

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Bureau of Commerce, Div. of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY 20-2-50a

AMENDMENT TO AN EXISTING RULE: YES ___ NO x

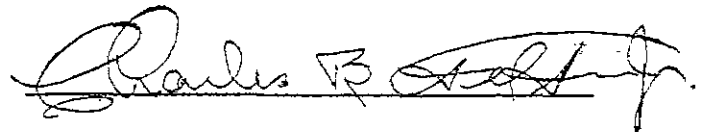
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Wildlife Damage Control Agents

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Circumstances Concerning
Wildlife Damage Control Agents

Agency: Bureau of Commerce, Division of Natural Resources

Rule: ----- Title 58, Series 1, "Wildlife Damage Control Agents"

Circumstances: Pursuant to Senate Bill 223, the proposed regulations establish methods to govern the licensing, training and operations of wildlife damage control agents in West Virginia.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Wildlife Damage Control Agents
 Type of Rule: Legislative Interpretive Procedural
 Agency: Division of Natural Resources
 Address: State Capitol Complex
Building 3, Room 812
1900 Kanawha Blvd.
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 750	\$ 0	\$ 0	\$ 750	\$ 750
PERSONAL SERVICES	500			500	1,000
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER (LICENSE FEES)	250			250	500

2. Explanation of above estimates:
N/A

3. Objectives of these rules:
To establish procedures for the testing and licensing of individuals who will assist the public with nuisance wildlife.

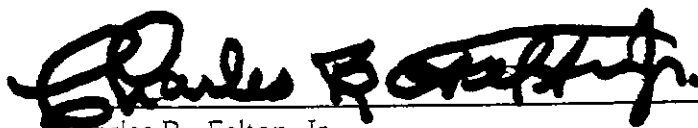
4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impacts on State government.
None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.
None

C. Economic Impact on citizens/Public at Large.
None

Date: 6/5/95



Charles B. Felton, Jr.
 Director

DATE: 7/31/95

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Charles B. Felton, Jr.

LEGISLATIVE RULE TITLE: Wildlife Damage Control Agents

1. Authorizing statute(s) citation 20-2-50a

2. a. Date filed in State Register with Notice of Hearing

June 6, 1995

b. What other notice, including advertising, did you give of the hearing?

Statewide newsrelease explaining rule and availability for review.

c. Date of Hearing(s) n/a

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Gordon C. Robertson, Deputy Chief
Division of Natural Resources
Wildlife Resources Section
Bldg. 3, Room 825
Charleston, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing: _____ n/a _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached _____ n/a _____

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Summary of a Proposed Rule Concerning
Wildlife Damage Control Agents

The proposed rule establishes the procedures for an individual to apply for a license to become a wildlife damage control agent, standards they must meet, their operations and the methods by which that individual may handle and dispose of captured wildlife.

TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 1
WILDLIFE DAMAGE CONTROL AGENTS

§58-1-1. General.

1.1. Scope and Purpose. -- The legislative rule establishes regulations to govern the licensing, training, and operations of wildlife damage control agents in West Virginia.

1.2. Authority. -- West Virginia Code §20-2-50a.

1.3. Filing Date. --

1.4. Effective Date. --

§58-1-2. Definitions.

2.1. "Wildlife Damage Control Agent" herein called "agent" means a person who is licensed by the Division of Natural Resources and who is authorized to take and dispose of wildlife found to be creating a nuisance in or around homes, businesses and other places where the presence of wildlife may be a nuisance.

2.2. "Wildlife Damage Control" means the act of taking, harassing, restraining, disposing or otherwise interfering with wildlife as listed in Subsection 7.1.7., 7.1.8., and 7.1.9. of these regulations and as defined in Chapter 20 Code of West Virginia.

2.3. "Director" means the Director of the Division of Natural Resources.

All other terms have the meaning prescribed in W. Va. Code §20-1-2.

§58-1-3. Licensing.

3.1. A person seeking a wildlife damage control license shall complete a written application on forms supplied by the Director. Completed applications shall be submitted to the district headquarters of the Law Enforcement Section, Division of Natural Resources. All applications shall contain the following information:

3.1.1. Name of applicant, address, telephone number, date of birth, and social security number and state business tax number.

