

**ENGROSSED**

**H. B. 4286**

(By Delegates Williams, Tomblin, R. Phillips,  
 Eldridge, Hartman, Sponaugle, Walker, Pino,  
 Craig, Miller and Anderson)

[Introduced January 24, 2014; referred to the  
 Committee on Agriculture and Natural Resources then  
 Finance.]

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; creating the Captive Cervid Farming  
 Act; setting forth powers and duties of the Department of  
 Agriculture; authorizing rule-making; setting forth duties and  
 obligation of the Commissioner of the Department of  
 Agriculture; establishing an application process; permitting  
 the issuance, renewal, modification and transfer of a license  
 certificate; requiring the inspection of facilities;  
 permitting the transition of current facilities; providing for

1 noncompliance with article; and establishing remedies and  
2 criminal penalties.

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

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

12 **CHAPTER 19. AGRICULTURE.**

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

14 **§19-2H-1. Definitions.**

15 As used in this article:

16 (1) "Bio-security" means measures, actions or precautions  
17 taken to prevent the transmission of disease in, among or between  
18 free-ranging and captive cervids.

19 (2) "Captive cervid's" or "captive cervids" means members of  
20 the Cervidae family of animals including, but not limited to,  
21 fallow deer, red deer, axis deer, moose, reindeer and caribou which  
22 are domesticated animals under the control of the owner of the  
23 animal: *Provided*, That for purposes of this article, elk and white-

1 tailed deer (Odocoileus virginianus) and all its subspecies are not  
2 included in the definition of captive cervid.

3 (3) "Captive cervid farming operation" means the raising of  
4 captive cervids which are to be sold or offered for sale through  
5 commercial outlets for human consumption.

6 (4) "Commissioner" means the Commissioner of the West Virginia  
7 Department of Agriculture.

8 (5) "Department" means the West Virginia Department of  
9 Agriculture.

10 (6) "Division of Natural Resouces" means division of natural  
11 resources established pursuant to section three, article one,  
12 chapter twenty of this code.

13 (7) "Identification system" means a process or procedure that  
14 allows an individual captive cervid to be continuously recognized  
15 as a unique animal throughout its lifetime.

16 (8) "License" means the authorization issued by the department  
17 for the operation of a captive cervid farming facility.

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

1 fenced area and having captive cervids located there for public or  
2 private viewing.

3 (10) "Owner" means the person who owns or operates a licensed  
4 captive cervid farming facility.

5 (11) "Person" means an individual, corporation, limited  
6 liability company, partnership, association, joint venture or other  
7 legal entity.

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

12 **§19-2H-2. Authority of the Department of Agriculture.**

13 The department shall regulate captive cervid farming  
14 operations in accordance with this article. Subject to the  
15 transition provisions contained in section ten of this article, no  
16 person may operate a captive cervid farming facility unless that  
17 person holds a license issued by the commissioner pursuant to this  
18 article authorizing operation of that particular facility.

19 **§19-2H-3. Captive cervid farming rules.**

20 (a) The commissioner shall propose legislative rules in  
21 accordance with article three, chapter twenty-nine-a of this code  
22 as are necessary to provide for implementation and enforcement of  
23 this article. Any rule proposed by the commissioner before  
24 September 1, 2014, may be filed as an emergency rule.

1       (b) The rules, insofar as practicable, shall provide for the  
2 protection of animal and human health and promotion of bio-security  
3 which are consistent with the rules on those same subjects  
4 promulgated by the United States Department of Agriculture,  
5 division of animal and plant health inspection service, in order  
6 that the rules promulgated pursuant to this section and similar  
7 rules promulgated by the United States Department of Agriculture  
8 may be harmoniously administered and applied to captive cervid  
9 farming operations subject to both the applicable federal rules and  
10 to rules promulgated under this section.

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

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

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

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

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

1 operations.

