

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 421**

(By Senators Williams, Sypolt, McCabe, Beach, K.  
Facemyer, Boley, D. Facemire, Helmick, Miller, Tucker,  
Laird, Nohe, Green, Barnes and Plymale)

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[Originating in the Committee on Judiciary;  
reported February 14, 2012.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8, §19-2H-9, §19-2H-10, §19-2H-11, §19-2H-12, §19-2H-13, §19-2H-14 and §19-2H-15; to amend and reenact §19-29-2 of said code; to amend and reenact §20-1-2 of said code; and to amend and reenact §20-2-11 and §20-2-12 of said code, all relating to regulating captive cervid farming as an agricultural enterprise in this state; stating the powers and duties of the

Department of Agriculture; promulgating rules; establishing the duties and obligation of the commissioner; creating an application process; issuing, renewing, modifying and transferring license certificates; inspecting facilities; transitioning current facilities to new licensure procedures; creating penalties for noncompliance with article; amending Division of Natural Resources laws relating to captive cervids; and providing for certain criminal penalties and remedies.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8, §19-2H-9, §19-2H-10, §19-2H-11, §19-2H-12, §19-2H-13, §19-2H-14 and §19-2H-15; that §19-29-2 of said code be amended and reenacted; that §20-1-2 of said code be amended and reenacted; and that §20-2-11 and §20-2-12 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 19. AGRICULTURE.**

### **ARTICLE 2H. CAPTIVE CERVID FARMING ACT.**

#### **§19-2H-1. Short title.**

- 1 This article shall be known and may be cited as the
- 2 Captive Cervid Farming Act.

**§19-2H-2. Purpose and legislative findings.**

1 (a) The purpose of this article is to promote this state's  
2 agricultural economy, to preserve family farming opportuni-  
3 ties, to encourage agricultural uses of the natural topography  
4 of the state's rural lands and to foster job retention and job  
5 creation in the state's rural areas, by providing for compre-  
6 hensive regulation in the public interest of captive cervid  
7 farming as a viable agricultural business.

8 (b) The Legislature finds and declares that captive cervid  
9 farming is primarily an agricultural pursuit which is sepa-  
10 rate from and largely unrelated to wildlife management, and  
11 that captive cervids should be treated in a manner similar to  
12 other farm livestock animals. The Legislature further finds  
13 and declares that the Commissioner of Agriculture and the  
14 professional staff of that department possess the knowledge,  
15 training and experience required to properly regulate captive  
16 cervid farming as an agricultural business and to adequately  
17 protect the health and safety of animals and the general  
18 public in connection with this farming business. The Legisla-  
19 ture also finds and declares that matters related to animal  
20 health, farm fencing, animal identification, agricultural  
21 record keeping and animal husbandry methods and equip-

22 ment are best managed and regulated by the farming  
23 professionals within the Department of Agriculture, in  
24 consultation with the Division of Natural Resources and  
25 other state agencies and departments having related regula-  
26 tory authority.

**§19-2H-3. Definitions.**

1 As used in this article:

2 (a) “Bio-security” means measures, actions or precau-  
3 tions taken to prevent the transmission of disease in, among  
4 or between free-ranging and captive cervids.

5 (b) “Captive cervid” or “captive cervids” means members  
6 of the Cervidae family of animals including, but not limited  
7 to, fallow deer, red deer, white-tail deer, axis deer, elk,  
8 moose, reindeer and caribou which are domesticated animals  
9 under the control of the owner of the animal.

10 (c) “Commissioner” means the Commissioner of the West  
11 Virginia Department of Agriculture.

12 (d) “Department” means the West Virginia Department  
13 of Agriculture.

14 (e) “Identification system” means a process or procedure  
15 that allows an individual cervid to be continuously recog-  
16 nized as a unique animal throughout its lifetime.

17 (f) “License” means the authorization issued by the  
18 department for the operation of a captive cervid farming  
19 facility.

20 (g) “Licensed captive cervid farming facility” means the  
21 specific fenced area and all equipment and components  
22 therein approved by the department for use as a captive  
23 cervid farming operation, but not including zoos accredited  
24 under the American Zoological Association, other petting  
25 zoos or roadside menageries licensed under section fifty-two,  
26 article two, chapter twenty of this code, or backyard enclo-  
27 sures containing less than one acre of fenced area and having  
28 captive cervids located there for public or private viewing.

