

1 **H. B. 4393**

2
3 (By Delegates Swartzmiller, Wells, Manypenny,
4 Ellem, Paxton, Fragale, Craig and Storch)

5 [Introduced February 3, 2014; referred to the
6 Committee on Agriculture & Natural Resources then the
7 Judiciary.]

**FISCAL
NOTE**

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §19-34-1, §19-34-2,
12 §19-34-3, §19-34-4, §19-34-5, §19-34-6, §19-34-7, §19-34-8,
13 §19-34-9 and §19-34-10, all relating to the regulation of
14 dangerous wild animals; creating the Dangerous Wild Animals
15 Act; setting forth findings and purpose; defining terms;
16 creating the Dangerous Wild Animal Board; setting forth the
17 duties of the board; requiring the board to create a list of
18 dangerous wild animals by rule; permitting the board to issue
19 a permit for a dangerous wild animal legally possessed prior
20 to the effective date of the rules; prohibiting the possession
21 of a dangerous wild animal thereafter; setting forth permit
22 requirements; providing for confiscation and disposition of
23 animals; permitting the suspension and revocation of permits;
24 providing exemptions; providing rule-making authority; and

1 establishing criminal and civil penalties.

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

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new article, designated §19-34-1, §19-34-2,
5 §19-34-3, §19-34-4, §19-34-5, §19-34-6, §19-34-7, §19-34-8,
6 §19-34-9 and §19-34-10, all to read as follows:

7 **ARTICLE 34. DANGEROUS WILD ANIMALS ACT.**

8 **§19-34-1. Findings and purpose.**

9 The possession of dangerous wild animals presents serious
10 public health and safety concerns and shall be regulated for the
11 following reasons:

12 (1) To prevent the introduction or spread of disease or
13 parasites harmful to humans, domestic livestock and poultry,
14 wildlife and captive wild animals;

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

16 (3) To prevent the escape or release of an animal injurious to
17 or competitive with agricultural, horticultural, forestry, wildlife
18 and other natural resources; and

19 (4) To prevent the mistreatment of permitted dangerous wild
20 animals.

21 **§19-34-2. Definitions.**

22 As used in this article unless otherwise specified:

23 (1) "Board" means the Dangerous Wild Animal Board;

1 (2) "Dangerous wild animal" means a mammal, bird, reptile,
2 amphibian and aquatic animal, including a hybrid, that is dangerous
3 to humans, other animals or the environment due to its inherent
4 nature. "Wildlife", as defined by section two, article one,
5 chapter twenty of this code, "agricultural animals", as defined in
6 section two, article ten-b and section two, article twenty-nine,
7 chapter nineteen of this code, and "domestic animals", as defined
8 in this section, are excluded. The board shall develop a
9 comprehensive list of dangerous wild animals pursuant to the
10 rule-making authority of this article.

11 (3) "Domestic animal" means an animal which, through extremely
12 long association with humans, has been bred to a degree which has
13 resulted in genetic changes affecting the temperament, color,
14 conformation or other attributes of the species to an extent that
15 makes it unique and distinguishable from a wild individual of its
16 species, and includes an animal that has been bred as a companion
17 animal.

18 (4) "Person" means an individual, partnership, corporation,
19 organization, trade or professional association, firm, limited
20 liability company, joint venture, association, trust, estate or
21 other legal entity and an officer, member, shareholder, director,
22 employee, agent or representative thereof.

23 **§19-34-3. Prohibition on the possession of a dangerous wild**
24 **animal; exceptions.**

1 (a) Except as otherwise provided in this article, a person may
2 not possess a dangerous wild animal.

3 (b) Pursuant to the provisions of this article, the board may
4 issue a permit for the possession of a dangerous wild animal if the
5 applicant was in legal possession of the animal prior to the
6 effective date of the rules promulgated under this article.

7 **§19-34-4. Dangerous Wild Animal Board; composition; duties; list**
8 **of prohibited animals.**

9 (a) The Dangerous Wild Animal Board is hereby established with
10 the following members: The Commissioner of the Department of
11 Agriculture, the Secretary of the Department of Health and Human
12 Resources and the Director of the Division of Natural Resources, or
13 their designees.

14 (b) The Commissioner of Agriculture shall serve as the chair,
15 the Secretary of the Department of Health and Human Resources as
16 the vice chair and the Director of the Division of Natural
17 Resources shall serve as the secretary of the board. The Department
18 of Agriculture shall provide necessary staff and support services
19 to the board as needed.