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

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

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

15 **§19-2H-4. Duties and obligations of the commissioner.**

16 The commissioner or his or her designees may:

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

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

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

1       (4) Enter into memorandum of understanding with the division  
2 of natural resources to establish inspection cooperation and  
3 coordination of the licensed captive cervid farming facilities and  
4 the sharing of information retained by either the department or the  
5 division of natural resources relating to any captive cervid;

6       (5) Enter into interstate contracts with other states to  
7 enhance the bio-security of captive cervid farming operations in  
8 this and other states;

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

13       (7) Hold hearings on any matter of concern relating to captive  
14 cervid farming, subpoena witnesses, administer oaths, take  
15 testimony, require the production of evidence and documentary  
16 evidence and designate hearing examiners and employees to so act;  
17 and

18       (8) To make and enter into all agreements and do all acts  
19 necessary or incidental to the performance of duties and the  
20 exercise of powers under this article.

21 **§19-2H-5. Application for license.**

22       (a) A person desiring to operate a captive cervid farming  
23 facility must submit an application for a license to the  
24 department. The department shall provide the forms and

1 instructions for the filing of applications.

2 (b) The application form shall require submission of the  
3 following information:

4 (1) The mailing address of the proposed captive cervid farming  
5 facility and the size, location and an adequate legal description  
6 of the facility;

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

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

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

14 (5) The proposed record-keeping system;

15 (6) The method of verification that all free-ranging deer  
16 species have been removed;

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

19 (8) Any other information considered necessary by the  
20 department.

21 (c) The application shall be accompanied by the biennial  
22 license fee as follows:

23 (1) Class one license - For a facility to be used only for  
24 breeding and propagation of cervids for sale to others - \$750;



1       (2) Class two license -- For facilities from which cervids  
2 will be harvested for commercial use - \$1,500.

3 **§19-2H-6. Departmental action on applications.**

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

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

14       (1) The facility has been inspected by the department and the  
15 commissioner has determined that the facility and its proposed  
16 operation meet each of the standards and requirements under this  
17 article and the rules promulgated under this article;

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

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

24       (c) If the department finds a deficiency in the license

1 application, the owner shall be given at least thirty days to  
2 remedy the deficiency before the license application is denied.

3 (d) If the commissioner determines that the proposed captive  
4 cervid farming facility or its proposed operation does not comply  
5 with the requirements of this article after the opportunity to  
6 remedy deficiencies, the commissioner shall deny the application  
7 and notify the applicant in writing of the reasons for the denial.

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

11 (f) The department may not return the license fee or any  
12 portion of the license fee to an applicant if a license is denied.

13 **§19-2H-7. License certificate; renewal; sale or transfer of**  
14 **license.**

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

18 (1) The class of license, the license number and expiration  
19 date;

20 (2) The cervid species approved for the licensed facility;

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

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

24 (b) An application for renewal of a license shall be submitted

1 on forms provided by the department not later than sixty days  
2 before expiration of the current license. Each license issued  
3 shall be for a period of two years from the date of issuance.

4 (c) The sale or transfer of ownership of a captive cervid  
5 farming facility will not operate to transfer the license. The  
6 department may issue a new license to the transferee, if all  
7 license requirements are met and a new license fee is paid.

8 **§19-2H-8. License modification.**

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

12 **§19-2H-9. Inspection of facility by the department.**

13 (a) The department, the division of natural resources,  
14 pursuant to a memorandum of understanding required by section four  
15 of this article, and their authorized agents shall have access at  
16 all reasonable hours to any licensed captive cervid farming  
17 facility for the purpose of conducting inspections, securing  
18 samples or specimens of any cervid species and determining whether  
19 the owner is in compliance with the requirements of this article.  
20 Any inspection and sampling shall be conducted in a manner which  
21 will not jeopardize the health of the captive cervids.

22 **§19-2H-10. Transition to captive cervid farming licenses;**

23 **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 application  
4 for a license under this article, provided the owner of that  
5 facility makes application for a license under this article within  
6 sixty days after application forms are available from the  
7 department.

