

Form #2

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**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 31
PUBLIC USE OF WEST VIRGINIA STATE PARKS,
STATE FORESTS, AND STATE WILDLIFE MANAGEMENT AREAS
UNDER THE DIVISION OF NATURAL RESOURCES**

§58-31-1. General.

1.1. Scope. -- This legislative rule governs the public use of West Virginia state parks, state forests, and recreation areas in state wildlife management areas under the jurisdiction and management of the Division of Natural Resources. ~~This rule shall not be construed to include the state forests or state wildlife management areas, or any areas or facilities in the state forests or state wildlife management areas, under the jurisdiction and management of the Department of Agriculture or other sections of the Division of Natural Resources, respectively.~~ This rule is necessary to provide for public health, safety and welfare; to protect state property; and to assure state recreational area guests of a safe, beneficial and enjoyable experience.

1.2. Authority. -- W. Va. Code §20-5-2.

1.3. Filing Date. -- April 10, 2002.

1.4. Effective Date. -- May 1, 2002.

§58-31-2. General Rules Governing Public Use of State Parks, State Forests, and Recreational Areas in State Wildlife Management Areas under the Division of Natural Resources.

2.1. No person shall cut, deface, destroy, or drive any object into any tree, shrub, rock, sign, building or other structure or object in a state park, state forest, or state wildlife management area. This subsection does not apply to the erection of temporary blinds or tree

stands in state wildlife management areas.

2.2. No person shall remove any man-made or natural object, material, substance, plant, animal or historical or archeological relic or artifact from a state park, state forest, or state wildlife management area, except those legally acquired through hunting and fishing in accordance with W. Va. Code §20-2-1 et seq. or upon proper authorization in writing by the Chief of Parks and Recreation, Division of Natural Resources.

2.3. Fires may be lighted only in fireplaces, fire rings or grates provided by the State or in places designated by the area superintendent. Those persons responsible for a fire shall extinguish it completely before leaving it. Ashes, charcoal briquets and other materials used for a fire shall be left in the fireplace, fire ring, grate or place designated for the fire, or be deposited in a trash container or a container provided specifically for that purpose but only after they are extinguished. The materials shall not be strewn over the ground.

2.4. No person shall attempt to or hunt, catch, capture, take, kill, trap, pursue or have in his or her possession any animal, except as provided in W. Va. Code §20-2-1 et seq. Hunting is prohibited in all state parks; however, legally authorized hunting is permitted in state forests, and state wildlife management areas.

a. No person shall attempt to feed, or feed, any animal in a state park, state forest, or state wildlife management area, except a pet they own, or as part of a wildlife management program officially approved by the

state agency having lawful jurisdiction over the program.

2.5. Loud or excessive noise, demonstrations, disturbances, disorderly conduct, profanity, public drunkenness, and the possession or use of controlled substances is prohibited.

2.6. Swimming is prohibited in state parks, state forests, and state wildlife management areas, except in places designated for that purpose.

2.7. Recreational activities including, but not limited to, rock climbing, rappelling, hang gliding, parachuting, parasailing, skydiving, spelunking and other like or similar recreational activities that require a high degree of specialized training and equipment are permitted, except where they are prohibited by posted signs. Persons who intend to participate in any such activity shall register at the area superintendent's office before engaging or participating in it and specify where it will take place. Participants in such activities assume full responsibility and liability for any risk or injury related to the activity. Scenic rocks, overlooks and vistas are for providing scenic beauty and aesthetic benefit for guests; therefore, they shall not be used for, or disfigured by, any such recreational activity. This subsection does not apply to golf, skiing, horseback riding, hunting or fishing.

2.8. Garbage, waste, bottles, cans, paper, junk, or any other trash or refuse shall not be dumped, deposited or strewn within the boundary of any state park, state forest, or state wildlife management area.

2.9. Lodge rooms, cabins, campsites, picnic shelters, swimming pools and beaches, or any other facility shall not be subleased by guests or patrons.

2.10. It is unlawful for any person not to pay the rental, charge or fee for any facility, service, activity or good he or she uses or

purchases in a state park, state forest, or state wildlife management area.

