

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Originating**

### **Senate Bill 590**

BY SENATORS MAYNARD, MANN, RUCKER, SMITH,

SYPOLT, AND CLINE

[Originating in the Committee on Natural Resources;

Reported on February 12, 2019]



1 A BILL to amend and reenact §20-2-22a, §20-2-23, and §20-2-26 of the Code of West Virginia,  
2 1931, as amended, all relating to permitting guided bear hunts by licensed outfitters and  
3 guides; providing the Director of the Division of Natural Resources Rule-making authority;  
4 setting license fee for outfitter and guide applications; and providing penalties for guides  
5 and outfitters.

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

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

### **§20-2-22a. Hunting, tagging, and reporting bear; procedures applicable to property destruction by bear; penalties.**

1 (a) A person may not hunt, capture, or kill any bear, or have in his or her possession any  
2 bear or bear parts, except during the hunting season for bear in the manner designated by rule  
3 or law. For the purposes of this section, bear parts include, but are not limited to, the pelt,  
4 gallbladder, skull, and claws of the bear.

5 (b) A person who kills a bear shall, within ~~twenty-four~~ 24 hours after the killing,  
6 electronically register the bear. A game tag number shall be issued to the person and recorded  
7 in writing with the person's name and address or on a field tag, and shall remain on the skin until  
8 it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state  
9 for disposal to a charitable institution, school, or as otherwise designated by the director.

10 (c) Training dogs on bears or pursuing bears with dogs is the hunting of bear for all  
11 purposes of this chapter, including all applicable regulations and license requirements.

12 (d) It is unlawful:

13 (1) To hunt bear without a bear damage stamp, as prescribed in ~~section forty-four b~~ §20-  
14 2-44b of this ~~article~~ code, in addition to a hunting license as prescribed in this article;

15 (2) To hunt a bear with:

16 (A) A shotgun using ammunition loaded with more than one solid ball; or

17 (B) A rifle of less than ~~twenty-five~~ 25 caliber using rimfire ammunition;

18 (3) To kill or attempt to kill, or wound or attempt to wound, any bear through the use of  
19 bait, poison, explosives, traps, or deadfalls or to feed bears at any time. For purposes of this  
20 section, bait includes, but is not limited to, corn and other grains, animal carcasses or animal  
21 remains, grease, sugars in any form, scent attractants, and other edible enticements; and an area  
22 is considered baited for ~~ten~~ 10 days after all bait has been removed;

23 (4) To shoot at or kill:

24 (A) A bear weighing less than ~~seventy-five~~ 75 pounds live weight or ~~fifty~~ 50 pounds field  
25 dressed weight, after removal of all internal organs;

26 (B) Any bear accompanied by a cub; or

27 (C) Any bear cub so accompanied, regardless of its weight;

28 (5) To transport or possess any part of a bear not tagged in accordance with the provisions  
29 of this section;

30 (6) To possess, harvest, sell, or purchase bear parts obtained from bear killed in violation  
31 of this section; or

32 (7) To organize for commercial purposes or to professionally outfit a bear hunt, or to give  
33 or receive any consideration whatsoever or any donation in money, goods, or services in  
34 connection with a bear hunt, ~~notwithstanding the provisions of sections twenty-three~~ except after  
35 January 1, 2020, such services may be provided by a licensed guide or licensed outfitter pursuant  
36 to §20-2-23 and ~~twenty-four~~ §20-2-24 of this article code. For purposes of this subdivision, a  
37 licensed outfitter and licensed guide must be a resident of the state, and guided bear hunts shall  
38 only be conducted on private land using trained bear dogs.

39 The director shall propose rules for promulgation in accordance with the provisions of  
40 §29A-3-1 et seq. of this code to establish hunter application procedures and hunting procedures  
41 for guided bear hunts.

42 (e) The following provisions apply to bear damaging or destroying property:

43 (1)(A) Any property owner or lessee who has suffered damage to real or personal property,  
44 including loss occasioned by the death or injury of livestock or the unborn issue of livestock,  
45 caused by an act of a bear, may complain to any natural resources police officer of the division  
46 for protection against the bear.

47 (B) Upon receipt of the complaint, the officer shall immediately investigate the  
48 circumstances of the complaint. If the officer is unable to personally investigate the complaint, he  
49 or she shall designate a wildlife biologist to investigate on his or her behalf.

