

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 421**

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

7 \_\_\_\_\_  
8 [Originating in the Committee on Judiciary;  
9 reported February 14, 2012.]  
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11  
12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §19-2H-1, §19-2H-2,  
14 §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8,  
15 §19-2H-9, §19-2H-10, §19-2H-11, §19-2H-12, §19-2H-13, §19-2H-  
16 14 and §19-2H-15; to amend and reenact §19-29-2 of said code;  
17 to amend and reenact §20-1-2 of said code; and to amend and  
18 reenact §20-2-11 and §20-2-12 of said code, all relating to  
19 regulating captive cervid farming as an agricultural  
20 enterprise in this state; stating the powers and duties of the  
21 Department of Agriculture; promulgating rules; establishing  
22 the duties and obligation of the commissioner; creating an  
23 application process; issuing, renewing, modifying and  
24 transferring license certificates; inspecting facilities;



1 the state's rural areas, by providing for comprehensive regulation  
2 in the public interest of captive cervid farming as a viable  
3 agricultural business.

4 (b) The Legislature finds and declares that captive cervid  
5 farming is primarily an agricultural pursuit which is separate from  
6 and largely unrelated to wildlife management, and that captive  
7 cervids should be treated in a manner similar to other farm  
8 livestock animals. The Legislature further finds and declares that  
9 the Commissioner of Agriculture and the professional staff of that  
10 department possess the knowledge, training and experience required  
11 to properly regulate captive cervid farming as an agricultural  
12 business and to adequately protect the health and safety of animals  
13 and the general public in connection with this farming business.  
14 The Legislature also finds and declares that matters related to  
15 animal health, farm fencing, animal identification, agricultural  
16 record keeping and animal husbandry methods and equipment are best  
17 managed and regulated by the farming professionals within the  
18 Department of Agriculture, in consultation with the Division of  
19 Natural Resources and other state agencies and departments having  
20 related regulatory authority.

21 **§19-2H-3. Definitions.**

22 As used in this article:

23 (a) "Bio-security" means measures, actions or precautions  
24 taken to prevent the transmission of disease in, among or between

1 free-ranging and captive cervids.

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

7 (c) "Commissioner" means the Commissioner of the West Virginia  
8 Department of Agriculture.

9 (d) "Department" means the West Virginia Department of  
10 Agriculture.

11 (e) "Identification system" means a process or procedure that  
12 allows an individual cervid to be continuously recognized as a  
13 unique animal throughout its lifetime.

14 (f) "License" means the authorization issued by the department  
15 for the operation of a captive cervid farming facility.

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

1 (h) "Owner" means the person who owns or operates a licensed  
2 captive cervid farming facility.

3 (I) "Person" means an individual, corporation, limited  
4 liability company, partnership, association, joint venture or other  
5 legal entity.

6 (j) "Release" means to allow a cervid from a licensed captive  
7 cervid farming facility to be outside the perimeter fence of that  
8 licensed captive cervid farming facility without being under the  
9 direct control of the owner or his or her agent.

10 **§19-2H-4. Authority of the Department of Agriculture.**

11 The department is hereby granted authority to regulate and  
12 control captive cervid farming operations in this state in  
13 accordance with this article. Subject to the transition provisions  
14 contained in section twelve of this article, no person may operate  
15 a captive cervid farming facility in this state unless that person  
16 holds a license issued by the commissioner pursuant to this article  
17 authorizing operation of that particular facility.

18 **§19-2H-5. Captive cervid farming rules.**

19 (a) The commissioner shall propose legislative rules in  
20 accordance with article three, chapter twenty-nine-a of this code  
21 as are necessary to provide for implementation and enforcement of  
22 this article. Any rules promulgated by the commissioner before  
23 September 1, 2012, may be by emergency rule.

24 (b) The rules, insofar as practicable, shall provide for the

1 protection of animal and human health and promotion of bio-security  
2 which are consistent with the rules on those same subjects  
3 promulgated by the United States Department of Agriculture,  
4 Division of Animal and Plant Health Inspection Service, in order  
5 that the rules promulgated pursuant to this section and similar  
6 rules promulgated by the United States Department of Agriculture  
7 may be harmoniously administered and applied to captive cervid  
8 farming operations subject to both the applicable federal rules and  
9 to rules promulgated under this section.