3.1.1.a. Applicant must be 18 years of age or older to be issued a wildlife damage control license.

3.1.2. In the event the applicant is a corporation, partnership, firm, business or other commercial entity, club, organization or association, the name, address and telephone number of all officers is required. Each agent engaged in wildlife damage control must be individually licensed.

3.1.3. The applicant must demonstrate his or her knowledge of wildlife damage control procedures, laws, regulations, and policies through the satisfactory completion of a written test.

3.2. Wildlife damage control license shall be valid for a period of one calendar year and must be renewed annually.

3.2.1. Agents shall be retested at five (5) year intervals upon application of license renewal.

3.3. The license is not transferable.

§58-1-4. Annual Fee.

4.1. An annual fee of \$50 shall be charged for issuance of a wildlife damage control license to agents who charge a fee for their services.

4.1.1. Corporation, partnership, firm, business or other commercial entity, club, or organization having multiple agents may license each agent annually for 20% of the license fee after payment of the initial \$50 license fee.

4.2. The \$50 annual fee shall be waived for employees of a municipal or other government agency, when such employee is acting as an agent for the agency.

§58.1.5. Background Check.

5.1. Upon receipt of a completed application, the district conservation officer in the district of the applicant's residence, shall determine if the applicant has, within the last 5 years, been convicted of a violation of any federal or state statute or regulation which is related to the activity for which the license is sought. Such a violation shall preclude issuance of a wildlife damage control license for a period of at least 5 years after the violation.

§58-1-6. Training.

6.1. The Director may provide training requirements for wildlife damage control agents.

§58-1-7. Procedures.

7.1. The following procedures and restrictions shall regulate wildlife damage control agents:

7.1.1 Issuance of a wildlife damage control license shall not exempt the licensee from compliance with the provisions of other state, local, or federal laws.

7.1.2. The wildlife damage control agent shall identify the offending wildlife, if possible, and recommend to the client methods of control, estimated costs, and advantages and disadvantages of each method. The agent shall explain to the client how much of the problem will be resolved by the recommended techniques.

7.1.3. While engaged in wildlife damage control, the agent must obey all hunting and trapping laws and regulations with the following exceptions:

7.1.3.a. Traps may be set at any time.

7.1.3.b. Woodchucks may be controlled by gas cartridges.

7.1.3.c. Wildlife dens of authorized species in subsections 7.1.7. and 7.1.8. may be disturbed and destroyed. Nests of state and federally protected birds containing eggs or young may be disturbed and destroyed after obtaining appropriate state and federal permits.

7.1.3.d. Authorized species of wildlife in subsections 7.1.7. and 7.1.8. may be taken by net, bait, or trap.

7.1.3.e. Authorized species in subsections 7.1.7. and 7.1.8. may be possessed for up to 72 hours during the closed season.

7.1.3.f. Agents may be authorized to use other methods of control as recommended by the district wildlife biologist or district conservation officer.

7.1.4. Agents using restricted use pesticides to take or control wildlife species must be certified and licensed with the West Virginia Department of Agriculture. Certified pesticide applicators providing wildlife damage control services must possess a wildlife damage control agent license.

7.1.5. Use of leghold traps in municipalities shall be of the type approved by the Director and shall be set as to avoid free roaming pets. If pets are captured they shall be released to the owners when the owner can be identified, released at the site of capture or to appropriate county officials. Wildlife species not responsible for nuisance or damage shall be immediately released.

7.1.6 All trapping devices must have the agent's or agent's employer name and address on a durable plate or tag attached to the trapping device.

7.1.7. A wildlife damage control license shall authorize the licensee to control problem animals of the following species or groups of species: pigeons (rock dove), house sparrow, European starling, redwinged blackbird, brownheaded cowbird, grackle, opossum, moles, bats, cottontail rabbit, snapping turtle, snakes, chipmunk, grey squirrel, fox squirrel, red squirrel, flying squirrel, woodchuck, muskrat, rats, mice, voles, raccoon, weasels, red fox, gray fox, coyote, mink and striped skunk, provided that the species listed in subsection 7.1.9. shall not be killed, captured, or disturbed. Crow, grackle, redwinged blackbird, and brownheaded cowbird may be controlled under state and federal regulations.