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

15       (c) A licensed captive cervid farming facility is not subject  
16 to sections eleven, twelve, thirteen, fourteen, forty-seven and  
17 fifty-one, article two, chapter twenty of this code or the rules  
18 promulgated thereunder for its operations relating to the raising  
19 of captive cervids which are to be sold or offered for sale through  
20 commercial outlets for human consumption. If a licensed captive  
21 cervid farming facility has other operations relating to cervids on  
22 its facility, those cervids and the facility, would be subject to  
23 any applicable laws relating to those other operations.

24 **\$19-2H-11. Noncompliance with article, standards, orders or**

1                   rules; suspension, revocation or limitation of  
2                   license.

3           The department may suspend, revoke or limit a license if the  
4 licensee fails to comply with this article, standards adopted  
5 under this article, orders issued by the commissioner as a result  
6 of an administrative action or departmental review conducted under  
7 this article or rules promulgated under this article.

8 **§19-2H-12. Prohibited conduct; violation; penalty.**

9           (a) A person may not intentionally or knowingly release or  
10 allow the release of any captive cervids from a captive cervid  
11 farming facility. This subsection does not prohibit the sale,  
12 breeding, marketing, exhibition or other uses of captive cervids  
13 approved by the department.

14           (b) An owner may not intentionally or knowingly abandon a  
15 captive cervid farming facility without first notifying the  
16 department in compliance with standards established under this  
17 article.

18           (c) A person may not intentionally or knowingly cause the  
19 ingress of free-ranging cervids into a captive cervid farming  
20 facility.

21           (d) Any person who violates subsection (a), (b) or (c) of this  
22 section is guilty of a misdemeanor and, upon conviction thereof,  
23 shall be fined not more than \$300, confined in jail for not more  
24 than ninety days, or both fined and confined, for a first offense.

1 A second or subsequent offense is a misdemeanor and, is punishable  
2 by a fine of not more than \$1,000, confinement for not more than  
3 one year, or both fined and confined.

4 **§19-2H-13. Findings of violations; remedies.**

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

7 (1) Issue a warning; or

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

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

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

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

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

21 **§19-2H-14. Reports to Legislature.**

22 Beginning October 1, 2014, and every three months thereafter  
23 until October 1, 2016, the Commissioner shall make quarterly  
24 reports to the Joint Committee on Government and Finance and to the

1 director of the division of natural resources detailing the  
2 implementation and enforcement of captive cervid farming facilities  
3 in the state.

4 **§19-2H-15. Captive Cervid Farming Facility Administrative Account**  
5 **created.**

6 There is hereby created in the State Treasury a special  
7 revenue fund to be designated and known as the "Captive Cervid  
8 Farming Facility Administrative Account," which shall consist of  
9 revenues derived from license fees, fees for services provided by  
10 the Department and civil penalties authorized by this article, to  
11 be administered by the Commissioner and used for the administration  
12 and enforcement of this article. Expenditures from the fund shall  
13 be for the purposes set forth in this article and are not  
14 authorized from collections but are to be made only in accordance  
15 with appropriation by the Legislature and in accordance with the  
16 provisions of article three, chapter twelve of this code and upon  
17 the fulfillment of the provisions set forth in article two, chapter  
18 eleven-b of this code: *Provided, That for the fiscal year ending*  
19 June 30, 2015, expenditures are authorized from collections rather  
20 than pursuant to an explicit appropriation by the Legislature.

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

22 **§19-29-2. Definitions.**

23 As used in this article:

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

3       ~~(b)~~ (2) "Commissioner" means the commissioner of agriculture or  
4 his or her designee.

5       ~~(c)~~ (3) "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)~~ (4) "Nontraditional agriculture" means the production of  
9 animals domesticated from wild stock, either native or nonnative,  
10 and are being confined, bred, and/or fed for domestic purposes,  
11 except that elk and white-tailed deer (*Odocoileus virginianus*) and  
12 all its subspecies shall not be included; aquaculture; or other  
13 agricultural products as defined in this article.