2.11. Unless other operating hours are posted at all park entrances, only registered lodge, cabin, and camping guests, licensed hunters, and fishermen while hunting or fishing and persons who have authorized, legitimate business in a state park, state forest, or state wildlife management area are permitted on the premises between the closing hour of 10:00 P.M. and the opening hour of 6:00 A.M., during which hours the premises are closed to the general public.

2.12. Dogs and cats are the only pets permitted in state parks, state forests, and state wildlife management areas; ~~Pets are prohibited~~ permitted in state park and state forest cabins and the areas immediately around them, and in state park lodges, at those parks and forests identified by the Director of DNR for such use. The Director shall also have the discretion to set the number of state park and state forest cabins and the number of state park lodge rooms that will be designated as pet friendly, as well as to establish all necessary and incidental reservation policies and fees. ~~Pets are prohibited~~ in and around swimming pool and beach swimming areas. In and around campgrounds, picnic areas, playgrounds, designated roads and trails and other similar intense public use areas, they shall be restrained at all times on a sturdy leash not to exceed ten feet in length and their owner or master shall clean up the pet's excreta, keep it quiet and from disturbing other guests, and is responsible for all damages it causes. Lodge and cabin pet policy for facilities not directly operated by the state will be set by the contractual operator subject to the review and approval of the Director.

2.13. Explosives, incendiaries, flammables and other dangerous substances are prohibited in state parks, state forests, and state wildlife management areas.

2.14. Uncased firearms, uncased bows

and uncased arrows are prohibited in state parks, state forests, and state wildlife management areas, and on state trails, except:

a. When the area is open for hunting (hunting is prohibited in state parks) or when a registered park or forest guest has the written permission of the area superintendent to carry them in a case from his or her lodge room, cabin or campsite to open hunting areas, or to an officially designated rifle, pistol, skeet, trap, target or shooting range;

b. Area superintendents may authorize their use in historical reenactments and plays; and

c. The Chief of Parks and Recreation, Division of Natural Resources, may authorize their use for a limited period in conjunction with recreational and arts and crafts programs.

2.15. The Division of Natural Resources assumes no responsibility for any personal property. If personal property is abandoned or left unattended by park guests more than forty-eight (48) hours, it will be removed from the public use area and disposed of according to law.

2.16. Hawking, peddling, soliciting, begging, advertising, or carrying on any business or commercial enterprise is prohibited in state parks, state forests, and state wildlife management areas without the written permission of the Director of the Division of Natural Resources.

2.17. Fishing and boating are permitted in state parks, state forests, and state wildlife management areas only in accordance with state law, fishing and boating rules promulgated under the law, and rules publicly posted in those areas.

2.18. The speed limit for motor vehicles is thirty (30) miles per hour in state parks, state forests, and state wildlife management areas,

except where a lower speed limit is posted. All traffic laws, signs and directions shall be strictly observed. Driving of motor vehicles in any manner that creates a nuisance to any guest by repetitive or continuous cruising or operation is prohibited.

2.19. Motor vehicles including, but not limited to, trail bikes, motorbikes, snowmobiles, and all terrain vehicles may be operated only on public roads usable by automotive vehicles, and on trails and areas designated for their use by the area superintendent by posted signs. It is unlawful for any unauthorized motor vehicle to go beyond a gate, cable, or other obstruction, or to proceed beyond any sign prohibiting such travel. All persons operating motor vehicles in state recreational areas shall obey and comply with all applicable state laws and rules.

a. Mountain and trail bicycles may be operated only on public roads, trails and other readily recognizable passageways such as logging roads and oil or gas well roads. They shall not be operated on horseback riding trails when they are open and operating as horseback riding trails, nor shall they be operated on any trail or road where their use is prohibited by posted signs.

b. For the purposes of this subsection, "mountain and trail bicycles" means any devices designed for operation on mountains and trails having two tandem wheels and pedals for propelling it by human power.