50 (C) If the complaint is found to be justified, the officer or designated wildlife biologist may  
51 issue a permit to kill the bear that caused the property damage or may authorize the owner and  
52 other residents to proceed to hunt, destroy, or capture the bear that caused the property damage:  
53 *Provided, That only the natural resources police officer or the wildlife biologist may recommend*  
54 *other measures to end or minimize property damage: Provided, however, That if out-of-state dogs*  
55 *are used in the hunt the owners of the dogs are the only nonresidents permitted to participate in*  
56 *hunting the bear.*

57 (2) (A) When a property owner has suffered damage to real or personal property as the  
58 result of an act by a bear, the owner shall file a report with the director of the division. A bear  
59 damage report shall be completed by a representative of the division and shall state whether or  
60 not the bear was hunted and destroyed or killed under authorization of a depredation permit and,  
61 if so, the sex and weight shall be recorded and a premolar tooth collected from the bear, all of  
62 which shall be submitted with the report. The report shall also include an appraisal of the property  
63 damage occasioned by the bear fixing the value of the property lost. Bear damage claims will not  
64 be accepted for personal and real property which is commonly used for the purposes of feeding,  
65 baiting, observing, or hunting wildlife, including, but not limited to, hunting blinds, tree stands,  
66 artificial feeders, game or trail cameras, and crops planted for the purposes of feeding or baiting  
67 wildlife.

68 (B) The report shall be ruled upon and the alleged damages examined by a commission  
69 comprised of the complaining property owner, an officer of the division, and a person to be jointly  
70 selected by the officer and the complaining property owner.

71 (C) The division shall establish the procedures to be followed in presenting and deciding  
72 claims, issuing bear depredation permits and organizing bear hunts under this section in  
73 accordance with ~~article three, chapter twenty-nine-a~~ §29A-3-1 et seq. of this code.

74 (D) All claims shall be paid in the first instance from the Bear Damage Fund provided in  
75 ~~section forty-four-b §20-2-44b~~ of this ~~article~~ code: *Provided*, That the claimant shall submit  
76 accurate information as to whether he or she is insured for the damages caused by the acts of  
77 bear on forms prescribed by the director, and all damage claims shall first be made by the claimant  
78 against any insurance policies before payment may be approved from the Bear Damage  
79 Fund. Claims for an award of compensation from the Bear Damage Fund shall be reduced or  
80 denied in the amount the claimant is actually reimbursed by insurance for the economic loss upon  
81 which the claim is based. In the event the fund is insufficient to pay all claims determined by the  
82 commission to be just and proper, the remainder due to owners of lost or destroyed property shall  
83 be paid from the special revenue account of the division.

84 (3) In all cases where the act of the bear complained of by the property owner is the killing  
85 of livestock, the value to be established is the fair market value of the livestock at the date of  
86 death. In cases where the livestock killed is pregnant, the total value is the sum of the values of  
87 the mother and the unborn issue, with the value of the unborn issue to be determined on the basis  
88 of the fair market value of the issue had it been born.

89 (f) *Criminal penalties.* — (1) Any person who commits a violation of the provisions of this  
90 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500  
91 nor more than \$1,000, which is not subject to suspension by the court, confined in jail not less  
92 than 10 nor more than 30 days, or both fined and confined. Further, the person's hunting and  
93 fishing licenses shall be assigned six points; however, the hunting and fishing licenses of any

94 person convicted of a violation of this section which results in the killing or death of a bear shall  
95 be suspended for two years.

96 (2) Any person who commits a second violation of the provisions of this section is guilty of  
97 a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than  
98 \$3,000, which is not subject to suspension by the court, confined in jail not less than 30 days nor  
99 more than 100 days, or both fined and confined. The persons hunting and fishing licenses shall  
100 be suspended for five years.

101 (3) Any person who commits a third or subsequent violation of the provisions of this section  
102 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor  
103 more than \$5,000, which is not subject to suspension by the court, confined in jail not less than  
104 six months nor more than one year, or both fined and confined. The person's hunting and fishing  
105 licenses shall be suspended for ~~ten~~ 10 years.

**§20-2-23. Outfitters and guides, generally; definitions.**

1 (a) Services of outfitters and guides for the benefit and convenience of hunters, fishermen,  
2 and others in this state are recognized as essential, and such outfitters and guides may be  
3 licensed and authorized to serve as provided in this article. The director is hereby authorized to  
4 promulgate rules and regulations on services of outfitters and guides as herein authorized and  
5 defined, including services of outfitters and guides conducting guided bear hunts.