20 (c) The board shall:

21 (1) Create a comprehensive list of dangerous wild animals;

22 (2) Establish minimum caging or enclosure requirements for
23 various dangerous wild animals;

24 (3) Enforce the permit requirements and set the fees for

1 permits;

2 (4) Issue, renew, revoke and maintain records for dangerous
3 wild animal permits;

4 (5) Annually review the list of prohibited dangerous wild
5 animals to determine if animals should be added or subtracted from
6 the list; and

7 (6) Address any other issues required by this article.

8 **§19-34-5. Permit applications, requirements, issuance and**
9 **revocation.**

10 (a) Application. -- A person applying for a permit to possess
11 a dangerous wild animal shall submit an application that includes
12 the following:

13 (1) A fee established by the board for each dangerous wild
14 animal;

15 (2) The name, address and telephone number of the applicant,
16 and the address where the dangerous wild animal is located;

17 (3) A description of each dangerous wild animal, including the
18 scientific name, common name, permanent and unique identifier, and
19 any information that would aid in the identification of the animal;
20 and

21 (4) A description of the exact location on the property and a
22 description of the enclosure or cage where each dangerous wild
23 animal is kept.

24 (b) Permit requirements and restrictions. -- The application

1 shall state, and the person shall acknowledge his or her
2 understanding, that:

3 (1) He or she may not breed, receive or replace a dangerous
4 wild animal;

5 (2) He or she shall notify the sheriff or humane officer in
6 his or her county immediately if the dangerous wild animal escapes;

7 (3) He or she may not allow the dangerous wild animal to come
8 into physical contact with a person other than the permittee, the
9 animal's designated handler, an employee of a law-enforcement
10 agency enforcing this article or a veterinarian administering
11 medical treatment or care;

12 (4) He or she has not been convicted for an offense involving
13 the abuse or neglect of any animal;

14 (5) He or she has not had a permit or license concerning the
15 care, possession, exhibition, breeding or sale of a dangerous wild
16 animal revoked or suspended by a governmental agency;

17 (6) He or she shall permanently mark each dangerous wild
18 animal with a unique identifier;

19 (7) He or she shall maintain records for each dangerous wild
20 animal, including veterinary records, acquisition papers, the
21 purchase date and other records that prove ownership of the
22 dangerous wild animal;

23 (8) He or she presents proof of liability insurance in an
24 amount of not less than \$100,000 with a deductible of not more than

1 \$250 for each occurrence of property damage, bodily injury or death
2 caused by a dangerous wild animal possessed by the person;

3 (9) He or she shall notify the board not less than three days
4 before a dangerous wild animal is sold or transferred to another
5 person out of state;

6 (10) He or she may not sell or otherwise transfer dangerous
7 wild animals in the state without the written consent of the board;

8 (11) He or she shall notify the board of any plans to move or
9 change his or her address, and may not move the animal without the
10 written consent of the board. However, in the event of a medical
11 emergency, a dangerous wild animal may be transported to a licensed
12 veterinarian's facility for treatment and care if the animal is at
13 all times confined sufficiently to prevent escape; and

14 (12) He or she shall comply with all rules promulgated by the
15 board pursuant to the provisions of this article.

16 (c) The board may issue a permit to possess a dangerous wild
17 animal if it determines that the applicant has met the requirements
18 of this article.

19 (d) A permit to possess a dangerous wild animal is valid for
20 one calendar year and must be renewed annually.

21 **§19-34-6. Confiscation and disposition of animals; suspension and**
22 **revocation of permits.**

23 (a) A law-enforcement officer, county humane officer or the
24 state veterinarian may immediately confiscate or euthanize any

1 dangerous wild animal if the animal poses an immediate risk to
2 public health or safety regardless of whether or not the owner of
3 the animal has a permit issued under this article.

4 (b) The board may summarily suspend a permit issued under this
5 article if one of the following conditions exists:

6 (1) An animal whose owner has a permit issued under this
7 article is in a position to harm another animal;

8 (2) A permitted animal poses a risk to public health or
9 safety; or

10 (3) The permittee has violated a provision of this article.

11 (c) In the event of the suspension of a permit or confiscation
12 of an animal pursuant to this section, the dangerous wild animal
13 may be transferred to another permittee in compliance with the
14 provisions of this article, if the transfer would abate the
15 imminent harm to the animal or the public as determined by the
16 responding law-enforcement officer, county humane officer or state
17 veterinarian. If the transfer of the dangerous wild animal cannot
18 be accomplished without additional risk to public safety, or if no
19 suitable facility is available for transfer, the responding
20 law-enforcement officer, county humane officer or veterinarian may
21 humanely euthanize the animal.

