

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

DO NOT MARK IN THIS BOX

FILED

May 10 3 02 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Bureau of Commerce, Division of Natural Resources TITLE NUMBER: 58

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 63

TITLE OF RULE BEING AMENDED: Commercial Sale of Wildlife

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) H.B. 4268

SECTION §64-10-2, PASSED ON March 8, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 10, 1996



AUTHORIZED SIGNATURE



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

Bernard F Dowler
Natural Resources
Wildlife Resources Section
State Capitol Bldg 3 Rm 812
Charleston, WV 25305

HB 4268 authorizing, **Title 58, Series 63, Commercial Sale of Wildlife** passed the Legislature on **March 8, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **HB 4268** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 4268 Section 64-10-2(a)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

TITLE 58
LEGISLATIVE RULES
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 63
COMMERCIAL SALE OF WILDLIFE

§ 58-63-1. General.

1.1. Scope. -- This legislative rule establishes regulations to govern the sale or transfer of wildlife raised or captured under licenses issued by the Division pursuant to W. Va. Code §§ 20-2-11, 20-2-47 and 20-2-48.

1.2. Authority. -- W. Va. Code § 20-2-11.

1.3. Filing Date. -- May 10, 1996

1.4. Effective Date. -- May 10, 1996

§ 58-63-2. Definitions.

2.1. "Facility" means the property on which a person engages in an activity for which one of the licenses listed in Section 2.2 of this rule is required by statute and includes, but is not limited to, buildings, enclosures, grounds, impoundments, and ponds.

2.2. "Licensee" means a person who has been granted one of the following permits and licenses issued by the Division:

2.2.1. A license for the operation of a private game preserve for the propagation of wild animals or wild birds for commercial purposes (W. Va. Code § 20-2-47). The Division will issue three categories of this license:

2.2.1.a. Commercial game farm license. This license authorizes the licensee to breed or raise wild animals and wild birds as specified by the license, to sell the wild animals and wild birds dead or alive, or to sell the eggs of birds in accordance with the provisions of this rule and under the terms and conditions of the license. This license does not include the acquisition or holding of foxes or raccoons trapped from the wild by a legal trapper (W. Va. Code § 20-2-11); and

2.2.1.b. Hound coursing/training pen game farm license. This license authorizes the licensee to purchase, hold, and release into hound coursing/training pens in

accordance with the provisions of this rule and under terms and conditions of the license, live foxes or raccoons obtained from the wild by a legal trapper (W. Va. Code § 20-2-11) or live wildlife obtained by means specified under Section 3 of this rule; and

2.2.1.c. Incorporated sportsmen club game farm license. This license authorizes incorporated sportsmen clubs in West Virginia to purchase, hold, and release in accordance with the provisions of this rule and under terms and conditions of the license, live foxes and raccoons obtained from the wild by a legal trapper (W. Va. Code § 20-2-11) or other means specified under Section 3 of this rule for the purpose of restocking.

2.2.2. A license for the operation of a private plant, pond, or business for the propagation, sale, or purchase of fish, frogs, turtles, or other forms of aquatic life for commercial purposes (W. Va. Code § 20-2-48). This license authorizes the licensee to breed or raise such species as specified by the license and to buy and sell those species dead or alive or the eggs of the species in accordance with the provisions of this rule.

2.3. "Wildlife" means wild animals, wild birds, fish, reptiles, amphibians, mollusks, crustaceans, and all forms of aquatic life used as fish bait, whether dead or alive.

2.4. "Legal Trapper" means a trapper possessing a valid West Virginia trapping license or its equivalent (W. Va. Code §§ 20-2-27 and 20-2-28).

2.5. "Hound Coursing/Training Pen" means a permanent enclosure of no less than forty (40) acres from which there is no reasonable expectation of escape of the animals placed within, except that fox hound coursing/training pens must enclose no less than 100 acres.

2.6. "Incorporated Sportsmen Club" means a club, organization, or group formed for a common purpose to further the tradition of hunting, fishing, or trapping and registered with the Secretary of State for that purpose.

