



TITLE 58  
LEGISLATIVE RULE  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES

SERIES 65  
FALCONRY

FILED

OCT 4 2 42 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§58-65-1. General.**

1.1. Scope and Purpose. -- This legislative rule establishes standards to govern the possession, training, and use of falcons for the purpose of hunting in West Virginia.

1.2. Authority. -- West Virginia Code §20-1-7(30)

1.3. Filing Date. --

1.4. Effective Date. --

**§58-65-2. Definitions.**

2.1. "Director" means the Director of the West Virginia Division of Natural Resources.

2.2. "Division" means the West Virginia Division of Natural Resources.

2.3. "Falconry" means the sport of taking quarry by means of a trained raptor.

2.4. "Raptor" means a live migratory bird of the Order Falconiformes or the Order Strigiformes, other than a bald eagle (*Haliaeetus leucocephalus*) or a golden eagle (*Aquila chrysaetos*).

**§58-65-3. Permit Requirements.**

3.1. A West Virginia falconry permit is required before any person may take, possess, transport, sell, purchase, barter, or offer to sell, purchase or barter raptors for falconry purposes or practice falconry in the state of West Virginia.

3.2. Permittees may not take, possess, transport, sell, purchase, barter, or transfer any raptor for falconry purposes except under authority of a Federal falconry permit which is issued in conjunction with the state permit and in accordance with appropriate State and Federal rules and regulations.

3.3. The Director may issue falconry permits to applicants who meet the requirements and otherwise comply with the provisions of this rule.

3.4. Applicants must complete and submit an application on forms provided by the Division.

3.5. Permits are valid from January 1 to December 31 of each year. Permits are renewable, but may not be transferred to any other person. Permits may be revoked or denied for cause or for violation of any of the provisions of the permit or Subsection 11.1 of this rule.

3.6. The fees for permits are as follows:

3.6.1. An applicant who applies for a permit, who does not currently possess a permit issued by the Division in one of the three classes set forth in Section 4 of this rule, shall pay an initial \$250 application and issuance fee for any class permit.

3.6.2. The annual renewal fee for any class permit is \$100. Any lapse in renewal of more than thirty (30) days subjects the applicant to the same \$250 fee as an initial applicant.

3.6.3. An applicant, who currently possess a permit issued by the Division in one of the classes set forth in Section 4 of this rule, who applies for a permit in one of the other classes shall not pay an application and issuance fee.

3.7. Hunting License Requirements.

3.7.1. In addition to a falconry permit, permittees are required to possess a valid hunting license and any other applicable stamps or licenses that are required by law.

3.7.2. When hunting waterfowl with a raptor, the permittee must hold a valid federal and state waterfowl stamp.

3.8. Seasons and bag limits.

3.8.1. Falconers may only hunt during seasons established by the Director.

3.8.2. Falconers must abide by all bag limits established by the Director.

#### **§58-65-4. Classes of Permits.**

4.1. Apprentice class.

4.1.1. An applicant for a permit shall be at least 14 years old.

4.1.2. A permittee must be sponsored by a holder of a valid West Virginia General or Master Falconry Permit or a valid General or Master Falconry Permit from another state meeting Federal falconry standards and listed in appropriate Federal regulations for the first two years in

which an apprentice permit is held, regardless of the age of the permittee. A sponsor may not have more than three apprentices at any one time;

4.1.3. A permittee shall not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period.

4.1.4. A permittee shall possess only an American kestrel (*Falco sparverius*) or a red-tailed hawk (*Buteo jamaicensis*).

#### 4.2. General Class.

4.2.1. An applicant for a permit shall be at least 18 years old.

4.2.2. An applicant for a permit shall have at least two years experience in the practice of falconry at the apprentice class level.

4.2.3. A permittee may not possess more than two raptors and may not obtain more than two raptors for replacement birds during any 12-month period.

4.2.4. A permittee may not take, transport, or possess any golden eagle (*Aquila chrysaetos*), or any species listed as threatened or endangered in appropriate Federal regulations.

#### 4.3. Master Class.

4.3.1. An applicant for a permit shall have at least five years experience in the practice of falconry at the general class level.

4.3.2. A permittee may not possess more than three raptors, and may not obtain more than two raptors for replacement birds during any 12-month period.

4.3.3. A permittee may not take any species listed as threatened or endangered in appropriate Federal regulations, but may transport or possess those species in accordance with the federal regulations and with authorization in writing by the Director.

4.3.4. A permittee may not take, transport, or possess any golden eagle or any raptor not indigenous to this State for falconry purposes, unless authorized in writing by the Director.