29 (h) “Owner” means the person who owns or operates a  
30 licensed captive cervid farming facility.

31 (i) “Person” means an individual, corporation, limited  
32 liability company, partnership, association, joint venture or  
33 other legal entity.

34 (j) “Release” means to allow a cervid from a licensed  
35 captive cervid farming facility to be outside the perimeter  
36 fence of that licensed captive cervid farming facility without  
37 being under the direct control of the owner or his or her  
38 agent.

**§19-2H-4. Authority of the Department of Agriculture.**

1 The department is hereby granted authority to regulate  
2 and control captive cervid farming operations in this state in  
3 accordance with this article. Subject to the transition  
4 provisions contained in section twelve of this article, no  
5 person may operate a captive cervid farming facility in this  
6 state unless that person holds a license issued by the com-  
7 missioner pursuant to this article authorizing operation of  
8 that particular facility.

**§19-2H-5. Captive cervid farming rules.**

1 (a) The commissioner shall propose legislative rules in  
2 accordance with article three, chapter twenty-nine-a of this  
3 code as are necessary to provide for implementation and  
4 enforcement of this article. Any rules promulgated by the  
5 commissioner before September 1, 2012, may be by emer-  
6 gency rule.

7 (b) The rules, insofar as practicable, shall provide for the  
8 protection of animal and human health and promotion of  
9 bio-security which are consistent with the rules on those  
10 same subjects promulgated by the United States Department  
11 of Agriculture, Division of Animal and Plant Health Inspec-  
12 tion Service, in order that the rules promulgated pursuant to

13 this section and similar rules promulgated by the United  
14 States Department of Agriculture may be harmoniously  
15 administered and applied to captive cervid farming opera-  
16 tions subject to both the applicable federal rules and to rules  
17 promulgated under this section.

18 (c) The rules promulgated under this section shall include  
19 specific requirements which shall:

20 (1) Prevent the spread of diseases between captive and  
21 free-ranging cervids;

22 (2) Implement an identification system which will allow  
23 individual captive cervids to be recognized and identified  
24 throughout the animal's life;

25 (3) Establish the specifications for fencing necessary to  
26 prevent the escape of captive cervids and the infiltration of  
27 free-ranging cervids into a licensed captive cervid farming  
28 facility;

29 (4) Specify the record-keeping standards required of  
30 licensees, including standards for documentation of pur-  
31 chases, propagation, sales, harvesting and any other docu-  
32 mentation required to maintain accurate and complete  
33 records of captive cervid farming operations;

34 (5) Establish animal health testing criteria needed to  
35 discover and prevent the spread of animal diseases;

36 (6) Regulate the movement of captive cervids and provide  
37 for maintenance of documentation of the origin and destina-  
38 tion of all shipments and any other documentation required  
39 under the animal industry laws of this state; and

40 (7) Establish a schedule of fees and charges for services  
41 provided by the department to licensed captive cervid  
42 farming facilities, which fees and charges shall be set so that  
43 the costs of regulation pursuant to this article are covered by  
44 the combination of the fees and charges, license fees and any  
45 federal and state grants and appropriations available for  
46 support of the regulation of captive cervid farming opera-  
47 tions.

**§19-2H-6. Duties and obligations of the commissioner.**

1 The commissioner or his or her designees may:

2 (1) Establish within the department a section responsible  
3 for the enforcement of this article;

4 (2) Designate members of the department staff responsi-  
5 ble for each of the functions required for the proper regula-  
6 tion of captive cervid farming operations;



7 (3) Contract, if deemed desirable, with veterinarians and  
8 other animal health professionals to provide services re-  
9 quired to assure the bio-security of captive cervid farming  
10 operations in this state;

11 (4) Enter into interstate contracts with other states to  
12 enhance the bio-security of captive cervid farming opera-  
13 tions in this and other states;

14 (5) Lease, rent, acquire, purchase, own, hold, construct,  
15 equip, maintain, operate, sell, encumber and assign rights of  
16 any property, real or personal, consistent with the objectives  
17 set forth in this article;

18 (6) Hold hearings on any matter of concern relating to  
19 captive cervid farming, subpoena witnesses, administer  
20 oaths, take testimony, require the production of evidence and  
21 documentary evidence and designate hearing examiners and  
22 employees to so act; and

23 (7) Make and enter into all agreements and do all acts  
24 necessary or incidental to the performance of duties and the  
25 exercise of powers under this article.

