

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 472**

BY SENATORS MAYNARD, STOLLINGS AND CLINE

[Originating in the Committee on Natural Resources;

reported on March 20, 2017]

1 A BILL to amend and reenact §20-2-22a, §20-2-23, §20-2-24 and §20-2-26 of the Code of West  
2 Virginia, 1931, as amended, all relating to outfitters and guides; setting forth license fees;  
3 creating special bear outfitter guide license for certain areas; clarifying when license may  
4 be issued; and making technical corrections.

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

1 That §20-2-22a, §20-2-23, §20-2-24 and §20-2-26 of the Code of West Virginia, 1931, as  
2 amended, be amended and reenacted, all to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property  
destruction by bear; penalties.**

1 (a) A person may not hunt, capture or kill any bear, or have in his or her possession any  
2 bear or bear parts, except during the hunting season for bear in the manner designated by rule  
3 or law. For the purposes of this section, bear parts include, but are not limited to, the pelt,  
4 gallbladder, skull and claws of bear.

5 (b) A person who kills a bear shall, within twenty-four hours after the killing, electronically  
6 register the bear. A game tag number shall be issued to the person and recorded in writing with  
7 the person's name and address, or on a field tag ~~and~~ that shall remain on the skin until it is tanned  
8 or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal  
9 to a charitable institution, school or as otherwise designated by the director.

10 (c) Training dogs on bears or pursuing bears with dogs is ~~the~~ hunting of bear for all  
11 purposes of this chapter, including all applicable regulations and license requirements.

12 (d) It is unlawful:

13 (1) To hunt bear without a bear damage stamp, as prescribed in section forty-four-b of this  
14 article, in addition to a hunting license as prescribed in this article;

15 (2) To hunt a bear with:

16 (A) A shotgun using ammunition loaded with more than one solid ball; or

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17 (B) A rifle of less than twenty-five caliber using rimfire ammunition;

18 (3) To kill or attempt to kill, or wound or attempt to wound, any bear through the use of  
19 bait, poison, explosives, traps or deadfalls, or to feed bears at any time. For purposes of this  
20 section, bait includes, but is not limited to, corn and other grains, animal carcasses or animal  
21 remains, grease, sugars in any form, scent attractants and other edible enticements, and an area  
22 is considered baited for ten days after all bait has been removed;

23 (4) To shoot at or kill:

24 (A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed  
25 weight, after removal of all internal organs;

26 (B) Any bear accompanied by a cub; or

27 (C) Any bear cub so accompanied, regardless of its weight;

28 (5) To transport or possess any part of a bear not tagged in accordance with the provisions  
29 of this section;

30 (6) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation  
31 of this section; or

32 (7) To organize for commercial purposes or to professionally outfit a bear hunt, or to give  
33 or receive any consideration whatsoever or any donation in money, goods or services in  
34 connection with a bear hunt, ~~notwithstanding the provisions of~~ except as provided for in sections  
35 twenty-three, ~~and~~ twenty-four and twenty-six of this article.

36 (e) The following provisions apply to bear damaging or destroying property:

37 (1)(A) Any property owner or lessee who has suffered damage to real or personal property,  
38 including loss occasioned by the death or injury of livestock or the unborn issue of livestock,  
39 caused by an act of a bear may complain to any natural resources police officer of the division for  
40 protection against the bear.

41 (B) Upon receipt of the complaint, the officer shall immediately investigate the

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42 circumstances of the complaint. If the officer is unable to personally investigate the complaint, he  
43 or she shall designate a wildlife biologist to investigate on his or her behalf.

44 (C) If the complaint is found to be justified, the officer or designated wildlife biologist may  
45 issue a permit to kill the bear that caused the property damage or may authorize the owner and  
46 other residents to proceed to hunt, destroy or capture the bear that caused the property damage:  
47 *Provided*, That only the natural resources police officer or the wildlife biologist may recommend  
48 other measures to end or minimize property damage: *Provided, however*, That, if out-of-state  
49 dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to  
50 participate in hunting the bear.

51 (2)(A) When a property owner has suffered damage to real or personal property as the  
52 result of an act by a bear, the owner shall file a report with the director of the division. A bear  
53 damage report shall be completed by a representative of the division and shall state whether or  
54 not the bear was hunted and destroyed or killed under authorization of a depredation permit and,  
55 if so, the sex and weight shall be recorded and a premolar tooth collected from the bear, all of  
56 which shall be submitted with the report. The report shall also include an appraisal of the property  
57 damage occasioned by the bear fixing the value of the property lost. Bear damage claims will not  
58 be accepted for personal and real property which is commonly used for the purposes of feeding,  
59 baiting, observing or hunting wildlife, including, but not limited to, hunting blinds, tree stands,  
60 artificial feeders, game or trail cameras and crops planted for the purposes of feeding or baiting  
61 wildlife.