#### §58-65-5. Examination.

5.1. Applicants for an apprentice class permit are required to answer correctly at least 80 percent of the questions on a supervised examination relating to basic biology, care and handling of raptors, literature, laws, rules, regulations and other appropriate subject matter before the Division will issue a falconry permit. The examination will be provided and administered by the Division.

5.2. Division employees representing the Director shall inspect and certify raptor housing and other equipment prior to issuing a permit to an applicant. Facilities and equipment must meet the standards listed in Subsection 6.1 of this rule.

#### **§58-65-6. Facilities and Equipment.**

6.1. Before a falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Wildlife Resources Section of the Division as meeting the following standards:

##### **6.1.1. Facilities.**

6.1.1.a. The primary consideration for raptor housing facilities, whether indoors (mews) or outdoors (weathering area), is protection from the environment, predators, or undue disturbance. The applicant may have either of the following facilities, except that depending upon climatic conditions, the issuing authority may require only one of the following facilities:

6.1.1.b. Indoor facilities (mews) which are large enough to allow easy access for caring for the raptors housed in the facility. If more than one raptor is to be kept in the mews, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body, and a secure door that can be easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided; or

6.1.1.c. Outdoor facilities (weathering area) which are fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators except that perches more than 6 ½ feet high need not be covered or roofed. The enclosed area shall be large enough to insure the birds cannot strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.

6.1.2. The following equipment must be possessed by the applicant before he or she will be issued a permit:

6.1.2.a. Jesses -- An applicant shall possess at least 1 pair of Alymeri jesses or jesses of similar type, constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free. Traditional 1-piece jesses may be used on raptors when they are not being flown;

6.1.2.b. Leashes and swivels -- An applicant shall possess at least 1 flexible, weather-resistant leash and 1 strong swivel of acceptable falconry design;

6.1.2.c. Weighing device -- An applicant shall possess a reliable scale or balance suitable for weighing the raptors held and graduated to increments of not more than ½ ounce (15 gram);

6.1.2.d. Bath container -- An applicant shall possess at least 1 suitable container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor; and

6.1.2.e. Outdoor perches -- An applicant shall possess at least 1 weathering area perch of an acceptable design for each raptor.

6.1.3. Maintenance.

6.1.3.a. All facilities and equipment must meet or exceed the standards listed in Subsections 6.1.1 and 6.1.2 of this rule at all times.

6.1.4. Transportation and temporary holding.

6.1.4.a. A raptor possessed under authority of a West Virginia falconry permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors, and then only if the raptor is accompanied at all times by the properly completed Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

6.1.4.b. Raptors may be transported or held for a period not to exceed thirty (30) days in a temporary facility, if it is equipped with a perch and is protected from extreme temperatures and excessive disturbance.

6.1.4.c. Raptors legally held under a valid West Virginia falconers permit may be transported to other states for meets, trials, and hunting and may be returned to West Virginia by the permittee without having to obtain an importation permit. Nothing in this rule exempts the falconer from having to obtain the necessary permits or licenses before transporting any raptor into another state.

**§58-65-7. Nonresident Permits.**

7.1. Nonresident falconers must possess both a West Virginia falconry permit and the appropriate nonresident hunting licenses to hunt with a raptor in West Virginia.

7.2. Nonresident falconers are not subject to the examination and facilities and equipment conditions outlined in Sections 5 and 6 of this rule, but must show proof of possession of a valid

permit from another State that meets Federal falconry standards and is listed in appropriate Federal regulations.

7.3. Nonresident falconers must obtain an importation permit as required by West Virginia code §20-2-13, prior to bringing raptors into West Virginia.

**§58-65-8. Reporting.**

8.1. The permittee may not take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless he or she submits a Federal form 3-186A (Migratory Bird Acquisition/Disposition Report), completed in accordance with the instructions on the form, to the Division office within five (5) calendar days of any transaction.

8.2. A permittee may not possess a raptor, unless the permittee has a properly completed Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) for each bird possessed.

**§58-65-9. Marking.**

9.1. The Division shall conduct an inventory of all raptors held within the State, except those held for scientific or zoological purposes.

9.2. Any raptor taken, possessed or transported for falconry purposes, except a captive bred raptor lawfully marked by a numbered, seamless band issued by the Division or the US Fish and Wildlife Service, must be banded with a permanent, non-reusable numbered band issued by the Division or the US Fish and Wildlife Service.

9.3. Raptors removed from the wild shall not be banded with a seamless numbered band.

9.4. A permittee shall report the loss or removal of any band to the issuing office within five (5) working days of the loss. The lost band must be replaced by a permanent, non-reusable numbered band supplied by the Division or by the US Fish and Wildlife Service. The permittee must file a Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) in accordance with the instructions on the form reporting the loss of the band and the rebanding.