**§19-2H-7. Application for license.**

1 (a) A person desiring to operate a captive cervid farming  
2 facility in this state must submit an application for a license

3 to the department. The department shall provide the forms  
4 and instructions for the filing of applications.

5 (b) The application form shall require submission of the  
6 following information:

7 (1) The mailing address of the proposed captive cervid  
8 farming facility and the size, location and an adequate legal  
9 description of the facility;

10 (2) The number of each species of cervid proposed to be  
11 included in the proposed facility;

12 (3) The bio-security measures to be utilized, including,  
13 but not limited to, a description of the fencing and the  
14 animal identification system to be used;

15 (4) The proposed method of flushing wild cervid species  
16 from the enclosure, if applicable;

17 (5) The proposed record-keeping system;

18 (6) The method of verification that all wild deer species  
19 have been removed;

20 (7) The current zoning, if any, of the property proposed  
21 for the facility; and

22 (8) Any other information considered necessary by the  
23 department.

24 (c) The application shall be accompanied by the biannual  
25 license fee as follows:

26 (1) *Class one license.* -- For a facility to be used only for  
27 breeding and propagation of cervids for sale to others -- \$750;  
28 or

29 (2) *Class two license.* -- For facilities from which cervids  
30 will be harvested - \$1,500.

**§19-2H-8. Departmental action on applications.**

1 (a) The department shall act on an application for a  
2 license within sixty days of receipt. The department may  
3 issue a provisional license for a proposed facility which has  
4 not yet been constructed, but operations shall not begin  
5 under a provisional license until after inspection of the fully  
6 constructed facility by the department and the issuance of a  
7 nonprovisional license for the facility.

8 (b) The department may not issue any nonprovisional  
9 license until the commissioner has determined that the  
10 facility and its operation meet all of the following criteria:

11 (1) The facility has been inspected by the department and  
12 the commissioner has determined that the facility and its  
13 proposed operation meet each of the standards and require-

14 ments under this article and the rules promulgated under  
15 this article;

16 (2) The applicant has all necessary federal, state and  
17 local governmental permits required for the facility and  
18 operations subject to the license; and

19 (3) The owner has paid all applicable license fees and all  
20 departmental charges for services provided to the owner's  
21 captive cervid farming facility.

22 (c) If the department finds a deficiency in the license  
23 application, the owner shall be given at least thirty days to  
24 remedy the deficiency before the license application is  
25 denied.

26 (d) If the commissioner determines that the proposed  
27 captive cervid farming facility or its proposed operation does  
28 not comply with the requirements of this article after the  
29 opportunity to remedy deficiencies, the commissioner shall  
30 deny the application and notify the applicant in writing of  
31 the reasons for the denial.

32 (e) The applicant may request a hearing pursuant to  
33 article five, chapter twenty-nine-a of this code, to contest the  
34 denial of a license or any limitations placed upon the  
35 issuance of a license.

36 (f) The department shall retain the license fee or any  
37 portion of the license fee to an applicant if a license is  
38 denied.

**§19-2H-9. License certificate; renewal; sale or transfer of  
license.**

1 (a) The department shall issue a license certificate to the  
2 owner of each licensed captive cervid farming facility, which  
3 shall contain the following information:

4 (1) The class of license, the license number and expira-  
5 tion date;

6 (2) The deer species approved for the licensed facility;

7 (3) The name, business address and telephone number of  
8 the owner of the licensed facility; and

9 (4) The address of the captive cervid farming facility.

10 (b) An application for renewal of a license shall be  
11 submitted on forms provided by the department not later  
12 than sixty days before expiration of the current license. Each  
13 license issued shall be for a period of two years from the date  
14 of issuance.

15 (c) The sale or transfer of ownership of a captive cervid  
16 farming facility will not operate to transfer the license. The

17 department may issue a new license to the transferee if all  
18 license requirements are met and a new license fee is paid.

**§19-2H-10. License modification.**

1 An owner must apply to the department for a license  
2 modification if there is any proposed change in the class of  
3 license or the species approved for the licensed facility.

**§19-2H-11. Inspection of facility by the department.**

1 The department and its duly authorized agents shall have  
2 access at all reasonable hours to any licensed captive cervid  
3 farming facility for the purpose of conducting inspections,  
4 securing samples or specimens of any cervid species and  
5 determining whether the owner is in compliance with the  
6 requirements of this article. Any inspection and sampling  
7 shall be conducted in a manner which will not jeopardize the  
8 health of the captive cervids.