14                                   **CHAPTER 20. NATURAL RESOURCES.**

15 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

16 **§20-1-2. Definitions.**

17       As used in this chapter, unless the context clearly requires  
18 a different meaning:

19       (1) "Agency" means any branch, department or unit of the state  
20 government, however designated or constituted.

21       (2) "Alien" means any person not a citizen of the United  
22 States.

23       (3) "Bag limit" or "creel limit" means the maximum number of  
24 wildlife which may be taken, caught, killed or possessed by any



1 person.

2       (4)"Big game" means elk, deer, black bears, wild boars and  
3 wild turkeys.

4       (5)"Bona fide resident, tenant or lessee" means a person who  
5 permanently resides on the land.

6       (6)"Citizen" means any native-born citizen of the United  
7 States and foreign-born persons who have procured their final  
8 naturalization papers.

9       (7)"Closed season" means the time or period during which it  
10 shall be unlawful to take any wildlife as specified and limited by  
11 the provisions of this chapter.

12       (8)"Commission" means the Natural Resources Commission.

13       (9)"Commissioner" means a member of the advisory commission of  
14 the Natural Resources Commission.

15       (10)"Director" means the Director of the Division of Natural  
16 Resources.

17       (11)"Fishing" or "to fish" means the taking, by any means, of  
18 fish, minnows, frogs or other amphibians, aquatic turtles and other  
19 forms of aquatic life used as fish bait.

20       (12)"Fur-bearing animals" include: (A) The mink; (B) the  
21 weasel; (C) the muskrat; (D) the beaver; (E) the opossum; (F) the  
22 skunk and civet cat, commonly called polecat; (G) the otter; (H)  
23 the red fox; (I) the gray fox; (J) the wildcat, bobcat or bay lynx;  
24 (K) the raccoon; and (L) the fisher.

1       (13)"Game" means game animals, game birds and game fish as  
2 herein defined.

3       (14)"Game animals" include: (A) The elk; (B) the deer; (C)  
4 the cottontail rabbits and hares; (D) the fox squirrels, commonly  
5 called red squirrels, and gray squirrels and all their color phases  
6 - red, gray, black or albino; (E) the raccoon; (F) the black bear;  
7 and (G) the wild boar. The term "game animals" does not include  
8 privately owned cervid and all its subspecies that are kept  
9 pursuant to article two-h, chapter nineteen of this code.

10       (15)"Game birds" include: (A) The anatidae, commonly known as  
11 swan, geese, brants and river and sea ducks; (B) the rallidae,  
12 commonly known as rails, sora, coots, mudhens and gallinule; (C)  
13 the limicolae, commonly known as shorebirds, plover, snipe,  
14 woodcock, sandpipers, yellow legs and curlews; (D) the galliformes,  
15 commonly known as wild turkey, grouse, pheasants, quails and  
16 partridges (both native and foreign species); (E) the columbidae,  
17 commonly known as doves; (F) the icteridae, commonly known as  
18 blackbirds, redwings and grackle; and (G) the corvidae, commonly  
19 known as crows.

20       (16)"Game fish" include: (A) Brook trout; (B) brown trout;  
21 (C) rainbow trout; (D) golden rainbow trout; (E) largemouth bass;  
22 (F) smallmouth bass; (G) spotted bass; (H) striped bass; (I) chain  
23 pickerel; (J) muskellunge; (K) walleye; (L) northern pike; (M) rock  
24 bass; (N) white bass; (O) white crappie; (P) black crappie; (Q) all

1 sunfish species; (R) channel catfish; (S) flathead catfish; (T)  
2 blue catfish, (U) sauger; and (V) all game fish hybrids.

3       (17)"Hunt" means to pursue, chase, catch or take any wild  
4 birds or wild animals: *Provided*, That the definition of "hunt" does  
5 not include an officially sanctioned and properly licensed field  
6 trial, water race or wild hunt as long as that field trial is not  
7 a shoot-to-retrieve field trial.