2.20. No person may operate a vehicle in a manner so as to harass, chase or annoy any person or animal.

2.21. Except as authorized in writing by the Director for group functions no person shall have in his or her possession beer, wine, liquor, or other alcoholic beverages within the boundaries of the following historical, day use and natural area state parks which include:

Beartown,
Berkeley Springs,

Brush Creek Falls day-use area managed by Pipestem State Park,
 Carnifex Ferry Battlefield, Cass Scenic Railroad, Cathedral, Chief Logan, except in the lodge and conference center, Droop Mountain Battlefield, Fairfax Stone Historic Monument, Little Beaver, Pinnacle Rock, ~~Point Pleasant Battle-Monument~~, Tu-Endie-Wei, Prickett's Fort, Valley Falls, and Watters Smith Memorial, the Greenbrier River Trail and the North Bend Rail Trail; in the following vacation parks: Audra, except in reserved picnic shelters; Babcock, Camp Creek, Moncove Lake, Tomlinson Run, except in reserved picnic shelters, Bluestone State Park, in all boat launch ramp parking areas and all camping areas within its boundaries, Beech Fork State Park, in all camping areas within its boundaries, and Hawks Nest State Park, except the lodge and Hawks Nest golf course which is operated as part of Hawks Nest State Park;

in all state forests, which include:

Cabwaylingo,
 Calvin Price,
Camp Creek,
 Coopers Rock,
 Greenbrier,
 Kanawha,
 Kumbrabow,

Panther, and Seneca;
~~in recreation areas within the following state wildlife management areas:~~

Berwind Lake,
Big Ditch Lake,
Bluestone,
Laurel Lake,
Pleasant Creek,
Plum Orchard Lake, and
Teter Creek Lake,
in the following wildlife management areas,

Berwind Lake,
Bluestone,
Laurel Lake, and
Plum Orchard Lake,
in Recreation Areas within the following state Wildlife Management Areas which include:

Teter Creek Lake,
Big Ditch Lake,
Pleasant Creek,
Lewis Wetzel,
Sleepy Creek,
Conway Run Lake,
McClintic,
Chief Cornstalk,
Upper Mud;

and in those parts of Wildlife Management Areas and in those state park and state forest areas where they are prohibited by posted signs. Provided, That any person, group or association sponsoring private party at the restaurant at Chief Logan State Park or the multi purpose log barn at Prickett's Fort State Park may provide beer, wine, liquor and all other alcoholic beverages for guests at the private party as long as the party is not open to the general public.

2.22. The Director of the Division of Natural Resources is authorized to issue special

use permits and enter into written agreements with persons who demonstrate to the satisfaction of the Director that they have good cause to utilize a motor driven vehicle on the Greenbrier River Trail or the North Bend Rail Trail. The Director may also authorize persons with legitimate need to utilize motorized vehicles on the trails as authorized in subdivision 2.22.3 of this rule.

2.22.1. The Director may, upon application in writing and for good cause shown, issue a written special use permit authorizing limited use of motorized vehicles on either the North Bend Rail Trail or Greenbrier River Trail. A separate permit is required for each use. Each permit shall specify the limitation on access, including such things as the date, time not to exceed three days, place, method and distance the applicant will be allowed to have access to the trail. As part of the permit process, the Director shall enter into a written agreement to allow the use of motorized vehicles on the trails. The agreement shall specify the limitations of the use and require, in exchange for such use, that the persons allowed to use motorized vehicles on the trails shall maintain a specified area of the trail for a specified length of time. The terms of the maintenance portion of the agreement shall depend on the length and nature of the use.

2.22.2. Good cause may be shown by (a) those persons in need of limited access to adjacent land that the applicant owns or leases for agriculture purposes and who have demonstrated no other reasonable means to gain entry to the adjacent land; (b) those persons who have a vested right of ingress to and egress from the trail and (c) those persons required by law to plug or reclaim oil or gas wells.

2.22.3. Persons with a legitimate need to use motorized vehicles on the trails are exempt from the permit requirements. A legitimate need is limited to (a) those persons who are authorized by the Director to use motorized vehicles in the management, construction, and maintenance and operation of

the trails and facilities and (b) persons and equipment to fight forest fires and handle other emergencies.