62 (B) The report shall be ruled upon and the alleged damages examined by a commission  
63 comprised of the complaining property owner, an officer of the division and a person to be jointly  
64 selected by the officer and the complaining property owner.

65 (C) The division shall establish the procedures to be followed in presenting and deciding  
66 claims, issuing bear depredation permits and organizing bear hunts under this section in

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67 accordance with article three, chapter twenty-nine-a of this code.

68 (D) All claims shall be paid in the first instance from the Bear Damage Fund provided in  
69 section forty-four-b of this article: *Provided*, That the claimant shall submit accurate information  
70 as to whether he or she is insured for the damages caused by the acts of bear on forms prescribed  
71 by the director, and all damage claims shall first be made by the claimant against any insurance  
72 policies before payment may be approved from the Bear Damage Fund. Claims for an award of  
73 compensation from the Bear Damage Fund shall be reduced or denied in the amount the claimant  
74 is actually reimbursed by insurance for the economic loss upon which the claim is based. In the  
75 event the fund is insufficient to pay all claims determined by the commission to be just and proper,  
76 the remainder due to owners of lost or destroyed property shall be paid from the special revenue  
77 account of the division.

78 (3) In all cases where the act of the bear complained of by the property owner is the killing  
79 of livestock, the value to be established is the fair market value of the livestock at the date of  
80 death. In cases where the livestock killed is pregnant, the total value is the sum of the values of  
81 the mother and the unborn issue, with the value of the unborn issue to be determined on the basis  
82 of the fair market value of the issue had it been born.

83 (f) *Criminal penalties.* —

84 (1) Any person who commits a violation of the provisions of this section is guilty of a  
85 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than  
86 \$1,000, which is not subject to suspension by the court, confined in jail not less than ten nor more  
87 than thirty days, or both fined and confined. Further, the person's hunting and fishing licenses  
88 shall be assigned six points, however, the hunting and fishing licenses of any person convicted  
89 of a violation of this section which results in the killing or death of a bear shall be suspended for  
90 two years.

91 (2) Any person who commits a second violation of the provisions of this section is guilty of

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92 a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than  
93 \$3,000, which is not subject to suspension by the court, confined in jail not less than thirty days  
94 nor more than one hundred days, or both fined and confined. The person's hunting and fishing  
95 licenses shall be suspended for five years.

96 (3) Any person who commits a third or subsequent violation of the provisions of this section  
97 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor  
98 more than \$5,000, which is not subject to suspension by the court, confined in jail not less than  
99 six months nor more than one year, or both fined and confined. The person's hunting and fishing  
100 licenses shall be suspended for ten years.

**§20-2-23. Outfitters and guides—~~Generally~~; definitions.**

101 (a) Services of outfitters and guides for the benefit and convenience of hunters, fishermen  
102 and others in this state are recognized as essential, and ~~such~~ outfitters and guides may be  
103 licensed and authorized to serve as provided in this article. The director is hereby authorized to  
104 promulgate rules and regulations ~~on services of~~ regarding outfitters and guides ~~as herein~~  
105 ~~authorized and defined.~~

106 (b) The term "outfitter" ~~as used herein~~, means ~~and includes~~ any person who, operating  
107 from any temporary or permanent camp, private or public lodge, or private ~~or incorporated~~ home  
108 ~~situate within~~ in this state, provides for monetary profit or gain, saddle or pack animals ~~or other~~  
109 ~~animals~~, vehicles, boats, conveyances or equipment, or guide services ~~for~~ to any person ~~or~~  
110 ~~persons~~ hunting game animals or game birds, fishing, or taking expeditions on both land and  
111 water in this state. The term "outfitter" shall not include, ~~however~~, any person who occasionally,  
112 for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or  
113 others as a service incidental to his or her principal occupation or business without advertising  
114 outfitter or guide services ~~or holding out to the public the offering of such services.~~ The term  
115 "guide", as used herein, includes ~~and embraces~~ outfitter services and the term "outfitter" includes

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116 ~~and embraces~~ guide services, but the applicant for any license hereunder ~~may in his or her~~  
117 ~~application~~ may elect to be designated as an outfitter or guide. A person may not provide outfitter  
118 or guide services to a person hunting bear without first obtaining a special bear outfitter guide  
119 license pursuant to subsection (b), section twenty-four of this article

120 (c) The term “commercial whitewater outfitter”, as used herein, means any person,  
121 partnership, corporation or other organization, or any combination thereof, ~~duly authorized and~~  
122 ~~operating from within or from without the state, which for monetary profit or gain, that~~ provides  
123 whitewater expeditions or rents whitewater craft or equipment for profit for use in whitewater  
124 expeditions on any river, or portions of rivers, ~~or waters of the state~~ in accordance with this article.