9.5. Alteration, counterfeiting or defacing of a marker is prohibited except that a permittee may remove the rear tab on markers and may smooth an imperfect surface provided the integrity of the marker and numbering are not affected.

**§58-65-10. Restrictions.**

10.1. Taking Restrictions.

10.1.1. It is illegal to take at any time any golden eagle or any species of raptor listed as threatened or endangered in appropriate State or Federal rules or regulations.

10.1.2. Only resident falconers may take raptors from the wild for the purposes of falconry.

10.1.3. Resident falconers are only allowed to take American kestrels (*Falco sparverius*) and red-tailed hawks (*Buteo jamaicensis*) from the wild for the purpose of falconry.

10.1.4. Resident falconers who desire to take either of the two species listed in Subdivision 10.1.3 of this Section must obtain a scientific collecting permit from the Director. Any permit for collecting birds from the wild shall include, as a provision of collection, the written permission of the landowner, including State and Federal agencies, from which the bird(s) would be taken.

10.1.5. Immature raptors of the species listed in Subdivision 10.1.3 of this Section which are not yet capable of flight (eyases) may only be taken by a General or Master Falconer during the period of May 1 to June 15, and no more than two eyases may be taken by the same permittee during the specified period.

10.1.6. First-year (passage) birds may be taken only during the period of September 1 to November 30.

10.1.7. A marked or banded raptor may be retrapped at any time.

10.1.8. Only American kestrels (*Falco sparverius*) over one year old may be taken for falconry. Any raptor listed as threatened or endangered by state or federal laws, rules or regulations, other than golden eagles, taken under the authority of a depredation or special purpose permit issued by the U.S. Fish and Wildlife Service may be used for falconry by General and Master falconers.

## 10.2. Other Restrictions and Provisions.

10.2.1. Any person who possesses a lawfully acquired raptor before the enactment of this rule and who fails to meet the permit requirements of this rule may be allowed to retain the raptor(s), provided he or she meets all the housing requirements listed in Subdivision 6.1.1 of this rule and provided further that the raptor is not used for falconry purposes by the holder. Any person possessing raptors under the authority of this section must also comply with the provisions of Division rule, Miscellaneous Permits and Licenses 58 CSR 64-2.1.3. These birds shall be identified with markers supplied by the Director and cannot be replaced if death, loss, release, or escape occurs.



10.2.2. A person who possesses raptors before the enactment of this rule, in excess of the number allowed under his or her class of permit, may be allowed to retain the extra raptors. These birds shall be identified with markers supplied by the Director and no replacement shall occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

10.2.3. A falconer shall remove and surrender to the Division any markers from an intentionally released bird which is indigenous to the state. A standard Federal bird band shall be attached to these birds by a Division or U.S. Fish and Wildlife Service bird bander prior to release.

10.2.4. No non-indigenous birds may be released in this state.

10.2.5. Another person may care for the birds of a permittee, if written authorization from the permittee accompanies the birds when they are transferred. If the period of care will exceed thirty (30) days, the Director must be notified in writing by the permittee within three (3) days of the transfer. The notification must include the location where the birds are being held, the reason for the transfer, the name and address of the person responsible for their care, and the approximate number of days they will be in the care of that person.

10.2.6. Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by a permittee only for imping purposes.

10.2.7. A permittee may not sell, purchase, barter, or offer to sell, purchase or barter any raptor unless the raptor is marked on the metatarsus by a seamless, numbered band supplied by the Division or US Fish and Wildlife Service.

10.2.8. A permittee may not propagate raptors without prior acquisition of a valid raptor propagation permit issued by the U.S. Fish and Wildlife Service and written authorization from the Director in writing.

#### **§58-65-11. Revocation of Permit.**

11.1. The Director may revoke a falconry permit under the authority granted by West Virginia Code §20-2-38. The Director shall send notice to the permittee by certified mail which specifies the reason for the revocation, which may include, but is not limited to, the following reasons:

- 11.1.1. Improper care for a raptor;
- 11.1.2. A raptor becomes a public nuisance;
- 11.1.3. A violation of West Virginia game laws or rules;

- 11.1.4. Non-compliance with the terms or conditions of permit; or
- 11.1.5. Revocation of the permittee's Federal falconry permit.

## ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Natural Resources

**Subject:** Falconry

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### PERTINENT DATES

Filed for public comment: June 28, 1996  
Public comment period ended: July 29, 1996  
Filed following public comment period: August 16, 1996  
Filed LRMRC: August 16, 1996  
Filed as emergency:  
  
Fiscal Impact: \$310 increase

### ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 requires that a person who takes, possesses, transports, sells, purchases, or barter raptors for falconry purposes or who practices falconry in this State must have a West Virginia falconry permit. It requires permittee to have a federal falconry permit which is issued in conjunction with the state permit. Permits are valid for the calendar year. The initial application fee is \$250 and the annual renewal fee is \$100.

It also requires falconers to possess a valid hunting license and any other applicable stamps or licenses that are required by law. It requires permittees who are hunting waterfowl to possess a valid federal and state waterfowl stamp.

Permittees may hunt only during established hunting seasons and must abide by all established bag limits.

Section 4 sets forth 3 classes of permits-apprentice, general and master. It also sets forth the criteria for each class.

Section 5 requires an applicant for a permit to pass an examination administered by the Division on subject matters relating to falconry. It also requires that Division employees inspect and certify raptor housing and other equipment prior to the issuance of a permit.

Section 6 sets forth the standards which raptor housing facilities and falconry equipment must meet prior to the issuance of a permit.

Section 7 requires nonresident falconers to possess a valid WV falconers permit and the appropriate nonresident hunting licenses. They are not subject to examination or the standards for facilities or equipment, but they must show proof of possession of a valid permit from another state that meets federal falconry standards. They must obtain an importation permit prior to bringing raptors into this State.

Section 8 requires a permittee to submit a Migratory Bird Acquisition /Disposition Report to the issuing office within 5 days of the acquisition etc., of any raptor.

Section 9 requires the Division to conduct an inventory of all raptors held within the State, except those held for scientific or zoological purposes. It requires that all raptors taken, possessed or transported for falconry purposes be banded with a numbered band issued by the Division or the US Fish and Wildlife Service.

Section 10 sets forth restrictions on the taking of raptors. It also contains provisions regarding persons who possessed raptors prior to the promulgation of the proposed rule.

Section 11 sets forth those reasons for which the Director may revoke a falconry permit.

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#### AUTHORITY

Statutory authority: W.Va. Code, §20-1-7, which provides, in part, as follows:

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective

the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

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### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

The proposed rule conflicts with Division of Natural Resources Rule, Prohibitions When Hunting and Fishing, 58 CSR 47. However, the Division has proposed an amendment to that rule to resolve the conflict.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.



FILED

SEP 19 10 17 AM '96

**West Virginia Legislature**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room MB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair

September 17, 1996

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Gordon Robertson  
Division of Natural Resources  
Bldg. 3, Room 842  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Falconry

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency

X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

1 Bill-DNR, Falconry

(By Delegate(s) Douglas, Hunt, Compton,  
Faircloth, Linch and Riggs)

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[Introduced March 3, 1997; referred to the

5

Committee on Agriculture and Natural Resources

6

then the Judiciary.]

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8

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10 A BILL to amend and reenact section two, article ten,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of natural resources to  
14 promulgate a legislative rule relating to falconry.

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

16 That section two, article ten, chapter sixty-four of  
17 the code of West Virginia, one thousand nine hundred  
18 thirty-one, as amended, be amended and reenacted, to read  
19 as follows:

20 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO  
21 PROMULGATE LEGISLATIVE RULES.

22 §64-10-2. Division of natural resources.

23 (a) The legislative ~~rules~~ rule filed in the state



1 register on the twenty-second day of December, one thousand  
2 nine hundred ninety-four, authorized under the authority of  
3 section eleven, article two, chapter twenty of this code,  
4 modified by the division of natural resources to meet the  
5 objections of the legislative rule-making review committee  
6 and refiled in the state register on the twentieth day of  
7 July, one thousand nine hundred ninety-five, relating to  
8 the division of natural resources (commercial sale of  
9 wildlife, 58 CSR 63), ~~are~~ is authorized.

10 (b) The legislative ~~rules~~ rule filed in the state  
11 register on the twenty-second day of December, one thousand  
12 nine hundred ninety-four, authorized under the authority of  
13 section eleven, article two, chapter twenty of this code,  
14 modified by the division of natural resources to meet the  
15 objections of the legislative rule-making review committee  
16 and refiled in the state register on the twentieth day of  
17 September, one thousand nine hundred ninety-five, relating  
18 to the division of natural resources (miscellaneous permits  
19 and licenses, 58 CSR 64), ~~are~~ is authorized.

