

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 237**

5 (Senators D. Hall, Romano, Snyder, Facemire and Williams, *original sponsors*)

6 _____
7 [Passed February 13, 2015; in effect from passage.]
8 _____

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10
11 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
12 designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7,
13 §19-2H-8, §19-2H-9, §19-2H-10, §19-2H-11 and §19-2H-12; to amend and reenact §19-29-2
14 of said code; to amend and reenact §20-1-2 of said code; and to amend and reenact §20-2-11
15 and §20-2-12 of said code, all relating to the Captive Cervid Farming Act; regulating captive
16 cervid farming as an agricultural business; stating legislative findings and definitions;
17 permitting sale of venison; stating powers and duties of the Department of Agriculture and
18 commissioner; creating application process and classes of licenses; issuing, renewing,
19 modifying and transferring licenses; inspecting facilities; transitioning current facilities to
20 new licensure procedures; creating penalties for noncompliance with article; amending other
21 statutes to comport with the Captive Cervid Farming Act; permitting rulemaking; prohibiting
22 certain conduct; and providing for certain criminal penalties.

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

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

6 **CHAPTER 19. AGRICULTURE.**

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

8 **§19-2H-1. Short title; legislative findings.**

9 (a) This article shall be called the Captive Cervid Farming Act.

10 (b) The Legislature finds that captive cervid farming is primarily an agricultural business and
11 that captive cervids should be regulated like other livestock.

12 (c) The Legislature further finds that the Department of Agriculture possesses the knowledge,
13 training and expertise to regulate captive cervid farming as an agricultural business and to adequately
14 protect the health and safety of animals and the general public. Matters related to licensure, the sale
15 of venison, animal health and testing, fencing, interstate and intrastate movement, animal
16 identification system, recordkeeping, animal husbandry, equipment and other related matters shall
17 be regulated by the department.

18 **§19-2H-2. Definitions.**

19 As used in this article:

20 (a) “Biosecurity” means measures, actions or precautions taken to prevent the transmission
21 of disease in, among or between free-ranging and captive cervids.

22 (b) “Captive cervid” or the plural means a member of the Cervidae family of animals
23 including, but not limited to, fallow deer, red deer, white-tailed deer, axis deer, elk, moose, reindeer

1 and caribou which are domesticated animals under the control of the owner of the animal.

2 (c) “Captive cervid farming facility”, “facility” or the plural means the captive cervids,
3 property, fenced area, operations and equipment regulated and licensed by the department pursuant
4 to this article.

5 (d) “Commissioner” means the Commissioner of the West Virginia Department of
6 Agriculture.

7 (e) “Department” means the West Virginia Department of Agriculture.

8 (f) “Identification system” means a process or procedure that allows an individual cervid to
9 be continuously recognized as a unique animal throughout its lifetime.

10 (g) “License” means the authorization issued by the department for the operation of a captive
11 cervid farming facility pursuant to this article.

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

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

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

18 **§19-2H-3. Authority of the department; duties and obligations of the commissioner.**

19 (a) The department is hereby granted authority to regulate captive cervid farming facilities
20 in this state in accordance with this article. Subject to the transition provisions contained in this
21 article, no person may operate a captive cervid farming facility in this state unless that person holds
22 a license issued by the commissioner pursuant to this article.

23 (b) The commissioner or his or her designees may:

- 1 (1) Establish a section and designate staff responsible for the enforcement of this article;
- 2 (2) Contract with veterinarians, biologists or other professionals to implement this article;
- 3 (3) Enter into contracts or compacts with state agencies or other states to enhance the
4 biosecurity of captive cervid farming facilities in this and other states;
- 5 (4) Lease, rent, purchase, construct, maintain, operate, sell, encumber or assign rights of real
6 or personal property to meet the objectives of this article;
- 7 (5) Hold hearings, subpoena witnesses, administer oaths, take testimony, require the
8 production of evidence and designate hearing examiners and employees;
- 9 (6) Take any other action necessary or incidental to the performance of his or her duties
10 pursuant to this article;
- 11 (7) Regulate the movement of captive cervids and require the documentation of the origin
12 and destination of all shipments of captive cervids; and
- 13 (8) Prohibit captive cervid facilities in this state from receiving live captive cervids or any
14 byproduct thereof, or captive cervid genetic materials from a captive cervid facility that has had a
15 confirmed chronic wasting disease or tuberculosis positive cervid in the last sixty months.