**§19-2H-12. Transition to captive cervid farming licenses; statutory  
conflicts.**

1 (a) A captive cervid farming facility in existence on the  
2 effective date of this article may continue operation under its  
3 existing authorization until the department acts on its  
4 application for a license under this article: *Provided*, That  
5 the owner of that facility makes application for a license

6 under this article within sixty days after application forms  
7 are available from the department.

8 (b) Notwithstanding any other provision of the law to the  
9 contrary, an owner or an owner's customer harvesting  
10 captive cervids from a licensed captive cervid farming  
11 facility is not subject to any possession limits laws, closed  
12 season laws or hunting license requirements. A license under  
13 this article does not give the licensee any right to take wild  
14 deer unless it is done pursuant to a permit issued by the  
15 Division of Natural Resources.

16 (c) A licensed captive cervid farming facility is not  
17 subject to sections eleven, twelve, thirteen, fourteen, forty-  
18 seven and fifty-one, article two, chapter twenty of this code  
19 or the rules promulgated thereunder.

**§19-2H-13. Noncompliance with article, standards, orders or  
rules; suspension, revocation or limitation of  
license.**

1 The department may suspend, revoke or limit a license if  
2 the licensee fails to comply with this article, standards  
3 adopted under this article, orders issued by the commissioner  
4 as a result of an administrative action or departmental

5 review conducted under this article or rules promulgated  
6 under this article.

**§19-2H-14. Prohibited conduct; violation; penalty.**

1 (a) A person may not release or allow the release of any  
2 captive cervids from a captive cervid farming facility. This  
3 subsection does not prohibit the sale, breeding, marketing,  
4 exhibition or other uses of captive cervids approved by the  
5 department.

6 (b) An owner may not abandon a captive cervid farming  
7 facility without first notifying the department in compliance  
8 with standards established under this article.

9 (c) A person may not cause the entry or introduction of  
10 wild deer into a captive cervid farming facility.

11 (d) Any person who violates subsection (a) or (b) of this  
12 section is guilty of a misdemeanor and, upon conviction  
13 thereof, shall, for a first offense, be confined in jail for not  
14 more than ninety days, or fined not more than \$300 or both  
15 fined and confined. Any person who violates subsection (a)  
16 or (b) for a second or subsequent offense is guilty of a  
17 misdemeanor and, upon conviction thereof, shall be confined  
18 in jail for not more than one year, or fined not more than  
19 \$1,000 or both fined and confined.



20 (e) Notwithstanding subsection (d) of this section, any  
21 person who intentionally or knowingly violates subsection  
22 (a), (b) or (c) of this section is guilty of a felony and, upon  
23 conviction thereof, shall be imprisoned in a state correc-  
24 tional facility not less than one nor more than three years, or  
25 fined not more than \$1,000 or both fined and imprisoned.

**§19-2H-15. Findings of violations; remedies.**

1 (a) The commissioner, upon finding that a person has  
2 violated any requirements under this article, may:

3 (1) Issue a warning; or

4 (2) Impose a civil penalty of not more than \$1,000, plus  
5 the costs of investigation, for each violation, after notice and  
6 an opportunity for a hearing. A person aggrieved by an  
7 administrative action under this section may request a  
8 hearing pursuant to article five, chapter twenty-nine-a of  
9 this code.

10 (b) Notwithstanding any other provisions of this article,  
11 the commissioner may bring an action to:

12 (1) Obtain a declaratory judgment that a particular  
13 method, activity or practice is a violation of this article; or

14 (2) Obtain an injunction against a person who is engag-  
15 ing in a method, activity or practice that violates this article.

16 (c) The remedies under this article are cumulative and  
17 use of one remedy does not bar the use of any other remedy.

**ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE  
PRODUCTS.**

**§19-29-2. Definitions.**

1 (a) "Aquaculture" means the commercial production of  
2 fish and/or other aquatic life.

3 (b) "Commissioner" means the Commissioner of Agricul-  
4 ture or his or her designee.

5 (c) "Domestic purposes" means for the purposes of food  
6 production, for resale as breeding stock or for the sale of  
7 immature stock for the purposes of further feeding.