125 (d) The term “commercial whitewater guide”, as used herein, means any person who is an  
126 owner, agent or employee of a commercial whitewater outfitter and who is qualified and  
127 authorized to provide services for whitewater expeditions ~~in the state~~ in accordance with this  
128 article.

**§20-2-24. Outfitters and guides – qualifications; fees.**

129 ~~Each outfitter and guide licensed under the provisions hereof shall be a financially~~  
130 ~~responsible citizen of the United States of America. He shall possess and inventory proper and~~  
131 ~~adequate materials and equipment to provide for hunters, fishermen and others the services and~~  
132 ~~conveniences he advertises. All such materials and equipment shall be safe and free of infection~~  
133 ~~and conditions inimical to the health and well-being of hunters, fishermen, their traveling, camping~~  
134 ~~and lodging companions.~~

135 (a) The director may issue licenses for outfitter and guide services for an annual fee of  
136 \$50. This license authorizes the licensee to provide outfitter and guide services as provided for in  
137 section twenty-three of this article.

138 (b) The director may issue a special bear outfitter guide license for an annual fee of \$100.  
139 This license authorizes the licensee to provide outfitter and guide services for bear hunts if the

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140 director determines it is necessary to control the bear population in the elk management area as  
141 defined in section five-h of this article. The special bear outfitter guide license shall be valid only  
142 in the counties, or portions thereof, as designated by the director.

143 (c) An outfitter or guide licensed under the provisions of this article shall be financially  
144 sound and in good standing with the state. He or she shall provide equipment that is in good  
145 working order and that complies with all applicable safety standards and ratings.

146 (d) The director shall cause all review outfitter and guide applicants to be investigated and  
147 shall make a determination of determine if their qualifications are sufficient prior to the issuance  
148 or refusal of licenses thereto issuing or refusing to issue a license.

**§20-2-26. ~~Same~~— License fee; Outfitters and guides— bond; revocation of license; criminal penalties.**

149 ~~When satisfied as to the applicant's qualifications for an outfitter's or guide's license and~~  
150 ~~upon receipt of a fee of \$10 therefor, the director shall issue such license which shall be for the~~  
151 ~~calendar year therein designated.~~

152 ~~Immediately upon the issuance of an outfitter's or guide's license and before any outfitter's~~  
153 ~~or guide's services are offered or rendered thereunder, the licensee shall execute a surety bond~~  
154 ~~in the penal sum of \$1,000 payable to the State of West Virginia and conditioned upon the faithful~~  
155 ~~and reliable discharge of his services under and pursuant to such license. Such bond shall be~~  
156 ~~approved as to form by the Attorney General and as to surety by the director, and when so~~  
157 ~~executed and approved, shall be filed in the office of the director. Such bond shall be for the life~~  
158 ~~of the license.~~

159 ~~The director is hereby authorized to revoke and cancel any such license: for failure of the~~  
160 ~~licensee to give the bond herein required; for licensee's violation or disregard of any of the~~  
161 ~~provisions of this chapter; upon licensee's conviction of crime; or for any other reason or cause~~  
162 ~~justifying refusal of the license to the licensee upon a new application therefor. The director shall~~

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163 ~~afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.~~

164 (a) The director may issue a license for an outfitter or guide when satisfied with the  
165 applicant's qualifications. The license may not be issued until a \$1,000 surety bond is posted and  
166 the requisite annual fee paid. The license is in effect for the current calendar year.

167 (b) The director may refuse to issue or revoke any outfitter or guide license if: (1) The  
168 licensee fails to post bond; (2) the licensee violates a provision of the chapter; (3) the licensee is  
169 convicted of a crime; or (4) other just cause. The director shall provide the licensee with an  
170 opportunity to be heard upon the refusal or revocation of a license.

171 (c) No person shall act or serve as a guide or outfitter, as defined in this article, without  
172 procuring and having on his or her person at the time a valid license from the director ~~authorizing~~  
173 ~~him so to do.~~ Any person violating ~~this provision~~ the provisions of this article shall be guilty of a  
174 misdemeanor and, upon conviction thereof, may be fined not exceeding \$100 or confined in the  
175 county jail not exceeding ninety days, ~~or, in the discretion of the court, be both fined and~~  
176 ~~imprisoned within the limits herein prescribed~~ both fined and confined.

NOTE: The purpose of this bill is to permit bear hunting with guides.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.