

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4393**

5 (By Delegates Swartzmiller, Wells, Manypenny,
6 Ellem, Paxton, Fragale, Craig and Storch)

7
8 (Originating in the Committee on the Judiciary)

9 [February 19, 2014]

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

1 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 and
6 §19-34-9, 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;

24 (2) "Dangerous wild animal" means a mammal, bird, reptile,

1 amphibian or aquatic animal, including a hybrid, that is dangerous
2 to humans, other animals or the environment due to its inherent
3 nature and capability to do significant harm. "Wildlife", as
4 defined by section two, article one, chapter twenty of this code,
5 "livestock", as defined in section two, article ten-b, chapter
6 nineteen of this code, and "domestic animals", as defined in this
7 section, are excluded.

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

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

20 **§19-34-3. 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. The
24 board may promulgate emergency rules pursuant to section fifteen,
25 article three, chapter twenty-nine-a of this code.

1 §19-34-4. Prohibition on the possession of a dangerous wild
2 animal; exceptions.

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

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

9 §19-34-5. Dangerous Wild Animal Board; composition; duties.

10 (a) The Dangerous Wild Animal Board is hereby established with
11 the following members: The Commissioner of the Department of
12 Agriculture, the Secretary of the Department of Health and Human
13 Resources and the Director of the Division of Natural Resources, or
14 their designees. The board shall develop a comprehensive list of
15 dangerous wild animals pursuant to the rule-making authority of
16 this article.

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

23 (c) The board shall:

24 (1) Establish minimum caging or enclosure requirements for
25 various dangerous wild animals;

1 (A) Create a comprehensive list of dangerous wild animals that
2 does not include animals native to this state, but may include and
3 is not limited to:

4 (i) Bears (family ursidae);

5 (ii) Large Cats including lions, jaguars, leopards, tigers
6 (genus panthera), clouded leopard (niofelis nebulosa), cheetah
7 (acinonyx jubatus), cougar or mountain lion (felis concolor);

8 (iii) Non-human primates;

9 (iv) Constricting snakes including boa constrictor (boa
10 constrictor), all subspecies, anaconda (eunectes murinus), indian
11 python (python molurus), reticulate python (python reticulatus),
12 rock python (python sebae);

13 (v) Alligators (family alligatoridae);

14 (vi) Poisonous snakes including cobras, coral snakes (family
15 elapidae), sea snakes (family hydrophidae), adders, vipers
16 (family viperidae), pit vipers (family crotalidae), all venomous
17 rear-fanged species (family colubridae);

18 (2) Enforce the permit requirements and set the fees for
19 permits;

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

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

25 (5) Address any other issues required by this article.

1 §19-34-6. Permit applications, requirements, issuance and
2 revocation.

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

6 (1) A fee established by the board for each dangerous wild
7 animal;

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

10 (3) A description of each dangerous wild animal, including
11 the scientific name, common name, permanent and unique
12 identifier, and any information that would aid in the
13 identification of the animal; and

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

17 (b) Permit requirements and restrictions. -- The application
18 shall state, and the person shall acknowledge his or her
19 understanding, that:

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

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

25 (3) He or she may not allow the dangerous wild animal to

1 come into physical contact with a person other than the permittee,
2 the animal's designated handler, an employee of a law-enforcement
3 agency enforcing this article or a veterinarian administering
4 medical treatment or care;

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

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

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

12 (7) He or she shall maintain records for each dangerous wild
13 animal, including veterinary records, acquisition papers, the
14 purchase date and other records that prove ownership of the
15 dangerous wild animal;

16 (8) He or she presents proof of liability insurance in an
17 amount of not less than \$300,000 with a deductible of not more
18 than \$250 for each occurrence of property damage, bodily injury
19 or death caused by a dangerous wild animal possessed by the
20 person;

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

24 (10) He or she may not transfer dangerous wild animals in
25 the state without the written consent of the board;

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

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

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

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

15 **§19-34-7. Confiscation and disposition of animals; suspension**
16 **and revocation of permits.**

17 (a) A law-enforcement officer, county humane officer or the
18 state veterinarian may immediately confiscate or euthanize any
19 dangerous wild animal if the animal poses an immediate risk to
20 public health or safety regardless of whether the owner of the
21 animal has a permit issued under this article.

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

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

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

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

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

15 (d) Upon conviction of an offense under this article or any
16 other animal cruelty statute, the board shall revoke that
17 person's permit.

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

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

21 **§19-34-8. Exemptions.**

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

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

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

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

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

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

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

10 (7) A person displaying dangerous wild animals at a fair or
11 festival that has been pre-approved by the board; and

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

16 (b) *Qualified exemption.* -- The permitting provisions of
17 this article do not apply to exhibitors or dealers licensed as of
18 January 1, 2014, under the Animal Welfare Act, 7 U.S.C. §2132(e),
19 as amended, and at the time the rules become effective and who
20 continue to have a valid exhibitor or dealer license. The board
21 may revoke this exemption as to exhibitors or dealers that have
22 repeated, uncorrected citations in violation of the Animal
23 Welfare Act, a conviction for violation of an animal cruelty
24 statute or a violation of sections seven or nine of this article.

25 **§19-34-9. 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
4 with 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
21 capture, confinement, transfer or euthanasia of a dangerous wild
22 animal.

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