

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #6

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APR 16 1 39 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Natural Resources TITLE NUMBER: 58

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 47

TITLE OF RULE BEING AMENDED: Prohibitions when Hunting & Trapping

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 320

SECTION §64-10-1(d) **PASSED ON** March 10, 1998

**THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS BILL BECOMES EFFECTIVE ON THE
FOLLOWING DATE:** April 16, 1998



John B. Rader, Director

52.40

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

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING**

Promulgation History

Filed May 27, 1997 - Form #2 Notice of Comment Period of a Proposed Rule

Filed July 25, 1997 - Form #3 Notice of Agency Approval of a Proposed Rule & Filing
With Legislative Rule Making Committee

August 19, 1998 - Legislative Rule Making Committee Approved Rule

Filed August 28, 1997 - Form #4 Notice of Rule Modification of a Proposed Rule

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

**SERIES 47
PROHIBITIONS WHEN HUNTING AND TRAPPING**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§58-47-1. General.

- 1.1. Scope and Purpose. -- This rule establishes prohibitions in the pursuit or taking of wildlife within the boundaries of this State.
- 1.2. Authority. -- West Virginia Code §20-1-7(30).
- 1.3. Filing Date. -- April 16, 1998
- 1.4. Effective Date. -- April 16, 1998

§58-47-2. Definitions.

2.1. All terms in this rule have the meaning prescribed in the Division of Natural Resources rule, Regulations Defining The Terms To Be Used Concerning All Hunting and Trapping Regulations (58 C.S.R. 46).

§58-47-3. Prohibitions.

3.1. Hunting is prohibited in State parks and wildlife refuges, in safety zones in State forests, and in safety zones in State Wildlife Management Areas.

3.1.1. Federal regulations prohibit hunting in Harpers Ferry National Historical Park.

3.2. Notwithstanding the provisions of W. Va. Code §20-2-5(2), woodchucks may be controlled by digging them out, cutting them out or smoking them out on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant.

3.3. Except as provided in Subdivisions 3.3.1 and 3.3.2 of this rule, it is illegal to use poisons, chemicals, or explosives in taking any furbearing animal, game animal, game bird, protected bird, or protected mammal.

3.3.1. Woodchucks may be controlled by poison, chemicals or explosives on private land by the landowner, his or her resident children or resident parents, or a bona fide resident tenant during the period commencing each year on April 1 and ending on September 30.

3.3.2. Redwing blackbirds, grackles, pigeons, starlings, brownheaded cowbirds and English sparrows may be controlled by chemicals registered with the West Virginia Department of Agriculture and the United States Environmental Protection Agency when prescribed and authorized by the director in writing. Authorized users must follow avicide label instructions and take all possible precautions in order to protect nontarget species of wildlife.

3.4. It is illegal to hunt from, or by means of, a motorized watercraft unless the motor has been completely shutoff and the watercraft's progress from the motor has ceased.

3.5. The use or possession of a fully automatic, rifle, shotgun, or pistol is prohibited while hunting or pursuing wildlife at any time.

3.6. It is illegal to catch, capture, take, or kill, or attempt to do so, by seine, net, bait, trap, deadfall, snare, or like device of any kind, any bear, migratory bird, protected bird, protected mammal, or wild boar.

3.6.1. No person may take, or attempt to take, the species listed under Subsection 3.7 of this rule, by the aid of baiting. The Director considers an area to be baited for 10 days after the removal of the bait.

3.7. It is illegal for a person to have in his or her possession solid ball ammunition and lead or steel shot larger than No. 4 during the muzzleloading season, except for those persons legally hunting bear or legally hunting deer with a muzzleloader firearm. The use of .22 caliber rimfire for small game hunting is legal during the muzzleloading season.

3.8. No person may use tree stands, except for portable tree stands, on public lands.

3.9. No person may transport wildlife or parts of wildlife, which were killed by another hunter unless the wildlife is accompanied by a paper or tag filled out in plain English bearing the following information from the hunter killing the wildlife:

3.9.1. The hunter's signature, address, hunting license number (if required), official game checking tag number (if required), the date of kill, the species, and the number, and/or quantity of wildlife.

3.10. It is illegal for any person to feed bears.

3.11. No person shall, after alighting from a motor vehicle along any public road or highway, shoot at wildlife with either a bow or firearm unless they are at least 25 yards from the motor vehicle.

58-17

07/17

1 Bill-DNR,

H. B. 4140

2 (By Delegates Hunt, Linch, Compton, Jenkins,
3 Faircloth and Riggs)

4 [Introduced January 30, 1998; referred to the
5 Committee on Agriculture and Natural Resources
6 then the Judiciary.]

7
8
9

10 A BILL to amend and reenact section one, 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 prohibitions
15 when hunting and trapping.

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

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

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

23 **§64-10-1. Division of natural resources.**

4140

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the ~~sixteenth~~ twenty-fifth day of ~~August~~ July, one
13 thousand nine hundred ~~ninety-six~~ ninety-seven, authorized
14 under the authority of section seven, article one, chapter
15 twenty of this code, ~~modified by the division of natural~~
16 ~~resources to meet the objections of the legislative rule~~
17 ~~making review committee and refiled in the state~~
18 ~~register on the twenty-seventh day of September, one~~
19 ~~thousand nine hundred ninety-six,~~ relating to the division
20 of natural resources (prohibitions when hunting and
21 trapping, 58 CSR 47), is authorized.

22 (c) The legislative rule filed in the state register
23 on the sixteenth day of August, one thousand nine hundred

1 ninety-six, authorized under the authority of section
2 seven, article one, chapter twenty of this code, modified
3 by the division of natural resources to meet the objections
4 of the legislative rule-making review committee and
5 refiled in the state register on the twenty-seventh day of
6 September, one thousand nine hundred ninety-six, relating
7 to the division of natural resources (falconry, 58 CSR 65),
8 is authorized.

9

10 NOTE: The purpose of this bill is to authorize the
11 Division of Natural Resources to promulgate a legislative
12 rule relating to Prohibitions When Hunting and Trapping.

13

14 Strike-throughs indicate language that would be
15 stricken from the present law, and underscoring indicates
16 new language that would be added.

✓

Senate Bill No. 321

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

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

58-47

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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 prohibitions
15 when hunting and trapping.

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

23 §64-10-1. Division of natural resources.

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19 ~~thousand nine hundred ninety-six,~~ relating to the division
20 of natural resources (prohibitions when hunting and
21 trapping, 58 CSR 47), is authorized.

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15 stricken from the present law, and underscoring indicates
16 new language that would be added.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Prohibitions When Hunting and Trapping, 58CSR47

PERTINENT DATES

Filed for public comment: May 30, 1997
Public comment period ended: July 1, 1997
Filed following public comment period: July 25, 1997
Filed LRMRC: July 25, 1997
Filed as emergency:

Fiscal Impact: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED

ABSTRACT

The proposed rule amends a current legislative rule. The amendment would require a hunter to be at least 25 yards from his or her motor vehicle before shooting wildlife along any public road or highway.

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.

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?

No.

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.