22 (d) Upon conviction of an offense under this article or any
23 other animal cruelty statute, the board shall revoke that persons
24 permit.

1 (e) The board may, for cause, revoke a permit.

2 (f) A person aggrieved by action of the board may appeal to
3 circuit court.

4 **§19-34-7. Exemptions.**

5 (a) The permitting provisions of this article do not apply to:

6 (1) Institutions accredited by the Association of Zoos and
7 Aquariums (AZA) or an AZA-certified facility;

8 (2) An animal control or law-enforcement agency or officer
9 acting under the authority of this article;

10 (3) Licensed veterinary hospitals or clinics treating
11 dangerous wild animals;

12 (4) A licensed or accredited research medical institution;

13 (5) A research facility as defined in the Animal Welfare Act,
14 7 U.S.C. §2132(e), as amended;

15 (6) A circus that is an incorporated, Class c licensee under
16 the Animal Welfare Act, 7 U.S.C. §2132(e), as amended;

17 (7) A person displaying dangerous wild animals at a fair or
18 festival that has been preapproved by the board; and

19 (8) A person temporarily transporting a dangerous wild animal
20 through the state, if the transit time is not more than forty-eight
21 hours and the animal is at all times confined sufficiently to
22 prevent escape.

23 (b) Qualified exemption. -- The permitting provisions of this
24 article do not apply to exhibitors or dealers licensed under the

1 Animal Welfare Act, 7 U.S.C. §2132(e), as amended, at the time the
2 rules become effective. The board may revoke the permitting
3 exemption for exhibitor or dealer permits that have repeated,
4 uncorrected violations of the Animal Welfare Act, a conviction of
5 an animal cruelty statute or a violation of sections seven or ten
6 of this article.

7 **§19-34-8. Dangerous Wild Animal Fund; creation; purpose.**

8 (a) There is hereby created in the State Treasury a special
9 revenue account to be designated the Dangerous Wild Animal Fund.
10 Expenditures from the fund are for the purposes set forth in this
11 article and are to be made in accordance with appropriation by the
12 Legislature and in accordance with the provisions of article three,
13 chapter twelve of this code and upon the fulfillment of the
14 provisions set forth in article two, chapter eleven-b of this code.

15 (b) All moneys received and collected pursuant to this article
16 shall be deposited into the fund and used for the purposes
17 designated in this article. The fund may receive any
18 appropriations, gifts, grants, contributions or other money from
19 any source that is designated for deposit into the fund.

20 **§19-34-9. Rule-making authority.**

21 The Board shall propose rules for legislative approval to
22 effectuate the provisions of this article in accordance with the
23 provisions of article three, chapter twenty-nine-a of this code.

24 **§19-34-10. Criminal and civil penalties.**

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

5 (b) A person who knowingly and intentionally releases a
6 dangerous wild animal or unlawfully possesses a dangerous wild
7 animal that does not cause injury to an individual is guilty of a
8 misdemeanor and, upon conviction, may be confined in jail for not
9 more than one year or fined not less than \$500 nor more than
10 \$2,500, or both confined and fined.

11 (c) A person who knowingly and intentionally releases a
12 dangerous wild animal or unlawfully possesses a dangerous wild
13 animal that injures an individual is guilty of a felony and, upon
14 conviction thereof, may be imprisoned in a state correctional
15 institution for not less than one year nor more than three years,
16 or fined not less than \$1,000 nor more than \$5,000, or both
17 confined and fined.

18 (d) Civil penalty. -- A person convicted of an offense under
19 this article is liable for all costs, including personnel costs,
20 expended by the county or state agencies involved with the capture,
21 confinement, transfer or euthanasia of a dangerous wild animal.

22 (e) The civil liability imposed by this section is in addition
23 to any other legal remedies for damages to person or property
24 caused by a dangerous wild animal.

NOTE: The purpose of this bill is to create the Dangerous Wild Animals Act. The bill sets forth findings and purpose. The bill defines terms. The bill creates the Dangerous Wild Animal Board. The bill sets forth the duties of the board. The bill requires the board to create a list of dangerous wild animals by rule. The bill permits the board to issue a permit for a dangerous wild animal legally possessed prior to the effective date of the rules. The bill prohibits the possession of a dangerous wild animal thereafter. The bill sets forth permit requirements. The bill provides for confiscation and disposition of animals. The bill permits the suspension and revocation of permits. The bill provides exemptions. The bill provides rule-making authority. The bill establishes criminal and civil penalties.

This article is new; therefore, it has been completely underscored.