2.23. Any person may be evicted from a state park, state forest, or state wildlife management area for any breach of this rule, or for the breach of any other rule which is in effect governing their use. All rentals, charges and fees are forfeited upon an eviction.

§58-31-3. Enforcement of Rules Governing Public Use of State Parks, State Forests, and Recreation Areas in State Wildlife Management Areas under the Division of Natural Resources and Penalties.

3.1. Responsibility for enforcing the rules.

Conservation Officers, Special Conservation Officers, and the superintendents, assistant superintendents and managers of state parks, state forests, and state wildlife management areas shall enforce all of the provisions of this rule.

3.2. Violation of rules and penalties.

Any person violating any of the provisions of this rule is guilty of a misdemeanor, and, upon conviction thereof, shall be punished in accordance with W. Va. Code §20-7-9.

Current Preamble

§ 58-31-1. General.

- 1.1. Scope. – The legislative rule governs the public use of West Virginia state parks, state forests, and recreation areas in state wildlife management areas under the jurisdiction and management of the Division of Natural Resources. This rule shall not be construed to include the state forests or state wildlife management areas, or any areas or facilities in the state forests or state wildlife management areas, under the jurisdiction and management of the Department of Agriculture or other sections of the Division of Natural Resources, respectively. This rule is necessary to provide for public health, safety and welfare; to protect state property; and to assure state recreational area guests of a safe, beneficial and enjoyable experience.

Proposed Preamble

§ 58-31-1. General.

- 1.2. Scope. – The legislative rule governs the public use of West Virginia state parks, state forests, and recreation areas in state wildlife management areas under the jurisdiction and management of the Division of Natural Resources. ~~This rule shall not be construed to include the state forests or state wildlife management areas, or any areas or facilities in the state forests or state wildlife management areas, under the jurisdiction and management of the Department of Agriculture or other sections of the Division of Natural Resources, respectively.~~ This rule is necessary to provide for public health, safety and welfare; to protect state property; and to assure state recreational area guests of a safe, beneficial and enjoyable experience.

Rule Governing Alcoholic Beverages in State Parks,
State Forests, and State Wildlife Management Areas

Current Rule

- 2.21 No person shall have in his or her possession beer, wine, liquor, or other alcoholic beverages within the boundaries of any historical, day-use and natural area state parks, which include: Beartown, Berkeley Springs, Brush Creek Falls day use area managed by Pipestem State Park, Carnifex Ferry Battlefield, Cass Scenic Railroad, Cathedral, Chief Logan, Droop Mountain Battlefield, Fairfax Stone Historic Monument, Little Beaver, Pinnacle Rock, Point Pleasant Battle Monument, Prickett's Fort, Valley Falls, and Watters Smith Memorial, the Greenbrier River Trail and the North Bend Rail Trail; in the following vacation parks: Audra, except in reserved picnic shelters, Babcock, Camp Creek, Moncove Lake, Tomlinson Run except in reserved picnic shelters, in all boat launch ramp parking areas, and all camping areas within the boundaries of Bluestone State Park, all camping areas within the boundary of Beech Fork State Park, and in all of Hawks Nest State Park except the lodge and Hawks Nest golf course which is operated as part of Hawks Nest State Park; in all state forests, which include Cabwaylingo, Calvin Price, Coopers Rock, Greenbrier, Kanawha, Kumbrabow, Panther, and Seneca; in the following state wildlife management areas: Berwind Lake, Big Ditch Lake, Bluestone, Laurel Lake, Pleasant Creek, Plum Orchard Lake and Teter Creek Lake, and in those state park areas where they are prohibited by posted signs: Provided, That any person, group or association sponsoring a private party at the restaurant at Chief Logan State Park or the multi-purpose log barn at Prickett's Fort State Park may provide beer, wine, liquor and all other alcoholic beverage for guests at the private party as long as the party is not open to the general public.