20 (c) The legislative ~~rules~~ rule filed in the state  
21 register on the thirty-first day of July, one thousand nine  
22 hundred ninety-five, authorized under the authority of  
23 section twenty-two, article seven, chapter twenty of this

1 code, modified by the division of natural resources to meet  
2 the objections of the legislative rule-making review  
3 committee and refiled in the state register on the  
4 twentieth day of September, one thousand nine hundred  
5 ninety-five, relating to the division of natural resources  
6 (boating, 58 CSR 25), ~~are~~ is authorized.

7 (d) The legislative ~~rules~~ rule filed in the state  
8 register on the thirty-first day of July, one thousand nine  
9 hundred ninety-five, authorized under the authority of  
10 section twenty-two, article seven, chapter twenty of this  
11 code, modified by the division of natural resources to meet  
12 the objections of the legislative rule-making review  
13 committee and refiled in the state register on the twenty-  
14 eighth day of October, one thousand nine hundred  
15 ninety-five, relating to the division of natural resources  
16 (special boating, 58 CSR 26), ~~are~~ is authorized, with the  
17 following amendments:

18 On page two, six, eight and nine, sections 3.6, 3.65,  
19 3.71, 3.87 3.102 and 3.109, following the words "must have  
20 the propeller removed", by inserting the words "or have the  
21 motor withdrawn to the maximum trailorable limit".

22 (e) The legislative ~~rules~~ rule filed in the state  
23 register on the thirty-first day of July, one thousand nine

1 hundred ninety-five, authorized under the authority of  
2 section fifty-a, article two, chapter twenty of this code,  
3 modified by the division of natural resources to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the twentieth day of  
6 September, one thousand nine hundred ninety-five, relating  
7 to the division of natural resources (wildlife damage  
8 control agents, 58 CSR 41), ~~are~~ is authorized.

9 (f) The legislative ~~rules~~ rule filed in the state  
10 register on the thirty-first day of July, one thousand nine  
11 hundred ninety-five, authorized under the authority of  
12 section seven, article one, chapter twenty of this code,  
13 modified by the division of natural resources to meet the  
14 objections of the legislative rule-making review committee  
15 and refiled in the state register on the twentieth day of  
16 September, one thousand nine hundred ninety-five, relating  
17 to the division of natural resources (wildlife scientific  
18 collecting permits, 58 CSR 42), ~~are~~ is authorized.

19 (g) The legislative ~~rules~~ rule filed in the state  
20 register on the thirty-first day of July, one thousand nine  
21 hundred ninety-five, authorized under the authority of  
22 section seven, article one, chapter twenty of this code,  
23 modified by the division of natural resources to meet the

1 objections of the legislative rule-making review committee  
2 and refiled in the state register on the twentieth day of  
3 September, one thousand nine hundred ninety-five, relating  
4 to the division of natural resources (prohibitions when  
5 hunting and trapping, 58 CSR 47) ~~are~~ is authorized.

6 (h) The legislative ~~rules~~ rule filed in the state  
7 register on the thirty-first day of July, one thousand nine  
8 hundred ninety-five, authorized under the authority of  
9 section seven, article one, chapter twenty of this code,  
10 modified by the division of natural resources to meet the  
11 objections of the legislative rule-making review committee  
12 and refiled in the state register on the twentieth day of  
13 September, one thousand nine hundred ninety-five, relating  
14 to the division of natural resources (special waterfowl  
15 hunting, 58 CSR 58), ~~are~~ is authorized.

16 (i) The legislative ~~rules~~ rule filed in the state  
17 register on the thirty-first day of July, one thousand nine  
18 hundred ninety-five, authorized under the authority of  
19 section seventeen-a, article one, chapter five-b of this  
20 code, modified by the division of natural resources to meet  
21 the objections of the legislative rule-making review  
22 committee and refiled in the state register on the  
23 twenty-fifth day of October, one thousand nine hundred

1 ninety-five, relating to the division of natural resources  
2 (public use of West Virginia state parks, state forests,  
3 and state wildlife management areas under the division of  
4 natural resources, 58 CSR 31), ~~are~~ is authorized,

5 "with the following amendment:

6 On page 4 section 2.22 by striking out section 2.22 in  
7 its entirety and inserting in lieu thereof the following:

8 2.22. The Director of the Division of Natural  
9 Resources is authorized to issue special use permits and  
10 enter into written agreements with persons who demonstrate  
11 to the satisfaction of the Director that they have good  
12 cause to utilize a motor driven vehicle on the Greenbrier  
13 River Trail or the North Bend Rail Trail. The Director may  
14 also authorize persons with legitimate need to utilize  
15 motorized vehicles on the trails as authorized in  
16 subdivision 2.22.3.

