to protect the public health including quarantine,
11 seizure, and destruction may be carried out independently of other
12 state agencies within the legislative authority of the Bureau for
13 Public Health. The Division of Natural Resources and the State
14 Department of Agriculture will be advised of these activities.
15 Actions taken by the Bureau for Public Health will be compatible
16 with the Federal Endangered Species Act and other federal laws.

17 (d) Any action taken by the Division of Natural Resources,
18 Department of Agriculture or the Bureau for Public Health is
19 subject to the provisions of the state's Administrative Procedures
20 Act.

21 **§20-9-3. Definitions.**

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

23 (2) "Department" means the West Virginia Department of

1 Agriculture;

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

4 (4) "Domestic animal," or the plural, means an animal which,
5 through extremely long association with humans, predominately as
6 companions and pets, has been bred to a degree which has resulted
7 in genetic changes affecting the temperament, color, conformation
8 or other attributes of the species to an extent that makes them
9 unique and distinguishable from wild individuals of their species.
10 A comprehensive list of "domestic animals" shall be set forth by
11 the division, in consultation with the department and the bureau,
12 pursuant to the rulemaking authority of this article or the current
13 legislative authority of the division.

14 (5) "Livestock animal" means a captive animal raised solely
15 for meat or animal by-products or as brood-stock held in cages,
16 pens, fences, enclosures or other man-made means of secure
17 confinement that limit their movement within definite boundaries or
18 as further defined in chapter nineteen of this code.

19 (6) "Wild and exotic animal," "animal" or the plural mean any
20 animals other than those defined as domestic and livestock,
21 including mammals, birds, reptiles, amphibians and fresh water fish
22 that are either native wildlife or exotic, including hybrids
23 thereof, which, due to their inherent nature, may be considered

1 dangerous to humans, other animals or the environment. A
2 comprehensive list of "wild and exotic animals" shall be set forth
3 by the division, in consultation with the department and the
4 bureau, pursuant to the rule-making authority of this article or
5 the current legislative authority of the division.

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

11 (8) "Possessor" means any person who owns, possesses, breeds,
12 transports, releases or has custody or control of a wild and exotic
13 animal.

14 (9) "Wildlife" means all animals occurring naturally in the
15 state, either presently or historically, as defined by section two,
16 article one of this chapter. "Wildlife" are "wild and exotic
17 animals" for purposes of this article, but to the extent that any
18 other provision of chapter twenty of this code conflicts with these
19 provisions, the division will need to clarify the applicability.

20 (10) "Wildlife sanctuary" means a nonprofit organization as
21 described in Section 170(b) (1) (A) (vi), Internal Revenue Code
22 1986, and its subsequent amendments, that operates a facility that
23 is a place of refuge where abused, neglected, unwanted, impounded,

1 abandoned, orphaned or displaced animals are provided care for
2 their lifetime or released back to their natural habitat and is a
3 facility with the following characteristics:

4 (i) No activity that is not inherent to the animal's nature,
5 natural conduct or the animal in its natural habitat is conducted
6 except as needed for routine animal husbandry;

7 (ii) No commercial activity involving any animal occurs
8 including, but not limited to, the sale of or trade in animals,
9 animal parts, animal by-products or animal offspring or the sale of
10 photographic opportunities involving any animal or the use of any
11 animal for any type of entertainment purpose;

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

14 (iv) No breeding of an animal(s) occurs in the facility.

15 §20-9-4. Possessing Wild and Exotic Animals Limited.

16 (a) Unless the activity is specifically exempted, no person may
17 own, possess, breed, harbor, transport, release or have custody or
18 control of a wild and exotic animal.

19 (b) *Permit.*-- The division may issue a personal possession
20 permit to a possessor of a wild and exotic animal prior to the
21 effective date if:

22 (1) The possessor was in legal possession of the wild and
23 exotic animal prior to the effective date of this article; and

1 (2) The possessor completes a notarized permit application for
2 each wild and exotic animal by January 1 of each year containing:

3 (A) The name, address, telephone number and date of birth of
4 the possessor.

5 (B) A description of each animal the applicant possesses,
6 including the scientific name, sex, age, color, weight and any
7 distinguishing marks or coloration that would aid in the
8 identification of the animal.

9 (C) The exact location where the animal is kept and an
10 accurate description of the secure, safe and humane enclosure where
11 the animal is housed.

12 (D) The names, addresses and telephone number of the person
13 from whom the possessor obtained the animal, if known.

14 (E) The name, address, and phone number of the veterinarian
15 providing veterinary care to the animal and a certificate of good
16 health, including proof that the animal has been sterilized, from
17 the possessor's veterinarian.

18 (F) Certification that the possessor is eighteen years of age
19 or older and that the possessor has not been convicted of or found
20 responsible for violating a local or state law prohibiting cruelty,
21 neglect, or mistreatment of an animal and has not within the past
22 ten years been convicted of a felony or been convicted for
23 possession, sale or use of illegal narcotics.