10 (c) The rules promulgated under this section shall include  
11 specific requirements which shall:

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

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

17 (3) Establish the specifications for fencing necessary to  
18 prevent the escape of captive cervids and the infiltration of free-  
19 ranging cervids into a licensed captive cervid farming facility;

20 (4) Specify the record-keeping standards required of  
21 licensees, including standards for documentation of purchases,  
22 propagation, sales, harvesting and any other documentation required  
23 to maintain accurate and complete records of captive cervid farming  
24 operations;

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

3 (6) Regulate the movement of captive cervids and provide for  
4 maintenance of documentation of the origin and destination of all  
5 shipments and any other documentation required under the animal  
6 industry laws of this state; and

7 (7) Establish a schedule of fees and charges for services  
8 provided by the department to licensed captive cervid farming  
9 facilities, which fees and charges shall be set so that the costs  
10 of regulation pursuant to this article are covered by the  
11 combination of the fees and charges, license fees and any federal  
12 and state grants and appropriations available for support of the  
13 regulation of captive cervid farming operations.

14 **§19-2H-6. Duties and obligations of the commissioner.**

15 The commissioner or his or her designees may:

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

18 (2) Designate members of the department staff responsible for  
19 each of the functions required for the proper regulation of captive  
20 cervid farming operations;

21 (3) Contract, if deemed desirable, with veterinarians and  
22 other animal health professionals to provide services required to  
23 assure the bio-security of captive cervid farming operations in  
24 this state;

1 (4) Enter into interstate contracts with other states to  
2 enhance the bio-security of captive cervid farming operations in  
3 this and other states;

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

8 (6) Hold hearings on any matter of concern relating to captive  
9 cervid farming, subpoena witnesses, administer oaths, take  
10 testimony, require the production of evidence and documentary  
11 evidence and designate hearing examiners and employees to so act;  
12 and

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

16 **§19-2H-7. Application for license.**

17 (a) A person desiring to operate a captive cervid farming  
18 facility in this state must submit an application for a license to  
19 the department. The department shall provide the forms and  
20 instructions for the filing of applications.

21 (b) The application form shall require submission of the  
22 following information:

23 (1) The mailing address of the proposed captive cervid farming  
24 facility and the size, location and an adequate legal description



1 of the facility;

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

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

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

9 (5) The proposed record-keeping system;

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

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

14 (8) Any other information considered necessary by the  
15 department.

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

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

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

22 **§19-2H-8. Departmental action on applications.**

23 (a) The department shall act on an application for a license  
24 within sixty days of receipt. The department may issue a

1 provisional license for a proposed facility which has not yet been  
2 constructed, but operations shall not begin under a provisional  
3 license until after inspection of the fully constructed facility by  
4 the department and the issuance of a nonprovisional license for the  
5 facility.

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

9 (1) The facility has been inspected by the department and the  
10 commissioner has determined that the facility and its proposed  
11 operation meet each of the standards and requirements under this  
12 article and the rules promulgated under this article;

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

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

19 (c) If the department finds a deficiency in the license  
20 application, the owner shall be given at least thirty days to  
21 remedy the deficiency before the license application is denied.

22 (d) If the commissioner determines that the proposed captive  
23 cervid farming facility or its proposed operation does not comply  
24 with the requirements of this article after the opportunity to

1 remedy deficiencies, the commissioner shall deny the application  
2 and notify the applicant in writing of the reasons for the denial.

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

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

8 **§19-2H-9. License certificate; renewal; sale or transfer of**  
9 **license.**

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

13 (1) The class of license, the license number and expiration  
14 date;

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

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

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

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

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

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

3 **§19-2H-10. License modification.**

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

7 **§19-2H-11. Inspection of facility by the department.**

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

15 **§19-2H-12. Transition to captive cervid farming licenses;  
16 statutory conflicts.**

17 (a) A captive cervid farming facility in existence on the  
18 effective date of this article may continue operation under its  
19 existing authorization until the department acts on its application  
20 for a license under this article: *Provided*, That the owner of that  
21 facility makes application for a license under this article within  
22 sixty days after application forms are available from the  
23 department.

24 (b) Notwithstanding any other provision of the law to the

1 contrary, an owner or an owner's customer harvesting captive  
2 cervids from a licensed captive cervid farming facility is not  
3 subject to any possession limits laws, closed season laws or  
4 hunting license requirements. A license under this article does  
5 not give the licensee any right to take wild deer unless it is done  
6 pursuant to a permit issued by the Division of Natural Resources.