17 2.22.1. The director may, upon application in writing  
18 and for good cause shown, issue a written special use  
19 permit authorizing limited use of motorized vehicles on  
20 either the North Bend Rail Trail or Greenbrier River Trail.  
21 A separate permit is required for each use. Each permit  
22 shall specify the limitation on access, including such  
23 things as the date, time not to exceed three days, place,

1 method and distance the applicant will be allowed to have  
2 access to the trail. As part of the permit process, the  
3 Director shall enter into a written agreement to allow the  
4 use of motorized vehicles on the trails. The agreement  
5 shall specify the limitations of the use and require, in  
6 exchange for such use, that the persons allowed to use  
7 motorized vehicles on the trails shall maintain a specified  
8 area of the trail for a specified length of time. The  
9 terms of the maintenance portion of the agreement shall  
10 depend on the length and nature of the use.

11       2.22.2. Good cause may be shown by (a) those persons  
12 in need of limited access to adjacent land that the  
13 applicant owns or leases for agriculture purposes and who  
14 have demonstrated no other reasonable means to gain entry  
15 to the adjacent land; (b) those persons who have a vested  
16 right of ingress to and egress from the trail and (c) those  
17 persons required by law to plug or reclaim oil or gas  
18 wells.

19       2.22.3. Persons with a legitimate need to use  
20 motorized vehicles on the trails are exempt from the permit  
21 requirements. A legitimate need is limited to (a) those  
22 persons who are authorized by the Director to use motorized  
23 vehicles in the management, construction, maintenance and

1 operation of the trails and facilities and (b) persons and  
2 equipment to fight forest fires and handle other  
3 emergencies."

4 (j) The legislative ~~rules~~ rule filed in the state  
5 register on the thirty-first day of July, one thousand nine  
6 hundred ninety-five, authorized under the authority of  
7 section seven, article one, chapter twenty of this code,  
8 modified by the division of natural resources to meet the  
9 objections of the legislative rule-making review committee  
10 and refiled in the state register on the twenty-fifth day  
11 of October, one thousand nine hundred ninety-five, relating  
12 to the division of natural resources (rules governing  
13 public use of campgrounds in West Virginia state parks,  
14 state forests and state wildlife management areas under the  
15 division of natural resources, 58 CSR 32), ~~are~~ is  
16 authorized.

17 (k) The legislative ~~rules~~ rule filed in the state  
18 register on the thirty-first day of July, one thousand nine  
19 hundred ninety-five, authorized under the authority of  
20 section seven, article one, chapter twenty of this code,  
21 modified by the division of natural resources to meet the  
22 objections of the legislative rule-making review committee  
23 and refiled in the state register on the twenty-fifth day

1 of October, one thousand nine hundred ninety-five, relating  
2 to the division of natural resources (rules governing  
3 public use of swimming areas in West Virginia state parks,  
4 state forests and state wildlife management areas under the  
5 division of natural resources, 58 CSR 33), are is  
6 authorized.

7 (1) The legislative rule filed in the state register  
8 on the sixteenth day of August, one thousand nine hundred  
9 ninety-six, authorized under the authority of section  
10 seven, article one, chapter twenty, of this code, modified  
11 by the division of natural resources to meet the objections  
12 of the legislative rule-making review committee and refiled  
13 in the state register on the twenty-seventh day of  
14 September, one thousand nine hundred ninety-six, relating  
15 to the division of natural resources (falconry, 58 CSR 65),  
16 is authorized.

17

18 NOTE: The purpose of this bill is to authorize the  
19 Division of Natural Resources to promulgate a legislative  
20 rule relating to Falconry.

21  
22 Strike-throughs indicate language that would be  
23 stricken from the present law, and underscoring indicates  
24 new language that would be added.



Senate Bill No. 197

1 (By Senator(s) Ross, Anderson, Macnaughtan,  
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the  
4 Committee on Natural Resources; and then to the  
5 Committee on the Judiciary.]  
6  
7  
8  
9

10 A BILL to amend and reenact section two, article ten,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of natural resources to  
14 promulgate a legislative rule relating to falconry.

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

16 That section two, article ten, chapter sixty-four of  
17 the code of West Virginia, one thousand nine hundred  
18 thirty-one, as amended, be amended and reenacted, to read  
19 as follows:

20 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO  
21 PROMULGATE LEGISLATIVE RULES.

22 §64-10-2. Division of natural resources.

23 (a) The legislative ~~rules~~ rule filed in the state

1 register on the twenty-second day of December, one thousand  
2 nine hundred ninety-four, authorized under the authority of  
3 section eleven, article two, chapter twenty of this code,  
4 modified by the division of natural resources to meet the  
5 objections of the legislative rule-making review committee  
6 and refiled in the state register on the twentieth day of  
7 July, one thousand nine hundred ninety-five, relating to  
8 the division of natural resources (commercial sale of  
9 wildlife, 58 CSR 63), ~~are~~ is authorized.