7.1.8. The following species or groups of species, may be controlled only with prior approval of the district wildlife biologist and the district conservation officer: white-tailed deer, black bear, bobcat, fisher, beaver, otter, wild turkey, and any species not listed in subsection 7.1.7. and 7.1.9. Federally protected birds may only be taken with a U.S. Fish and Wildlife Service depredation permit.

7.1.9. The following species or group of species shall not be controlled by wildlife damage control agents: migratory birds (except as listed in subsections 7.1.7. and 7.1.8.), salamanders, frogs, toads, turtles (except as listed in subsection 7.1.7.), skinks, Eastern mountain lion (Felis concolor), Eastern ribbon snake (Thamnophis sauritus sauritus), mountain earth snake (Virginia valeriae pulchra), corn snake (Elaphe guttata guttata), Northern pine snake (Pituophis melanoleucus melanoleucus), Eastern king snake (Lampropeltis getulus getulus), long-tailed shrew (Sorex dispar), pygmy shrew (Sorex hoyi), Northern water shrew (Sorex palustris), small-footed myotis (Myotis subulatus), Northern long-eared bat (Myotis septentrionalis), Indiana bat (Myotis sodalis), Rafinesque's big-eared bat (Plecotus rafinesquii), Virginia big-eared bat (Plecotus townsendii), Northern flying squirrel (Glaucomys sabrinus), rock vole (Microtus chrotorrhinus), prairie vole (Microtus ochrogaster), golden mouse (Ochrotomys nuttalli), Eastern harvest mouse (Reithrodontomys humulis), meadow jumping mouse (Zapus hudsonius), least weasel (Mustela nivalis), Eastern spotted skunk (Spilogale putorius), or threatened or endangered species as designated by the Endangered Species Act of 1973, as ammended.

§58-1-8. Disposition of Nuisance Wildlife.

8.1. Nuisance wildlife which are captured alive shall be euthanatized in a humane manner, or liberated at the site of capture, or relocated and released only with prior approval from the district wildlife biologist.

8.1.1. The sale, trade, barter or donation of any live or dead wildlife or parts thereof taken under this license is prohibited, provided that in the event the trapping or hunting season for the particular species is open and the agent has the appropriate hunting and trapping license, the licensee may retain the carcass or parts thereof up to the legal season limit. Carcasses which are not

used must be disposed of in a manner consistent with state and local laws and regulations.

8.2. The wildlife damage control agent shall coordinate with the district wildlife biologist concerning disposition and handling of diseased animals. In the event that any person has been bitten or exposed to a diseased animal the West Virginia Department of Health and Human Resources shall immediately be notified.

8.3. The agent shall collect and provide the Division of Natural Resources information on the health or biology of nuisance wildlife upon request and with guidelines provided by the district wildlife biologist.

§58-1-9. Records and Reports.

9.1. The following records and reports shall be required:

9.1.1 All licensees shall keep daily records on all investigated wildlife damage complaints. Records shall include date of investigations, name of the complainant, number and species of animal involved, type of damage, disposition of the complaint, and such other information as the Director may require. Records of all wildlife taken shall be available for inspection by a conservation officer at any reasonable time.

9.1.2. An annual report shall be filed with the Law Enforcement Section, Division of Natural Resources, at the end of each calendar year. Such report shall be on forms supplied by the Director and shall accompany the application for renewal of the animal damage control license. The animal damage control license shall not be renewed until such time as a satisfactory annual report is received. The report shall include such information as required by the Director and shall be complete and legible.

§58-9-10. Revocation and Non-renewal.

10.1. A wildlife damage control license may be revoked at any time, by the Director, for failure to comply with the conditions of the license. The Director may upon receiving one or more complaints in a year from persons seeking assistance regarding unsatisfactory or unethical performance by a licensed wildlife damage control agent suspend the license for a period determined by the Director. A person whose license has been suspended may request a formal hearing within 30 days before a review board to show cause why said license should not be suspended. The review board will be composed of three (3) people - one appointed by the Director of the Division of Natural Resources, one appointed by the Chief of the Wildlife Resources Section, and one appointed by the Chief of the Law Enforcement Section. The decision of the review board will be final.

§58-1-11. Liabilities.

11.1. The Division of Natural Resources is not liable for any action, lack of action, damage, or injuries caused or suffered by the wildlife control agent or the landowner or client.