2.7. "Native" means commonly accepted and documented in scientific literature to live in the wild as part of the present or historic natural fauna of this State.

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

§ 58-63-3. Wildlife Acquisition.

3.1. Wildlife held by a licensee shall have been:

3.1.1. Obtained from a person licensed by the Division to sell wildlife in this State;

3.1.2. Imported into this State under the provisions of W. Va. Code § 20-2-13;

3.1.3. Born at the licensee's facility, the offspring of wildlife legally held by the licensee; or

3.1.4. Obtained from a legal trapper under the provisions of W. Va. Code § 20-2-11 and the animal captured within the county in which the licensee is to hold and release the animal or captured from counties specified by the Director for which inter-county sale or possession transfer may occur under terms and conditions of the license.

3.2. If a licensee acquires wildlife in the manner specified in Section 3.1.1 of this rule, a bill of sale from the supplying vendor must be retained by the licensee as proof of legal acquisition.

3.3. If a licensee acquires wildlife in the manner specified in Section 3.1.2 of this rule, the importation permit issued by the Division must be retained by the licensee as proof of legal acquisition.

3.4. If a licensee acquires wildlife in the manner specified in Section 3.1.3 of this rule, a record must be kept by the licensee in accordance with the provisions of Section 5 of this rule.

3.5. If a licensee acquires wildlife in the manner specified in Section 3.1.4 of this rule the foxes and raccoons must be ear tagged by the licensee with a tag supplied by the Division within 3 days of purchase and before release into the wild or a hound coursing/training pen and a record must be kept by the licensee in accordance with the provisions of Section 5 of this rule.

3.6. If a legal trapper acquires live foxes and raccoons under provisions of W. Va. Code § 20-2-11 for the purpose of sale or any other form of possession transfer, the live foxes and raccoons shall only be possessed by the trapper during the trapping season and sixty (60) days thereafter. Live foxes and raccoons held for thirty (30) days or less shall be held according to temporary or permanent cage/pen/housing requirements as specified under Miscellaneous Permits and Licenses 58 CSR 64 and foxes or raccoons held over thirty (30) days shall be held according to permanent cage/pen/housing requirements as specified under Miscellaneous Permits and Licenses 58 CSR 64.

§ 58-63-4. Wildlife Sales or Transfer.

4.1. The licensee and legal trapper that sells or transfers possession of wildlife shall provide a bill of sale or document to each person who purchases or receives the wildlife. The bill of sale or document shall, at a minimum, contain the following information:

4.1.1. The licensee's or legal trapper's name and address;

4.1.2. The licensee's or legal trapper's license number;

4.1.3. The date of the sale or transfer;

4.1.4. The purchaser's or receiver's name and address; and

4.1.5. A description of the wildlife sold or transferred, including the number of each species sold or transferred.

4.1.5.a. For sales of fish, this description shall include the number of pounds of each species sold.

4.2. Legal trappers which acquire live foxes and raccoons under the provisions of W. Va. Code § 20-2-11 shall only sell or transfer possession of live foxes or raccoons to licensed hound coursing/training pens or incorporated sportsmens clubs located within the county from which the fox or raccoon was captured or located in the counties specified by the Director for which inter-county sale or possession transfer may occur.

4.3. The licensee under the provisions of Section 2.2.1.b. and 2.2.1.c. of this rule shall not transfer possession or resell any foxes or raccoons acquired under Section 3.1.4 of this rule.

4.4. The Director shall in October of each year publish a list of specified counties for which the inter-county sale or possession transfer of live foxes and raccoons obtained under provisions of W. Va. Code § 20-2-11 may occur.

4.5. The Director shall suspend the sale or any other form of relocation of live foxes and raccoons acquired under the provisions of W. Va. Code § 20-2-11 in any county or portions thereof to protect public health and the welfare of native wildlife.

§ 58-63-5. Record Keeping.