16 **§19-2H-4. Application for license.**

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

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

- 21 (1) The mailing address of the proposed captive cervid farming facility and the size, location
22 and an adequate legal description of the facility;
- 23 (2) The number of each species of cervid to be included in the proposed facility;

- 1 (3) The biosecurity measures to be utilized;
- 2 (4) The proposed method of flushing wild cervids from the enclosure, if applicable;
- 3 (5) The proposed record-keeping system;
- 4 (6) The method of verification that all wild cervids have been removed;
- 5 (7) The current zoning of the property proposed for the facility; and
- 6 (8) Any other information requested by the department.

7 (c) The application shall be accompanied by the annual license fee as follows:

8 (1) *Class one license.* -- For a facility to breed and propagate captive cervids, and create
9 cervid byproducts, for sale to others, \$375; or

10 (2) *Class two license.* -- For a facility to breed, propagate, harvest or slaughter captive
11 cervids, create cervid byproducts, permit hunting of captive cervids or sell venison to others, \$750.

12 **§19-2H-5. Action on applications.**

13 (a) The department shall act on a complete application for a license within sixty days of
14 receipt. The department may issue a provisional license for a proposed facility that has not yet been
15 constructed, but operations shall not begin under a provisional license until the fully constructed
16 facility has been inspected and approved by the department.

17 (b) The department may not issue a license until the commissioner has determined that the
18 facility meets all of the following criteria:

19 (1) The facility has been inspected by the department and it meets the requirements of this
20 article and the rules promulgated thereunder;

21 (2) The applicant has all necessary federal, state and local governmental permits; and

22 (3) The owner has paid all applicable license fees and all departmental charges for services
23 provided to the facility.

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

3 (d) If the department finds that the proposed captive cervid farming facility does not comply
4 with the requirements of this article, then the owner shall be given at least thirty days to remedy the
5 deficiency at the facility before the license application is denied.

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

8 (f) The department shall retain the license fee for its services in the event a license is denied.

9 **§19-2H-6. License certificate; renewal; sale or transfer of license.**

10 (a) Once approved, the department shall issue a license certificate to the owner of a captive
11 cervid farming facility containing the following information:

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

13 (2) The captive cervid species and number of captive cervids approved for the licensed
14 facility; and

15 (3) The name, business address and telephone number of the owner and of the captive cervid
16 farming facility.

17 (b) An application for renewal of a license shall be submitted on forms provided by the
18 department sixty days prior to the expiration of the current license. Each license issued shall be for
19 a period of one year from the date of issuance.

20 (c) The sale or transfer of ownership of a captive cervid farming facility will not operate to
21 transfer the license. The department may issue a new license to the transferee if all license
22 requirements and fees are satisfied.

23 **§19-2H-7. License modification.**

1 An owner shall apply to the department for a license modification if there is any proposed
2 change in the class of license, cervid species, number of captive cervids or other requirement
3 necessitating an application for modification.

4 **§19-2H-8. Inspection of facility by the department.**

5 The department shall have access at all reasonable hours to any captive cervid farming
6 facility to conduct inspections, secure samples or specimens or determine whether the owner is in
7 compliance with the requirements of this article. Inspections and sampling shall be conducted in a
8 manner which will not unnecessarily jeopardize the health of the captive cervids.

9 **§19-2H-9. Transition to captive cervid farming licenses; statutory conflicts.**

10 (a) A captive cervid farming facility in existence on the effective date of this article may
11 continue operation under its existing authorization until the department acts on its application so
12 long as the facility applies for a license under this article within sixty days after application forms
13 are made available.

14 (b) Notwithstanding any other provision of the law to the contrary, an owner or an owner's
15 customer harvesting captive cervids from a captive cervid farming facility is not subject to laws
16 regarding possession limits and closed seasons. Further, a facility is not subject to sections thirteen,
17 fourteen and forty-seven, article two, chapter twenty of this code or the rules promulgated
18 thereunder.