8       (18)"Lands" means land, waters and all other appurtenances  
9 connected therewith.

10       (19)"Migratory birds" means any migratory game or nongame  
11 birds included in the terms of conventions between the United  
12 States and Great Britain and between the United States and United  
13 Mexican States, known as the Migratory Bird Treaty Act, for the  
14 protection of migratory birds and game mammals concluded,  
15 respectively, August 16, 1916, and February 7, 1936.

16       (20)"Nonresident" means any person who is a citizen of the  
17 United States and who has not been a domiciled resident of the  
18 State of West Virginia for a period of thirty consecutive days  
19 immediately prior to the date of his or her application for a  
20 license or permit except any full-time student of any college or  
21 university of this state, even though he or she is paying a  
22 nonresident tuition.

23       (21)"Open season" means the time during which the various  
24 species of wildlife may be legally caught, taken, killed or chased

1 in a specified manner and shall include both the first and the last  
2 day of the season or period designated by the director.

3       (22)"Person", except as otherwise defined elsewhere in this  
4 chapter, means the plural "persons" and shall include individuals,  
5 partnerships, corporations or other legal entities.

6       (23)"Preserve" means all ~~duly~~ licensed private game farmlands,  
7 or private plants, ponds or areas, where hunting or fishing is  
8 permitted under special licenses or seasons other than the regular  
9 public hunting or fishing seasons. The term "preserve" does not  
10 include privately-owned lands that are kept pursuant to article  
11 two-h, chapter nineteen of this code for the raising of captive  
12 cervids which are to be sold or offered for sale through commercial  
13 outlets for human consumption.

14       (24)"Protected birds" means all wild birds not included within  
15 the definition of "game birds" and "unprotected birds".

16       (25)"Resident" means any person who is a citizen of the United  
17 States and who has been a domiciled resident of the State of West  
18 Virginia for a period of thirty consecutive days or more  
19 immediately prior to the date of his or her application for license  
20 or permit: *Provided*, That a member of the Armed Forces of the  
21 United States who is stationed beyond the territorial limits of  
22 this state, but who was a resident of this state at the time of his  
23 or her entry into such service and any full-time student of any  
24 college or university of this state, even though he or she is

1 paying a nonresident tuition, shall be considered a resident under  
2 the provisions of this chapter.

3       (26) "Roadside menagerie" means any place of business, other  
4 than a commercial game farm, commercial fish preserve, place or  
5 pond, where any wild bird, game bird, unprotected bird, game animal  
6 or fur-bearing animal is kept in confinement for the attraction and  
7 amusement of the people for commercial purposes.

8       (27) "Small game" includes all game animals, furbearing animals  
9 and game birds except elk, deer, black bears, wild boars and wild  
10 turkeys.

11       (28) "Take" means to hunt, shoot, pursue, lure, kill, destroy,  
12 catch, capture, keep in captivity, gig, spear, trap, ensnare, wound  
13 or injure any wildlife, or attempt to do so: *Provided*, That the  
14 definition of "take" does not include an officially sanctioned and  
15 properly licensed field trial, water race or wild hunt as long as  
16 that field trial is not a shoot-to-retrieve field trial.

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

19       (30) "Wild animals" means all mammals native to the State of  
20 West Virginia occurring either in a natural state or in captivity,  
21 except house mice or rats. The term "wild animals" does not  
22 include privately-owned cervid and all its subspecies that are kept  
23 pursuant to article two-h, chapter nineteen of this code which are  
24 to be sold or offered for sale through commercial outlets for human

1 consumption.

2       (31)"Wild birds" shall include all birds other than: (A)  
3 Domestic poultry - chickens, ducks, geese, guinea fowl, peafowls  
4 and turkeys; (B) psittacidae, commonly called parrots and  
5 parakeets; and (C) other foreign cage birds such as the common  
6 canary, exotic finches and ring dove. All wild birds, either: (A)  
7 Those occurring in a natural state in West Virginia; or (B) those  
8 imported foreign game birds, such as waterfowl, pheasants,  
9 partridges, quail and grouse, regardless of how long raised or held  
10 in captivity, shall remain wild birds under the meaning of this  
11 chapter.