5.1. Accurate and current records of all wildlife acquisitions and sales or possession transfers shall be maintained by the licensee. Records on all wildlife born at the licensee's facility shall also be maintained. All records shall be either typed or written in plain and legible English and shall include the full name, address, and telephone number of each person with whom the licensee has conducted a wildlife transaction. The records shall contain the ear tag number, county of origin, date, and disposition for all live foxes and raccoons acquired in the manner specified in Section 3.1.4. of this rule. All records shall be maintained by the licensee at his or her facility for a minimum period of three (3) years.

§ 58-63-6. Inspections.

6.1. A licensee's facility, records, or wildlife may be inspected by an authorized representative of the director, on a case by case basis, to assure compliance with all requirements mandated by statute or rule or by the terms and conditions of the licensee's permit or license.

§ 58-63-7. Possession For Commercial Purposes Prohibited.

7.1. Except persons possessing a license or permit issued for such purpose or specifically designated by authority of W. Va. Code § 20-2-11, it is illegal for any person to take, or attempt to take, from the wild or possess for commercial purposes any species of wildlife native to this State, either dead or alive, or to take or attempt to take by any means, or to sell, trade, barter, expose or offer for sale, trade or barter, or to possess or transport, or to have in one's possession with the intent to transport into or out of the state any native wildlife, their eggs, or part thereof for commercial purposes.

§ 58-63-8. Penalties.

A violation of this rule constitutes a misdemeanor for each offense in accordance with W. Va. Code § 20-2-11 and for each misdemeanor offense a person is subject to the penalties provided for in W. Va. Code § 20-7-9.

SENATE BILL NO. 2060

(By Senators Ross, Anderson, Boley,
Buckalew, Grubb and Macnaughtan)

[Introduced January 29, 1996; referred
to the Committee on

*Natural Resources;
Judiciary*

58-63

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 legislative rules relating to the
15 commercial sale of wildlife.

16 Be it enacted by the Legislature of West Virginia:

17 That section two, 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 **§64-10-2. Division of natural resources.**

24 (a) The legislative rules filed in the state register

1 on the fourteenth day of July, one thousand nine hundred
2 ninety-four, authorized under the authority of section
3 five-a, article eleven, 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 eighth day of
7 September, one thousand nine hundred ninety-four, relating
8 to the division of natural resources (recycling assistance
9 fund grant program, 58 CSR 43 5), are authorized.

10 (b) The legislative rules filed in the state register
11 on the twelfth day of August, one thousand nine hundred
12 ninety-four, authorized under the authority of section
13 seven, article one, chapter twenty, of this code, modified
14 by the division of natural resources to meet the objections
15 of the legislative rule-making review committee and refiled
16 in the state register on the fourteenth day of October, one
17 thousand nine hundred ninety-four, relating to the division
18 of natural resources (West Virginia wildlife management
19 areas, 58 CSR 6 43), are authorized with the following
20 amendments:

21 On page four, section 6.4.3, before the word "No" by
22 inserting "Except for persons who are under sixteen years
23 of age and who have a valid West Virginia hunting
24 license,";

1 And,

2 On page four, section 6.4.3, by deleting the capital
3 letter "N" and substituting in lieu thereof the lower case
4 "n."

5 (c) The legislative rules filed in the state register
6 on the twelfth day of August, one thousand nine hundred
7 ninety-four, authorized under the authority of section
8 seven, article one, chapter twenty, of this code, modified
9 by the division of natural resources to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the fourteenth day of October, one
12 thousand nine hundred ninety-four, relating to the division
13 of natural resources (special bear hunting regulations, 58
14 CSR ~~48~~ 48), are authorized.

15 (d) The legislative rules filed in the state register
16 on the twelfth day of August, one thousand nine hundred
17 ninety-four, authorized under the authority of section
18 seven, article one, chapter twenty, of this code, modified
19 by the division of natural resources to meet the objections
20 of the legislative rule-making review committee and refiled
21 in the state register on the fourteenth day of October, one
22 thousand nine hundred ninety-four, relating to the division
23 of natural resources (wild boar hunting regulations, 58 CSR
24 ~~52~~ 52), are authorized.