8 (d) "Nontraditional agriculture" means the production of  
9 animals domesticated from wild stock, either native or  
10 nonnative, and are being confined, bred and/or fed for  
11 domestic purposes, ~~except that white-tailed deer (*Odocoileus*~~  
12 ~~*virginianus*) and all its subspecies shall not be included~~  
13 including privately owned cervid and all its subspecies that  
14 are kept pursuant to article two-h of this chapter;  
15 aquaculture; or other agricultural products as defined in this  
16 article.

**CHAPTER 20. NATURAL RESOURCES.**

**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

**§20-1-2. Definitions.**

1 As used in this chapter, unless the context clearly  
2 requires a different meaning:

3 “Agency” means any branch, department or unit of the  
4 state government, however designated or constituted.

5 “Alien” means any person not a citizen of the United  
6 States.

7 “Bag limit” or “creel limit” means the maximum number  
8 of wildlife which may be taken, caught, killed or possessed  
9 by any person.

10 “Big game” means elk, deer, black bears, wild boars and  
11 wild turkeys.

12 “Bona fide resident, tenant or lessee” means a person  
13 who permanently resides on the land.

14 “Citizen” means any native-born citizen of the United  
15 States and foreign-born persons who have procured their  
16 final naturalization papers.

17 “Closed season” means the time or period during which  
18 it shall be unlawful to take any wildlife as specified and  
19 limited by ~~the provisions of~~ this chapter.

20 “Commission” means the Natural Resources Commission.

21 “Commissioner” means a member of the advisory  
22 commission of the Natural Resources Commission.

23 “Director” means the Director of the Division of Natural  
24 Resources.

25 “Fishing” or “to fish” means the taking, by any means,  
26 of fish, minnows, frogs or other amphibians, aquatic turtles  
27 and other forms of aquatic life used as fish bait.

28 “Fur-bearing animals” include:(a) The mink; (b) the  
29 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f)  
30 the skunk and civet cat, commonly called polecat; (g) the  
31 otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat  
32 or bay lynx; (k) the raccoon; and (l) the fisher.

33 “Game” means game animals, game birds and game fish  
34 as herein defined.

35 “Game animals” include:(a) The elk; (b) the deer; (c) the  
36 cottontail rabbits and hares; (d) the fox squirrels, commonly  
37 called red squirrels, and gray squirrels and all their color  
38 phases - red, gray, black or albino; (e) the raccoon; (f) the  
39 black bear; and (g) the wild boar. The term “game animals”  
40 does not include privately owned cervid and all its subspe-

41 cies that are kept pursuant to article two-h, chapter nineteen  
42 of this code.

43 “Game birds” include:(a) The anatidae, commonly known  
44 as swan, geese, brants and river and sea ducks; (b) the  
45 rallidae, commonly known as rails, sora, coots, mudhens and  
46 gallinule; (c) the limicolae, commonly known as shorebirds,  
47 plover, snipe, woodcock, sandpipers, yellow legs and cur-  
48 lews; (d) the galliformes, commonly known as wild turkey,  
49 grouse, pheasants, quails and partridges (both native and  
50 foreign species); (e) the columbidae, commonly known as  
51 doves; (f) the icteridae, commonly known as blackbirds,  
52 redwings and grackle; and (g) the corvidae, commonly known  
53 as crows.

54 “Game fish” include:(a) Brook trout; (b) brown trout; (c)  
55 rainbow trout; (d) golden rainbow trout; (e) largemouth bass;  
56 (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i)  
57 chain pickerel; (j) muskellunge; (k) walleye; (l) northern pike;  
58 (m) rock bass; (n) white bass; (o) white crappie; (p) black  
59 crappie; (q) all sunfish species; (r) channel catfish; (s)  
60 flathead catfish; (t) blue catfish, (u) sauger; and (v) all game  
61 fish hybrids.

62 “Hunt” means to pursue, chase, catch or take any wild  
63 birds or wild animals. ~~Provided, That~~ However, the defini-  
64 tion of “hunt” does not include an officially sanctioned and  
65 properly licensed field trial, water race or wild hunt as long  
66 as that field trial is not a shoot-to-retrieve field trial.

67 “Lands” means land, waters and all other appurtenances  
68 connected therewith.

69 “Migratory birds” means any migratory game or  
70 nongame birds included in the terms of conventions between  
71 the United States and Great Britain and between the United  
72 States and United Mexican States, known as the Migratory  
73 Bird Treaty Act, for the protection of migratory birds and  
74 game mammals concluded, respectively, August 16, 1916, and  
75 February 7, 1936.