12       (32)"Wildlife" means wild birds, wild animals, game and fur-  
13 bearing animals, fish (including minnows,) reptiles, amphibians,  
14 mollusks, crustaceans and all forms of aquatic life used as fish  
15 bait, whether dead or alive. The term "wildlife" does not include  
16 privately owned cervid and all its subspecies that are kept  
17 pursuant to article two-h, chapter nineteen of this code which are  
18 to be sold or offered for sale through commercial outlets for human  
19 consumption.

20       (33)"Wildlife refuge" means any land set aside by action of  
21 the director as an inviolate refuge or sanctuary for the protection  
22 of designated forms of wildlife.

23 **ARTICLE 2. WILDLIFE RESOURCES.**

24 **§20-2-11. Sale of wildlife; transportation of same.**

1       ~~No~~ (a) A person, except those legally licensed to operate  
2 private game preserves for the purpose of propagating game for  
3 commercial purposes and those legally licensed to propagate or sell  
4 fish, amphibians and other forms of aquatic life, ~~shall~~ may not  
5 purchase or offer to purchase, sell or offer to sell, expose for  
6 sale, or have in his or her possession for the purpose of sale any  
7 wildlife, or part thereof, which has been designated as game  
8 animals, fur-bearing animals, game birds, game fish or amphibians,  
9 or any of the song or insectivorous birds of the state, or any  
10 other species of wildlife which the director may designate~~;~~  
11 ~~Provided, That~~ except for privately owned cervid and all its  
12 subspecies that are kept pursuant to article two-h, chapter  
13 nineteen of this code which are to be sold or offered for sale  
14 through commercial outlets for human consumption. ~~pelts~~ Pelts of  
15 game or fur-bearing animals taken during the legal season may be  
16 sold and live red and gray foxes and raccoon taken by legal methods  
17 during legal and established trapping seasons may be sold within  
18 the state: ~~Provided, however, That.~~ The hide, head, antlers and  
19 feet of a legally killed deer and the hide, head and skull of a  
20 legally killed black bear may be sold.

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

1 in violation of this section.

2 ~~The~~ (c) Each separate act of selling or exposing for sale,  
3 having in possession for sale, transporting or carrying in  
4 violation of this section ~~shall each constitute~~ constitutes a  
5 separate misdemeanor offense. Notwithstanding the provisions of  
6 this or any other section of this chapter, any game birds or game  
7 bird meats sold by licensed retailers may be served at any hotel,  
8 restaurant or other licensed eating place ~~in this state~~.

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

13 **§20-2-12. Transportation of wildlife out of state; penalties.**

14 (a) A person may not transport or have in his or her  
15 possession with the intention of transporting beyond the limits of  
16 the state any species of wildlife or any part thereof killed,  
17 taken, captured or caught within this state, except as provided in  
18 this section.

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

24 (2) Licensed resident hunters and trappers and resident and



1 nonresident fur dealers may transport beyond the limits of the  
2 state pelts of game and fur-bearing animals taken during the legal  
3 season.

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

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

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

13 (c) A person violating the provisions of this section by  
14 transporting or possessing with the intention of transporting  
15 beyond the limits of this state deer or wild boar shall be ~~deemed~~  
16 considered to have committed a separate offense for each animal so  
17 transported or possessed.

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

22 (e) This section does not apply to:

23 (1) Persons legally entitled to propagate and sell wild  
24 animals, wild birds, fish, amphibians and other forms of aquatic

1 life beyond the limits of the state; and

2       (2) Privately-owned cervid or any of its subspecies that are  
3 kept pursuant to article two-h, chapter nineteen of this code which  
4 are to be sold or offered for sale through commercial outlets for  
5 human consumption.