19 **§19-2H-10. Administrative penalties; hearing.**

20 (a) Upon finding that a person has violated any requirement or rule promulgated under this
21 article, the commissioner may:

22 (1) Issue a warning;

23 (2) Impose a civil penalty of not more than \$1,000 plus the costs of investigation for each

1 violation;

2 (3) Suspend, revoke or modify a license;

3 (4) Obtain a declaratory judgment that a particular action is a violation of this article; or

4 (5) Obtain an injunction.

5 (b) A person aggrieved by an administrative action under this section may request an informal
6 hearing or a hearing pursuant to article five, chapter twenty-nine-a of this code.

7 **§19-2H-11. Prohibited conduct; criminal penalties.**

8 (a) A person may not release or permit the release of any captive cervids from a captive
9 cervid farming facility.

10 (b) A person may not cause the entry or introduction of wild cervids into a captive cervid
11 farming facility.

12 (c) An owner may not cease operation of or abandon a captive cervid farming facility without
13 complying with the requirements and rules promulgated under this article.

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

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

1 **§19-2H-12. Rulemaking.**

2 (a) The commissioner shall propose legislative rules in accordance with article three, chapter
3 twenty-nine-a of this code to implement and enforce this article. The rules shall be consistent with
4 the rules of the United States Department of Agriculture in so far as practicable. Any rules
5 promulgated by the commissioner before September 1, 2015, may be emergency rules.

6 (b) The rules shall include, but not be limited to:

7 (1) Preventing the spread of diseases between captive and wild cervids;

8 (2) Implementing an identification system that allows individual captive cervids to be
9 recognized and identified throughout the animal's life;

10 (3) Establishing specifications for fencing necessary to prevent the escape of captive cervids
11 and the infiltration of wild cervids into a captive cervid farming facility;

12 (4) Specifying record-keeping standards required of captive cervid farming facilities,
13 including standards for documenting purchases, propagation, sales, harvesting, sales of venison and
14 other documentation required to maintain accurate and complete business records;

15 (5) Establishing animal health testing criteria, inoculation requirements and statistical
16 information to track, discover and prevent the spread of animal diseases, including chronic wasting
17 disease;

18 (6) Regulating the intrastate and interstate movement of captive cervids and maintaining
19 documentation of the origin and destination of all cervid shipments, disease and identification
20 records and any other requisite documentation;

21 (7) Creating regulations for the sale and slaughtering of captive cervids for venison;

22 (8) Establishing a schedule of fees and charges for services provided by the department to
23 captive cervid farming facilities; and

1 (9) Procedures for captive cervid farming facilities to close and wind down operations.

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

3 **§19-29-2. Definitions.**

4 (a) “Aquaculture” means the commercial production of fish and/or other aquatic life.

5 (b) “Commissioner” means the Commissioner of Agriculture or his or her designee.

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

8 (d) “Nontraditional agriculture” means the production of animals domesticated from wild
9 stock, either native or nonnative, and are being confined, bred or fed for domestic purposes; captive
10 cervids pursuant to article two-h of this chapter; aquaculture; or other agricultural products as
11 defined in this article.

12 **CHAPTER 20. NATURAL RESOURCES.**

13 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

14 **§20-1-2. Definitions.**

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

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

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

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

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

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

23 “Citizen” means any native-born citizen of the United States and foreign-born persons who

1 have procured their final naturalization papers.

2 “Closed season” means the time or period during which it shall be unlawful to take any
3 wildlife as specified and limited by this chapter.

4 “Commission” means the Natural Resources Commission.

5 “Commissioner” means a member of the advisory commission of the Natural Resources
6 Commission.

7 “Director” means the Director of the Division of Natural Resources.

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

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

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

14 “Game animals” includes: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d)
15 the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases - red,
16 gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar. The term “game
17 animals” does not include captive cervids regulated pursuant to article two-h, chapter nineteen of this
18 code.