76 “Nonresident” means any person who is a citizen of the  
77 United States and who has not been a domiciled resident of  
78 the State of West Virginia for a period of thirty consecutive  
79 days immediately prior to the date of his or her application  
80 for a license or permit except any full-time student of any  
81 college or university of this state, even though he or she is  
82 paying a nonresident tuition.

83 “Open season” means the time during which the various  
84 species of wildlife may be legally caught, taken, killed or  
85 chased in a specified manner and shall include both the first  
86 and the last day of the season or period designated by the  
87 director.

88 “Person”, except as otherwise defined elsewhere in this  
89 chapter, means the plural “persons” and shall include  
90 individuals, partnerships, corporations or other legal  
91 entities.

92 “Preserve” means all duly licensed private game farm-  
93 lands, or private plants, ponds or areas, where hunting or  
94 fishing is permitted under special licenses or seasons other  
95 than the regular public hunting or fishing seasons. The term  
96 “preserve” does not include privately owned lands that are  
97 kept pursuant to article two-h, chapter nineteen of this code.

98 “Protected birds” means all wild birds not included  
99 within the definition of “game birds” and “unprotected  
100 birds”.

101 “Resident” means any person who is a citizen of the  
102 United States and who has been a domiciled resident of the  
103 State of West Virginia for a period of thirty consecutive days  
104 or more immediately prior to the date of his or her applica-

105 tion for license or permit. ~~Provided, That~~ However, a  
106 member of the armed forces of the United States who is  
107 stationed beyond the territorial limits of this state, but who  
108 was a resident of this state at the time of his or her entry into  
109 such service and any full-time student of any college or  
110 university of this state, even though he or she is paying a  
111 nonresident tuition, shall be considered a resident under ~~the~~  
112 ~~provisions of~~ this chapter.

113 “Roadside menagerie” means any place of business, other  
114 than a commercial game farm, commercial fish preserve,  
115 place or pond, where any wild bird, game bird, unprotected  
116 bird, game animal or fur-bearing animal is kept in confine-  
117 ment for the attraction and amusement of the people for  
118 commercial purposes.

119 “Small game” includes all game animals, furbearing  
120 animals and game birds except elk, deer, black bears, wild  
121 boars and wild turkeys.

122 “Take” means to hunt, shoot, pursue, lure, kill, destroy,  
123 catch, capture, keep in captivity, gig, spear, trap, ensnare,  
124 wound or injure any wildlife, or attempt to do so. ~~Provided,~~  
125 ~~That~~ However, the definition of “take” does not include an  
126 officially sanctioned and properly licensed field trial, water



127 race or wild hunt as long as that field trial is not a shoot-to-  
128 retrieve field trial.

129 “Unprotected birds” shall include:(a) The English  
130 sparrow; (b) the European starling; and (c) the cowbird.

131 “Wild animals” means all mammals native to the State  
132 of West Virginia occurring either in a natural state or in  
133 captivity, except house mice or rats. The term “wild ani-  
134 mals” does not include privately owned cervid and all its  
135 subspecies that are kept pursuant to article two-h, chapter  
136 nineteen of this code.

137 “Wild birds” shall include all birds other than:(a)  
138 Domestic poultry - chickens, ducks, geese, guinea fowl,  
139 peafowls and turkeys; (b) psittacidae, commonly called  
140 parrots and parakeets; and (c) other foreign cage birds such  
141 as the common canary, exotic finches and ring dove. All wild  
142 birds, either:(i) Those occurring in a natural state in West  
143 Virginia; or (ii) those imported foreign game birds, such as  
144 waterfowl, pheasants, partridges, quail and grouse, regard-  
145 less of how long raised or held in captivity, shall remain wild  
146 birds under the meaning of this chapter.

147 “Wildlife” means wild birds, wild animals, game and fur-  
148 bearing animals, fish (including minnows), reptiles, amphibi-

149 ans, mollusks, crustaceans and all forms of aquatic life used  
150 as fish bait, whether dead or alive. The term “wildlife” does  
151 not include privately owned cervid and all its subspecies that  
152 are kept pursuant to article two-h, chapter nineteen of this  
153 code.

154 “Wildlife refuge” means any land set aside by action of  
155 the director as an inviolate refuge or sanctuary for the  
156 protection of designated forms of wildlife.