10 (b) The legislative ~~rules~~ rule filed in the state  
11 register on the twenty-second day of December, one thousand  
12 nine hundred ninety-four, authorized under the authority of  
13 section eleven, article two, chapter twenty of this code,  
14 modified by the division of natural resources to meet the  
15 objections of the legislative rule-making review committee  
16 and refiled in the state register on the twentieth day of  
17 September, one thousand nine hundred ninety-five, relating  
18 to the division of natural resources (miscellaneous permits  
19 and licenses, 58 CSR 64), ~~are~~ is authorized.

20 (c) The legislative ~~rules~~ rule filed in the state  
21 register on the thirty-first day of July, one thousand nine  
22 hundred ninety-five, authorized under the authority of  
23 section twenty-two, article seven, chapter twenty of this

1 code, modified by the division of natural resources to meet  
2 the objections of the legislative rule-making review  
3 committee and refiled in the state register on the  
4 twentieth day of September, one thousand nine hundred  
5 ninety-five, relating to the division of natural resources  
6 (boating, 58 CSR 25), ~~are~~ is authorized.

7 (d) The legislative ~~rules~~ rule filed in the state  
8 register on the thirty-first day of July, one thousand nine  
9 hundred ninety-five, authorized under the authority of  
10 section twenty-two, article seven, chapter twenty of this  
11 code, modified by the division of natural resources to meet  
12 the objections of the legislative rule-making review  
13 committee and refiled in the state register on the twenty-  
14 eighth day of October, one thousand nine hundred  
15 ninety-five, relating to the division of natural resources  
16 (special boating, 58 CSR 26), ~~are~~ is authorized, with the  
17 following amendments:

18 On page two, six, eight and nine, sections 3.6, 3.65,  
19 3.71, 3.87 3.102 and 3.109, following the words "must have  
20 the propeller removed", by inserting the words "or have the  
21 motor withdrawn to the maximum trailorable limit".

22 (e) The legislative ~~rules~~ rule filed in the state  
23 register on the thirty-first day of July, one thousand nine

1 hundred ninety-five, authorized under the authority of  
2 section fifty-a, article two, chapter twenty of this code,  
3 modified by the division of natural resources to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the twentieth day of  
6 September, one thousand nine hundred ninety-five, relating  
7 to the division of natural resources (wildlife damage  
8 control agents, 58 CSR 41), ~~are~~ is authorized.

9 (f) The legislative ~~rules~~ rule filed in the state  
10 register on the thirty-first day of July, one thousand nine  
11 hundred ninety-five, authorized under the authority of  
12 section seven, article one, chapter twenty of this code,  
13 modified by the division of natural resources to meet the  
14 objections of the legislative rule-making review committee  
15 and refiled in the state register on the twentieth day of  
16 September, one thousand nine hundred ninety-five, relating  
17 to the division of natural resources (wildlife scientific  
18 collecting permits, 58 CSR 42), ~~are~~ is authorized.

19 (g) The legislative ~~rules~~ rule filed in the state  
20 register on the thirty-first day of July, one thousand nine  
21 hundred ninety-five, authorized under the authority of  
22 section seven, article one, chapter twenty of this code,  
23 modified by the division of natural resources to meet the

1 objections of the legislative rule-making review committee  
2 and refiled in the state register on the twentieth day of  
3 September, one thousand nine hundred ninety-five, relating  
4 to the division of natural resources (prohibitions when  
5 hunting and trapping, 58 CSR 47) ~~are~~ is authorized.

6 (h) The legislative ~~rules~~ rule filed in the state  
7 register on the thirty-first day of July, one thousand nine  
8 hundred ninety-five, authorized under the authority of  
9 section seven, article one, chapter twenty of this code,  
10 modified by the division of natural resources to meet the  
11 objections of the legislative rule-making review committee  
12 and refiled in the state register on the twentieth day of  
13 September, one thousand nine hundred ninety-five, relating  
14 to the division of natural resources (special waterfowl  
15 hunting, 58 CSR 58), ~~are~~ is authorized.