Proposed Rule

- 2.21 Except as authorized in writing by the Director for group functions no person shall have in his or her possession beer, wine, liquor, or other alcoholic beverages within the boundaries of any historical, day-use and natural area state parks, which include: Beartown, Berkeley Springs, Brush Creek Falls day use area managed by Pipestem State Park, Carnifex Ferry Battlefield, Cass Scenic Railroad, Cathedral, Chief Logan, except in the lodge and conference center, Droop Mountain Battlefield, Fairfax Stone Historic Monument, Little Beaver, Pinnacle Rock, ~~Point Pleasant Battle Monument~~, Tu-Endie-Wei, Prickett's Fort, Valley Falls, and Watters Smith Memorial, the Greenbrier River Trail and the North Bend Rail Trail; in the following vacation parks: Audra, except in reserved picnic shelters, Babcock, Camp Creek, Moncove Lake, Tomlinson Run except in reserved picnic shelters, in all boat launch ramp parking areas, and all camping areas within the boundaries of Bluestone State Park, all camping areas within the boundary of Beech Fork State Park, and in all of Hawks Nest State Park except the lodge and Hawks Nest golf course which is operated as part of Hawks Nest State Park; in all state forests, which include Cabwaylingo, Calvin Price, Camp Creek, Coopers Rock, Greenbrier, Kanawha, Kumbrabow, Panther, and Seneca ~~in recreation areas within the following state wildlife management areas: Berwind Lake, Big Ditch Lake, Bluestone, Laurel Lake, Pleasant Creek, Plum Orchard Lake, and Teter Creek Lake,~~ in the following state wildlife management areas: Berwind Lake, Bluestone, Laurel Lake, and Plum Orchard Lake, in Recreation Areas within the following state Wildlife Management Areas which include: Teter Creek Lake, Big Ditch Lake, Pleasant Creek, Lewis Wetzel, Sleepy Creek, Conway Run Lake, McClintic, Chief Cornstalk, Upper Mud; and in those parts of Wildlife Management Areas and in those state park and state forest areas where they are prohibited by posted signs. ~~Provided, That any person, group or association sponsoring a private party at the restaurant at Chief Logan State Park or the multi purpose log barn at Prickett's Fort State Park may provide beer, wine, liquor and all other alcoholic beverage for guests at the private party as long as the party is not open to the general public.~~

Summary of Proposed Rule

- 2.21 To Amend the existing rule to give the Director of The Division of Natural Resources the authority to provide written permission to groups who rent a certain state park facilities, to possess beer, wine, liquor, or other alcoholic beverages for functions not open to the general public. The other changes to this rule are technical changes to the rule.

Statement of Circumstances Which Require This Rule.

- 2.21 The Division of Natural Resources has enacted a broad general prohibition on beer, wine, liquor, and other alcoholic beverages within the boundaries of historical, day-use, and natural state parks and all state forests. Many groups, however, often rent picnic shelters, activities buildings, meeting rooms and similar facilities for group functions not open to the general public and desire the opportunity to serve alcoholic beverages for their event, for example, a wedding reception. This amended rule would give the Director authorization to provide groups with written permission to possess alcoholic beverages, thereby giving state parks and state forests the flexibility to adapt to an ever changing and competitive marketplace.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing public use of WV State Parks, Forests, and Wildlife Management

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division of Natural Resources

Address: State Capitol Complex
Building 3, Room 713
Charleston, WV 25305

Phone Number: 304-558-2764 Email: dougbaker@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This proposed rule change would have a positive impact of park revenues. This rule gives state parks, with the Director's written approval, the flexibility to rent facilities to groups who wish to serve alcoholic beverages to their guests which has the potential for parks to rent facilities to a larger market.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	2,000.00	5,000.00

Rule Title: Rules Governing public use of WV State Parks, Forests, and Wildlife Management

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The increase in revenues would primarily result from parks having the ability to appeal to a broader market of potential renters by offering this rule change. Parks does not foresee any increase in expenses except those associated with normal rentals, which should be covered by the increased revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The other changes to this rule are technical in nature. For example, adding an exception to the prohibition to permit alcoholic beverages at the Chief Logan conference center and lodge, changing the name of Point Pleasant Battle Monument to Tu-Endie-Wei, and adding Camp Creek State Forest to the alcoholic beverage prohibition, which was omitted from previous rule changes.

Date: 6/29/05

Signature of Agency Head or Authorized Representative

Frank J. Aguirre