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

11 **§19-2H-13. Noncompliance with article, standards, orders or**  
12 **rules; suspension, revocation or limitation of**  
13 **license.**

14 The department may suspend, revoke or limit a license if the  
15 licensee fails to comply with this article, standards adopted under  
16 this article, orders issued by the commissioner as a result of an  
17 administrative action or departmental review conducted under this  
18 article or rules promulgated under this article.

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

20 (a) A person may not release or allow the release of any  
21 captive cervids from a captive cervid farming facility. This  
22 subsection does not prohibit the sale, breeding, marketing,  
23 exhibition or other uses of captive cervids approved by the  
24 department.

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

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

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

14 (e) Notwithstanding subsection (d) of this section, any person  
15 who intentionally or knowingly violates subsection (a), (b) or (c)  
16 of this section is guilty of a felony and, upon conviction thereof,  
17 shall be imprisoned in a state correctional facility not less than  
18 one nor more than three years, or fined not more than \$1,000 or  
19 both fined and imprisoned.

20 **§19-2H-15. Findings of violations; remedies.**

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

23 (1) Issue a warning; or

24 (2) Impose a civil penalty of not more than \$1,000, plus the

1 costs of investigation, for each violation, after notice and an  
2 opportunity for a hearing. A person aggrieved by an administrative  
3 action under this section may request a hearing pursuant to article  
4 five, chapter twenty-nine-a of this code.

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

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

9 (2) Obtain an injunction against a person who is engaging in  
10 a method, activity or practice that violates this article.

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

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

14 **§19-29-2. Definitions.**

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

17 (b) "Commissioner" means the Commissioner of Agriculture or  
18 his or her designee.

19 (c) "Domestic purposes" means for the purposes of food  
20 production, for resale as breeding stock or for the sale of  
21 immature stock for the purposes of further feeding.

22 (d) "Nontraditional agriculture" means the production of  
23 animals domesticated from wild stock, either native or nonnative,  
24 and are being confined, bred and/or fed for domestic purposes,

1 ~~except that white-tailed deer (Odocoileus virginianus) and all its~~  
2 ~~subspecies shall not be included~~ including privately owned cervid  
3 and all its subspecies that are kept pursuant to article two-h of  
4 this chapter; aquaculture; or other agricultural products as  
5 defined in this article.

6 **CHAPTER 20. NATURAL RESOURCES.**

7 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

8 **§20-1-2. Definitions.**

9 As used in this chapter, unless the context clearly requires  
10 a different meaning:

11 "Agency" means any branch, department or unit of the state  
12 government, however designated or constituted.

13 "Alien" means any person not a citizen of the United States.

14 "Bag limit" or "creel limit" means the maximum number of  
15 wildlife which may be taken, caught, killed or possessed by any  
16 person.

17 "Big game" means elk, deer, black bears, wild boars and wild  
18 turkeys.

19 "Bona fide resident, tenant or lessee" means a person who  
20 permanently resides on the land.

21 "Citizen" means any native-born citizen of the United States  
22 and foreign-born persons who have procured their final  
23 naturalization papers.

24 "Closed season" means the time or period during which it shall



1 be unlawful to take any wildlife as specified and limited by ~~the~~  
2 ~~provisions of~~ this chapter.

3 "Commission" means the Natural Resources Commission.

4 "Commissioner" means a member of the advisory commission of  
5 the Natural Resources Commission.

6 "Director" means the Director of the Division of Natural  
7 Resources.

8 "Fishing" or "to fish" means the taking, by any means, of  
9 fish, minnows, frogs or other amphibians, aquatic turtles and other  
10 forms of aquatic life used as fish bait.

11 "Fur-bearing animals" include:(a) The mink; (b) the weasel;  
12 (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and  
13 civet cat, commonly called polecat; (g) the otter; (h) the red fox;  
14 (I) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the  
15 raccoon; and (l) the fisher.

16 "Game" means game animals, game birds and game fish as herein  
17 defined.

18 "Game animals" include:(a) The elk; (b) the deer; (c) the  
19 cottontail rabbits and hares; (d) the fox squirrels, commonly  
20 called red squirrels, and gray squirrels and all their color phases  
21 - red, gray, black or albino; (e) the raccoon; (f) the black bear;  
22 and (g) the wild boar. The term "game animals" does not include  
23 privately owned cervid and all its subspecies that are kept  
24 pursuant to article two-h, chapter nineteen of this code.