6 (b) The term "outfitter", as used herein, means and includes any person, partnership,  
7 corporation, or other organization, or any combination thereof, duly authorized and operating from  
8 within or without the state, ~~who operating from any temporary or permanent camp, private or~~  
9 ~~public lodge, or private or incorporated home situate within this state,~~ provides, for monetary profit  
10 or gain, saddle or pack animals or other animals, vehicles, boats, conveyances, or equipment, or  
11 guide services for any person or persons hunting game animals, game birds, fishing, or taking  
12 expeditions, both land and water, in this state. The term "outfitter" shall not include, however, any  
13 person who occasionally, for accommodation or favor rather than profit or gain, rents equipment

14 to hunters, fishermen, or others as a service incidental to his or her principal occupation or  
15 business without advertising outfitter or guide services or holding out to the public the offering of  
16 such services.

17 (c) The term “guide”, as used herein, includes ~~and embraces outfitter services and the~~  
18 ~~term “outfitter” includes and embraces guide services, but the applicant for any license hereunder~~  
19 ~~may in his or her application elect to be designated as an outfitter or guide~~ any individual operating  
20 from within or without the state who provides, for monetary profit or gain, saddle or pack animals  
21 or other animals, vehicles, boats, conveyances, or equipment, or guide services for any person  
22 or persons hunting game animals, game birds, fishing, or taking expeditions, on both land and  
23 water, in this state, including such services provided as an agent or employee of an outfitter. The  
24 term “guide” shall not include, however, any individual who occasionally, for accommodation or  
25 favor rather than profit or gain, rents equipment to hunters, fishermen, or others as a service  
26 incidental to his or her principal occupation or business without advertising outfitter or guide  
27 services or holding out to the public the offering of such services.

28 (d) The term “commercial whitewater outfitter”, as used herein, means any person,  
29 partnership, corporation, or other organization, or any combination thereof, duly authorized and  
30 operating from within or without the state, which for monetary profit or gain provides whitewater  
31 expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river,  
32 portions of rivers, or waters of the state in accordance with this article.

33 (e) The term “commercial whitewater guide”, as used herein, means any person who is an  
34 owner, agent, or employee of a commercial whitewater outfitter, and who is qualified and  
35 authorized to provide services for whitewater expeditions in the state in accordance with this  
36 article.

**§20-2-26. Same - license fee; bond; revocation of license; penalties.**

1 When satisfied as to the applicant’s qualifications for an outfitter’s ~~or guide’s~~ license and  
2 upon receipt of a fee of ~~\$40~~ \$50 therefor, the director shall issue such license which shall be for  
3 the calendar year therein designated.



4           When satisfied as to the applicant's qualifications for a guide license and upon receipt of  
5 a fee of \$15 therefor, the director shall issue such license which shall be for the calendar year  
6 therein designated.

7           Immediately upon the issuance of an outfitter's or guide's license and before any outfitter's  
8 or guide's services are offered or rendered thereunder, the licensee shall execute a surety bond  
9 in the penal sum of \$1,000 payable to the State of West Virginia and conditioned upon the faithful  
10 and reliable discharge of his or her services under and pursuant to such license. Such bond shall  
11 be approved as to form by the Attorney General and as to surety by the director, and when so  
12 executed and approved, shall be filed in the office of the director. Such bond shall be for the life  
13 of the license: Provided, That any guide providing services exclusively as an agent or employee  
14 of an outfitter is not required to execute such surety bond.

15           The director is hereby authorized to revoke and cancel any such license for failure of the  
16 licensee to give the bond herein required, for licensee's violation or disregard of any of the  
17 provisions of this chapter, upon licensee's conviction of crime, or for any other reason or cause  
18 justifying refusal of the license to the licensee upon a new application therefor. The director shall  
19 afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

20           No person shall act or serve as a guide or outfitter, as defined in this article, without  
21 procuring and having on his or her person at the time a valid license from the director authorizing  
22 him or her so to do. Any person violating this provision shall be guilty of a misdemeanor, and,  
23 upon conviction thereof, may be fined not exceeding ~~\$100~~ \$500 or confined in the county jail not  
24 exceeding ~~ninety~~ 90 days, or, in the discretion of the court, be both fined and ~~imprisoned~~ confined  
25 within the limits herein prescribed.

NOTE: The purpose of this bill is to amend existing law to permit bear hunting with the use of a guide.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.