1 (e) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 seven, article one, chapter twenty, of this code, modified
5 by the division of natural resources to meet the objections
6 of the legislative rule-making review committee and refiled
7 in the state register on the fourteenth day of October, one
8 thousand nine hundred ninety-four, relating to the division
9 of natural resources (special fishing rule, 58 CSR ~~21~~ 61),
10 are authorized with the following amendment:

11 On page four, section 58-21-5, paragraph 5.1.1, by
12 deleting the numeral "15" and inserting in lieu thereof the
13 numeral "13".

14 (f) The legislative rules filed in the state register
15 on the second day of December, one thousand nine hundred
16 ninety-four, authorized under the authority of section
17 seven, article one, chapter twenty, of this code, modified
18 by the division of natural resources to meet the objections
19 of the legislative rule-making review committee and refiled
20 in the state register on the sixteenth day of December, one
21 thousand nine hundred ninety-four, relating to the division
22 of natural resources (rules governing public use of West
23 Virginia state parks, state forests and state wildlife
24 management areas under the division of natural resources,

1 58 CSR ~~58~~ 3), are authorized with the following amendment:

2 On page five, section 2.23, line four, before the word
3 "chartered" by inserting the word "A" and by deleting the
4 letter "s" at the end of the word "foundations".

5 (g) The legislative rules filed in the state register
6 on the twelfth day of August, one thousand nine hundred
7 ninety-four, authorized under the authority of section
8 seven, article one, chapter twenty, of this code, modified
9 by the division of natural resources to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the fourteenth day of October, one
12 thousand nine hundred ninety-four, relating to the division
13 of natural resources (prohibitions when hunting and
14 trapping, 58 CSR ~~41B~~ 47) are authorized with the following
15 amendments:

16 On page two, by striking out section 3.5 and
17 renumbering the remaining sections;

18 In section 3.7, after the word "net" by inserting the
19 word "bait" and after the word "any" by inserting the word
20 "deer";

21 And,

22 By striking out subsection 3.7.1 and renumbering the
23 remaining sections.

24 (h) The legislative rules filed in the state register

1 on the twenty-second day of December, one thousand nine
2 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 authorized.

10

11 NOTE: The purpose of this bill is to authorize the
12 Division of Natural Resources to promulgate legislative
13 rules relating to the commercial sale of wildlife.

14

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

4273

H. B. 4273

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996 ; referred to the
Committee on Agriculture and Natural Resources then
the Judiciary)

58-63

A BILL to amend and reenact section two, article ten,
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Be it enacted by the Legislature of West Virginia:

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PROMULGATE LEGISLATIVE RULES.

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5 objections of the legislative rule-making review committee
6 and refiled in the state register on the eighth day of
7 September, one thousand nine hundred ninety-four, relating
8 to the division of natural resources (recycling assistance
9 fund grant program, 58 CSR ~~43~~ 5), are authorized.

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11 on the twelfth day of August, one thousand nine hundred
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13 seven, article one, chapter twenty, of this code, modified
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13 of natural resources (special bear hunting regulations, 58
14 CSR ~~46~~ 48), are authorized.

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23 Virginia state parks, state forests and state wildlife
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6 and refiled in the state register on the twentieth day of
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9 wildlife, 58 CSR 63), are authorized.

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12 Division of Natural Resources to promulgate legislative
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15 Strike-throughs indicate language that would be
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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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CATHERINE FREROTTE
Executive Assistant

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FILED

WILLIAM H. HARRINGTON
Chief of Staff

OCT 17 1 59 PM 1996 JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA OFFICE OF WEST VIRGINIA
SECRETARY OF STATE SECRETARY OF STATE

SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

TO: ~~BILL DANIEL~~ Gordon C. Robertson
AGENCY: NATURAL RESOURCES -- Wildlife Resources
FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION
DATE: October 3, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR
COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY
CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO
AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF
THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN
(10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF
YOU HAVE ANY QUESTIONS.

SERIES: 63 TITLE: 58 NATURAL RESOURCES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Gordon C. Robertson
TITLE OF PERSON SIGNING: Deputy Chief, Wildlife Resources
DATE: 10/17/96

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE
CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE
FORWARD TO THE CORRECT PERSON.