1 "Game birds" include: (a) The anatidae, commonly known as swan,  
2 geese, brants and river and sea ducks; (b) the rallidae, commonly  
3 known as rails, sora, coots, mudhens and gallinule; (c) the  
4 limicolae, commonly known as shorebirds, plover, snipe, woodcock,  
5 sandpipers, yellow legs and curlews; (d) the galliformes, commonly  
6 known as wild turkey, grouse, pheasants, quails and partridges  
7 (both native and foreign species); (e) the columbidae, commonly  
8 known as doves; (f) the icteridae, commonly known as blackbirds,  
9 redwings and grackle; and (g) the corvidae, commonly known as  
10 crows.

11 "Game fish" include: (a) Brook trout; (b) brown trout; (c)  
12 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)  
13 smallmouth bass; (g) spotted bass; (h) striped bass; (I) chain  
14 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock  
15 bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all  
16 sunfish species; (r) channel catfish; (s) flathead catfish; (t)  
17 blue catfish, (u) sauger; and (v) all game fish hybrids.

18 "Hunt" means to pursue, chase, catch or take any wild birds or  
19 wild animals. ~~Provided, That~~ However, the definition of "hunt"  
20 does not include an officially sanctioned and properly licensed  
21 field trial, water race or wild hunt as long as that field trial is  
22 not a shoot-to-retrieve field trial.

23 "Lands" means land, waters and all other appurtenances  
24 connected therewith.

1 "Migratory birds" means any migratory game or nongame birds  
2 included in the terms of conventions between the United States and  
3 Great Britain and between the United States and United Mexican  
4 States, known as the Migratory Bird Treaty Act, for the protection  
5 of migratory birds and game mammals concluded, respectively, August  
6 16, 1916, and February 7, 1936.

7 "Nonresident" means any person who is a citizen of the United  
8 States and who has not been a domiciled resident of the State of  
9 West Virginia for a period of thirty consecutive days immediately  
10 prior to the date of his or her application for a license or permit  
11 except any full-time student of any college or university of this  
12 state, even though he or she is paying a nonresident tuition.

13 "Open season" means the time during which the various species  
14 of wildlife may be legally caught, taken, killed or chased in a  
15 specified manner and shall include both the first and the last day  
16 of the season or period designated by the director.

17 "Person", except as otherwise defined elsewhere in this  
18 chapter, means the plural "persons" and shall include individuals,  
19 partnerships, corporations or other legal entities.

20 "Preserve" means all duly licensed private game farmlands, or  
21 private plants, ponds or areas, where hunting or fishing is  
22 permitted under special licenses or seasons other than the regular  
23 public hunting or fishing seasons. The term "preserve" does not  
24 include privately owned lands that are kept pursuant to article

1 two-h, chapter nineteen of this code.

2 "Protected birds" means all wild birds not included within the  
3 definition of "game birds" and "unprotected birds".

4 "Resident" means any person who is a citizen of the United  
5 States and who has been a domiciled resident of the State of West  
6 Virginia for a period of thirty consecutive days or more  
7 immediately prior to the date of his or her application for license  
8 or permit. ~~Provided, That~~ However, a member of the armed forces of  
9 the United States who is stationed beyond the territorial limits of  
10 this state, but who was a resident of this state at the time of his  
11 or her entry into such service and any full-time student of any  
12 college or university of this state, even though he or she is  
13 paying a nonresident tuition, shall be considered a resident under  
14 ~~the provisions of~~ this chapter.

15 "Roadside menagerie" means any place of business, other than  
16 a commercial game farm, commercial fish preserve, place or pond,  
17 where any wild bird, game bird, unprotected bird, game animal or  
18 fur-bearing animal is kept in confinement for the attraction and  
19 amusement of the people for commercial purposes.

20 "Small game" includes all game animals, furbearing animals and  
21 game birds except elk, deer, black bears, wild boars and wild  
22 turkeys.

23 "Take" means to hunt, shoot, pursue, lure, kill, destroy,  
24 catch, capture, keep in captivity, gig, spear, trap, ensnare, wound

1 or injure any wildlife, or attempt to do so. ~~Provided, That~~  
2 However, the definition of "take" does not include an officially  
3 sanctioned and properly licensed field trial, water race or wild  
4 hunt as long as that field trial is not a shoot-to-retrieve field  
5 trial.

6 "Unprotected birds" shall include: (a) The English sparrow; (b)  
7 the European starling; and (c) the cowbird.