## **ARTICLE 2. WILDLIFE RESOURCES.**

### **§20-2-11. Sale of wildlife; transportation of same.**

1 (a) ~~No~~ A person, except those legally licensed to operate  
2 private game preserves for the purpose of propagating game  
3 for commercial purposes and those legally licensed to  
4 propagate or sell fish, amphibians and other forms of aquatic  
5 life, ~~shall~~ may not purchase or offer to purchase, sell or offer  
6 to sell, expose for sale or have in his or her possession for the  
7 purpose of sale any wildlife, or part thereof, which has been  
8 designated as game animals, fur-bearing animals, game  
9 birds, game fish or amphibians, or any of the song or insec-  
10 tivorous birds of the state, or any other species of wildlife  
11 which the director may designate, ~~Provided, That~~ except for  
12 privately owned cervid and all its subspecies that are kept

13 pursuant to the provisions of article two-h, chapter nineteen  
14 of this code. However, pelts of game or fur-bearing animals  
15 taken during the legal season may be sold and live red and  
16 gray foxes and raccoon taken by legal methods during legal  
17 and established trapping seasons may be sold within the  
18 state. ~~Provided, however, That~~ In addition, the hide, head,  
19 antlers and feet of a legally killed deer and the hide, head  
20 and skull of a legally killed black bear may be sold.

21 (b) No A person, including a common carrier, ~~shall~~ may  
22 not transport, carry or convey, or receive for such purposes  
23 any wildlife, the sale of which is prohibited, if such person  
24 knows or has reason to believe that such wildlife has been or  
25 is to be sold in violation of this section.

26 (c) The Each separate act of selling or exposing for sale,  
27 having in possession for sale, transporting or carrying in  
28 violation of this section ~~shall each constitute~~ constitutes a  
29 separate misdemeanor offense. Notwithstanding ~~the provi-~~  
30 ~~sions of~~ this or any other section of this chapter, any game  
31 birds or game bird meats sold by licensed retailers may be  
32 served at any hotel, restaurant or other licensed eating place  
33 in this state.

34 (d) The director ~~shall have authority to promulgate~~ may  
35 propose rules for promulgation in accordance with article  
36 three, chapter twenty-nine-a of this code, dealing with the  
37 sale of wildlife and the skins thereof.

**§20-2-12. Transportation of wildlife out of state; penalties.**

1 (a) A person may not transport or have in his or her  
2 possession with the intention of transporting beyond the  
3 limits of the state any species of wildlife or any part thereof  
4 killed, taken, captured or caught within this state, except as  
5 provided in this section.

6 (1) A person legally entitled to hunt and fish in this state  
7 may take with him or her personally, when leaving the state,  
8 any wildlife that he or she has lawfully taken or killed, not  
9 exceeding, during the open season, the number that any  
10 person may lawfully possess.

11 (2) Licensed resident hunters and trappers and resident  
12 and nonresident fur dealers may transport beyond the limits  
13 of the state pelts of game and fur-bearing animals taken  
14 during the legal season.

15 (3) A person may transport the hide, head, antlers and  
16 feet of a legally killed deer and the hide, head, skull, organs

17 and feet of a legally killed black bear beyond the limits of  
18 the state.

19 (4) A person legally entitled to possess an animal accord-  
20 ing to section four, article two of this chapter may transport  
21 that animal beyond the limits of the state.

22 (b) The director ~~shall have authority to~~ may promulgate  
23 rules in accordance with chapter twenty-nine-a of this code  
24 dealing with the transportation and tagging of wildlife and  
25 the skins.

26 (c) A person ~~violating the provisions of~~ who violates this  
27 section by transporting or possessing with the intention of  
28 transporting beyond the limits of this state deer or wild boar  
29 shall be ~~deemed~~ considered to have committed a separate  
30 offense for each animal so transported or possessed. This  
31 section does not apply to privately owned cervid or any of its  
32 subspecies that are kept pursuant to article two-h, chapter  
33 nineteen of this code.

34 (d) A person ~~violating the provisions of~~ this section shall  
35 be guilty of a misdemeanor and, upon conviction thereof,  
36 shall be fined not less than \$20 nor more than \$300 and be  
37 ~~imprisoned~~ confined in jail not less than ten nor more than  
38 sixty days.

39 (e) This section does not apply to persons legally entitled  
40 to propagate and sell wild animals, wild birds, fish, amphibi-  
41 ans and other forms of aquatic life beyond the limits of the  
42 state.

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(NOTE: Article 2H is new; therefore, strike-throughs and underscoring have been omitted.)

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)