19 “Game birds” includes: (a) The anatidae, commonly known as swan, geese, brants and river
20 and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and gallinule; (c) the
21 limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and
22 curlews; (d) the galliformes, commonly known as wild turkey, grouse, pheasants, quails and
23 partridges (both native and foreign species); (e) the columbidae, commonly known as doves; (f) the

1 icteridae, commonly known as blackbirds, redwings and grackle; and (g) the corvidae, commonly
2 known as crows.

3 “Game fish” includes: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow
4 trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain pickerel;
5 (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white crappie; (p)
6 black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue catfish; (u)
7 sauger; and (v) all game fish hybrids.

8 “Hunt” means to pursue, chase, catch or take any wild birds or wild animals. However, the
9 definition of “hunt” does not include an officially sanctioned and properly licensed field trial, water
10 race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

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

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

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

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

23 “Person”, except as otherwise defined elsewhere in this chapter, means the plural “persons”

1 and shall include individuals, partnerships, corporations or other legal entities.

2 “Preserve” means all duly licensed private game farmlands, or private plants, ponds or areas,
3 where hunting or fishing is permitted under special licenses or seasons other than the regular public
4 hunting or fishing seasons. The term “preserve” does not include captive cervid farming facilities
5 regulated pursuant to article two-h, chapter nineteen of this code.

6 “Protected birds” means all wild birds not included within the definitions of “game birds”
7 and “unprotected birds”.

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

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

19 “Small game” includes all game animals, fur-bearing animals and game birds except elk,
20 deer, black bears, wild boars and wild turkeys.

21 “Take” means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig,
22 spear, trap, ensnare, wound or injure any wildlife, or attempt to do so. However, the definition of
23 “take” does not include an officially sanctioned and properly licensed field trial, water race or wild

1 hunt as long as that field trial is not a shoot-to-retrieve field trial.

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

4 “Wild animals” means all mammals native to the State of West Virginia occurring either in
5 a natural state or in captivity, except house mice or rats. The term “wild animals” does not include
6 captive cervids regulated pursuant to article two-h, chapter nineteen of this code.

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

13 “Wildlife” means wild birds, wild animals, game and fur-bearing animals, fish (including
14 minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait,
15 whether dead or alive. The term “wildlife” does not include captive cervids regulated pursuant to
16 article two-h, chapter nineteen of this code.

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

19 **ARTICLE 2. WILDLIFE RESOURCES.**

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

21 (a) A person, except those legally licensed to operate private game preserves for the purpose
22 of propagating game for commercial purposes and those legally licensed to propagate or sell fish,
23 amphibians and other forms of aquatic life, may not purchase or offer to purchase, sell or offer to

1 sell, expose for sale or have in his or her possession for the purpose of sale any wildlife, or part
2 thereof, which has been designated as game animals, fur-bearing animals, game birds, game fish or
3 amphibians, or any of the song or insectivorous birds of the state, or any other species of wildlife
4 which the director may designate, except for captive cervids regulated pursuant to the provisions of
5 article two-h, chapter nineteen of this code. However, pelts of game or fur-bearing animals taken
6 during the legal season may be sold and live red and gray foxes and raccoon taken by legal methods
7 during legal and established trapping seasons may be sold within the state. In addition, the hide,
8 head, antlers and feet of a legally killed deer and the hide, head and skull of a legally killed black
9 bear may be sold.

10 (b) A person, including a common carrier, may not transport, carry or convey, or receive for
11 such purposes, any wildlife, the sale of which is prohibited, if such person knows or has reason to
12 believe that such wildlife has been or is to be sold in violation of this section.

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

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

19 **§20-2-12. Transportation of wildlife out of state; penalties.**

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

23 (1) A person legally entitled to hunt and fish in this state may take with him or her personally,

1 when leaving the state, any wildlife that he or she has lawfully taken or killed, not exceeding, during
2 the open season, the number that any person may lawfully possess.

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

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

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

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

12 (c) A person who violates this section by transporting or possessing with the intention of
13 transporting beyond the limits of this state deer or wild boar shall be considered to have committed
14 a separate offense for each animal so transported or possessed. This section does not apply to
15 captive cervids regulated pursuant to article two-h, chapter nineteen of this code.

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

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