8 "Wild animals" means all mammals native to the State of West  
9 Virginia occurring either in a natural state or in captivity,  
10 except house mice or rats. The term "wild animals" does not  
11 include privately owned cervid and all its subspecies that are kept  
12 pursuant to article two-h, chapter nineteen of this code.

13 "Wild birds" shall include all birds other than: (a) Domestic  
14 poultry - chickens, ducks, geese, guinea fowl, peafowls and  
15 turkeys; (b) psittacidae, commonly called parrots and parakeets;  
16 and (c) other foreign cage birds such as the common canary, exotic  
17 finches and ring dove. All wild birds, either: (I) Those occurring  
18 in a natural state in West Virginia; or (ii) those imported foreign  
19 game birds, such as waterfowl, pheasants, partridges, quail and  
20 grouse, regardless of how long raised or held in captivity, shall  
21 remain wild birds under the meaning of this chapter.

22 "Wildlife" means wild birds, wild animals, game and fur-  
23 bearing animals, fish (including minnows), reptiles, amphibians,  
24 mollusks, crustaceans and all forms of aquatic life used as fish

1 bait, whether dead or alive. The term "wildlife" does not include  
2 privately owned cervid and all its subspecies that are kept  
3 pursuant to article two-h, chapter nineteen of this code.

4 "Wildlife refuge" means any land set aside by action of the  
5 director as an inviolate refuge or sanctuary for the protection of  
6 designated forms of wildlife.

7 **ARTICLE 2. WILDLIFE RESOURCES.**

8 **§20-2-11. Sale of wildlife; transportation of same.**

9 (a) ~~No~~ A person, except those legally licensed to operate  
10 private game preserves for the purpose of propagating game for  
11 commercial purposes and those legally licensed to propagate or sell  
12 fish, amphibians and other forms of aquatic life, ~~shall~~ may not  
13 purchase or offer to purchase, sell or offer to sell, expose for  
14 sale or have in his or her possession for the purpose of sale any  
15 wildlife, or part thereof, which has been designated as game  
16 animals, fur-bearing animals, game birds, game fish or amphibians,  
17 or any of the song or insectivorous birds of the state, or any  
18 other species of wildlife which the director may designate,  
19 ~~Provided, That~~ except for privately owned cervid and all its  
20 subspecies that are kept pursuant to the provisions of article two-  
21 h, chapter nineteen of this code. However, pelts of game or fur-  
22 bearing animals taken during the legal season may be sold and live  
23 red and gray foxes and raccoon taken by legal methods during legal  
24 and established trapping seasons may be sold within the state.-

1 ~~Provided, however, That~~ In addition, the hide, head, antlers and  
2 feet of a legally killed deer and the hide, head and skull of a  
3 legally killed black bear may be sold.

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

9 (c) The Each separate act of selling or exposing for sale,  
10 having in possession for sale, transporting or carrying in  
11 violation of this section ~~shall each constitute~~ constitutes a  
12 separate misdemeanor offense. Notwithstanding ~~the provisions of~~  
13 this or any other section of this chapter, any game birds or game  
14 bird meats sold by licensed retailers may be served at any hotel,  
15 restaurant or other licensed eating place in this state.

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

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

21 (a) A person may not transport or have in his or her  
22 possession with the intention of transporting beyond the limits of  
23 the state any species of wildlife or any part thereof killed,  
24 taken, captured or caught within this state, except as provided in

1 this section.

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

7 (2) Licensed resident hunters and trappers and resident and  
8 nonresident fur dealers may transport beyond the limits of the  
9 state pelts of game and fur-bearing animals taken during the legal  
10 season.

11 (3) A person may transport the hide, head, antlers and feet of  
12 a legally killed deer and the hide, head, skull, organs and feet of  
13 a legally killed black bear beyond the limits of the state.

14 (4) A person legally entitled to possess an animal according  
15 to section four, article two of this chapter may transport that  
16 animal beyond the limits of the state.

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

20 (c) A person ~~violating the provisions of~~ who violates this  
21 section by transporting or possessing with the intention of  
22 transporting beyond the limits of this state deer or wild boar  
23 shall be ~~deemed~~ considered to have committed a separate offense for  
24 each animal so transported or possessed. This section does not



1 apply to privately owned cervid or any of its subspecies that are  
2 kept pursuant to article two-h, chapter nineteen of this code.

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

7 (e) This section does not apply to persons legally entitled to  
8 propagate and sell wild animals, wild birds, fish, amphibians and  
9 other forms of aquatic life beyond the limits of the 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.)