1 (G) A fee of \$200. The division shall keep fifty percent of
2 the fee for handling its duties and remit the remaining fifty
3 percent of the fee to the county human or animal control officer,
4 or the sheriff in the alternative, to offset the cost of assisting
5 in inspecting and controlling these animals. This will also
6 provide the counties with important information about the wild and
7 exotic animals in their vicinities.

8 (H) A plan for the quick and safe recapture of the wild and
9 exotic animal if the animal escapes.

10 (I) Documentation that the possessor maintains liability
11 insurance coverage in an amount of not less than \$250,000 for
12 damages stemming from destruction of property and death and bodily
13 injury to a person caused by a wild and exotic animal.

14 (c) The county humane and animal control officers, or the
15 sheriffs in the alternative, may be asked by the above agencies to
16 inspect the wild and exotic animal and its enclosure. An inspection
17 may be required by the division prior to issuing a permit. The
18 possessor shall allow the division, department, bureau, county
19 humane and animal control officers, and sheriffs, and their agents,
20 to enter the premises where the animal is kept to ensure compliance
21 with this article and other applicable laws.

22 (d) The division shall provide all possessor information
23 obtained in the application to the department, bureau, county

1 humane and animal control officers, or the sheriffs in the
2 alternative, and shall strive to create a database tracking wild
3 and exotic animals that these agencies can access.

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

10 (f) The possessor shall use the emergency contact information
11 immediately if it suspects the wild or exotic animal has a disease,
12 injures a person, escapes or if any emergency arises involving the
13 animal.

14 (g) Any possessor granted a permit shall notify the division
15 of any changes to the stated information in the permit application
16 at any time. Any changes will be disseminated to the other
17 agencies.

18 (h) The possessor shall state in its notarized application
19 that it will contact the division, the department, a wildlife
20 sanctuary or an American Zoo and Aquarium Association accredited
21 facility if the possessor can no longer care for the wild and
22 exotic animal prior to releasing or euthanizing the wild and exotic
23 animal.

1 §20-9-5. Exemptions.

2 The provisions of this article do not apply to:

3 (1) Institutions accredited by the American Zoo and Aquarium
4 Association or being mentored through the American Zoo and Aquarium
5 Association.

6 (2) Duly incorporated nonprofit animal protection
7 organizations housing a wild and exotic animal at the written
8 request of the division.

9 (3) Animal control or law-enforcement agencies or officers
10 acting under the authority of this article.

11 (4) A person who is licensed by the division to rehabilitate
12 native wildlife. Persons are only exempt for the native wildlife in
13 their possession.

14 (5) Licensed veterinary hospitals or clinics treating wild
15 and exotic animals.

16 (6) A wildlife sanctuary as defined under this article.

17 (7) A licensed or accredited research or medical institution.

18 (8) A licensed or accredited educational institution.

19 (9) A lawfully operated circus or rodeo.

20 (10) A person temporarily transporting a wild and exotic
21 animal through the state if the transit time is not more than
22 ninety-six hours and the animal is at all times confined
23 sufficiently to prevent the wild and exotic animal from escaping.

1 **§20-9-6. Confiscation and Disposition of Wild and Exotic Animals.**

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

11 (b) If a wild and exotic animal is confiscated due to the
12 animal being kept in contravention of this article, the possessor
13 must post a security bond or cash with the division, department or
14 bureau in an amount sufficient to guarantee payment of all
15 reasonable expenses expected to be incurred in caring and providing
16 for the animal including, but not limited to, the estimated cost of
17 feeding, medical care and housing for at least thirty days. The
18 security bond or cash does not prevent the division from disposing
19 of the animal after thirty days unless the person claiming the
20 animal posts an additional security bond or cash with the division,
21 department or bureau to secure payment of all reasonable expenses
22 expected to be incurred in caring and providing for the animal for
23 an additional thirty days and does so prior to the expiration of

1 the first thirty day period. The amount of the security bond or
2 cash shall be determined by the division and based on the current
3 rate to feed, provide medical care and house the animal.

4 (c) If the possessor of a confiscated animal cannot be located
5 or if a confiscated animal remains unclaimed, the division,
6 department or bureau may contact an approved facility, such as a
7 wildlife sanctuary as defined under this article or an institution
8 accredited by the American Zoo and Aquarium Association; allow the
9 animal to be adopted by a person who currently possesses a personal
10 possession permit; or, may euthanize the animal.

11 (d) If the wild and exotic animal cannot be taken up or
12 recaptured safely by the division, department or bureau or if
13 proper and safe housing cannot be found, the division, department
14 or bureau may immediately euthanize the animal.

15 **§20-9-7. Rule-making authority and agency cooperation.**

16 (a) The division, department and bureau may develop inter-
17 agency agreements or propose rules for legislative approval in
18 accordance with article three, chapter twenty-nine-a of this code
19 to implement the provisions of this article and to take other
20 action as may be necessary for the proper and effective enforcement
21 of these provisions.

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

1 as may be necessary for the proper and effective enforcement of
2 these provisions.

NOTE: The purpose of this bill is to prohibit the possession of wild and exotic animals. The bill provides for a permit for those in possession on the effective date for limited exceptions to the prohibition and for removing the animals if they are being kept in violation of this article.

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