16 (i) The legislative ~~rules~~ rule filed in the state  
17 register on the thirty-first day of July, one thousand nine  
18 hundred ninety-five, authorized under the authority of  
19 section seventeen-a, article one, chapter five-b of this  
20 code, modified by the division of natural resources to meet  
21 the objections of the legislative rule-making review  
22 committee and refiled in the state register on the  
23 twenty-fifth day of October, one thousand nine hundred

1 ninety-five, relating to the division of natural resources  
2 (public use of West Virginia state parks, state forests,  
3 and state wildlife management areas under the division of  
4 natural resources, 58 CSR 31), ~~are~~ is authorized,

5 -- "with the following amendment:

6 On page 4 section 2.22 by striking out section 2.22 in  
7 its entirety and inserting in lieu thereof the following:

8 2.22. The Director of the Division of Natural  
9 Resources is authorized to issue special use permits and  
10 enter into written agreements with persons who demonstrate  
11 to the satisfaction of the Director that they have good  
12 cause to utilize a motor driven vehicle on the Greenbrier  
13 River Trail or the North Bend Rail Trail. The Director may  
14 also authorize persons with legitimate need to utilize  
15 motorized vehicles on the trails as authorized in  
16 subdivision 2.22.3.

17 2.22.1. The director may, upon application in writing  
18 and for good cause shown, issue a written special use  
19 permit authorizing limited use of motorized vehicles on  
20 either the North Bend Rail Trail or Greenbrier River Trail.  
21 A separate permit is required for each use. Each permit  
22 shall specify the limitation on access, including such  
23 things as the date, time not to exceed three days, place,

1 method and distance the applicant will be allowed to have  
2 access to the trail. As part of the permit process, the  
3 Director shall enter into a written agreement to allow the  
4 use of motorized vehicles on the trails. The agreement  
5 shall specify the limitations of the use and require, in  
6 exchange for such use, that the persons allowed to use  
7 motorized vehicles on the trails shall maintain a specified  
8 area of the trail for a specified length of time. The  
9 terms of the maintenance portion of the agreement shall  
10 depend on the length and nature of the use.

11       2.22.2. Good cause may be shown by (a) those persons  
12 in need of limited access to adjacent land that the  
13 applicant owns or leases for agriculture purposes and who  
14 have demonstrated no other reasonable means to gain entry  
15 to the adjacent land; (b) those persons who have a vested  
16 right of ingress to and egress from the trail and (c) those  
17 persons required by law to plug or reclaim oil or gas  
18 wells.

19       2.22.3.- Persons with a legitimate need to use  
20 motorized vehicles on the trails are exempt from the permit  
21 requirements. A legitimate need is limited to (a) those  
22 persons who are authorized by the Director to use motorized  
23 vehicles in the management, construction, maintenance and

1 operation of the trails and facilities and (b) persons and  
2 equipment to fight forest fires and handle other  
3 emergencies."

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5 register on the thirty-first day of July, one thousand nine  
6 hundred ninety-five, authorized under the authority of  
7 section seven, article one, chapter twenty of this code,  
8 modified by the division of natural resources to meet the  
9 objections of the legislative rule-making review committee  
10 and refiled in the state register on the twenty-fifth day  
11 of October, one thousand nine hundred ninety-five, relating  
12 to the division of natural resources (rules governing  
13 public use of campgrounds in West Virginia state parks,  
14 state forests and state wildlife management areas under the  
15 division of natural resources, 58 CSR 32), ~~are~~ is  
16 authorized.

17 (k) The legislative ~~rules~~ rule filed in the state  
18 register on the thirty-first day of July, one thousand nine  
19 hundred ninety-five, authorized under the authority of  
20 section seven, article one, chapter twenty of this code,  
21 modified by the division of natural resources to meet the  
22 objections of the legislative rule-making review committee  
23 and refiled in the state register on the twenty-fifth day



1 of October, one thousand nine hundred ninety-five, relating  
2 to the division of natural resources (rules governing  
3 public use of swimming areas in West Virginia state parks,  
4 state forests and state wildlife management areas under the  
5 division of natural resources, 58 CSR 33), ~~are~~ is  
6 authorized.

7 (1) The legislative rule filed in the state register  
8 on the sixteenth day of August, one thousand nine hundred  
9 ninety-six, authorized under the authority of section  
10 seven, article one, chapter twenty, of this code, modified  
11 by the division of natural resources to meet the objections  
12 of the legislative rule-making review committee and refiled  
13 in the state register on the twenty-seventh day of  
14 September, one thousand nine hundred ninety-six, relating  
15 to the division of natural resources (falconry, 58 CSR 65),  
16 is authorized.

17

18 NOTE: The purpose of this bill is to authorize the  
19 Division of Natural Resources to promulgate a legislative  
20 rule relating to Falconry.

21

22 Strike-throughs indicate language that would be  
23 stricken from the present law, and underscoring indicates  
24 new language that would be added.