

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: DOC, DNR, Wildlife Resources Section TITLE NUMBER: 58

CITE AUTHORITY: 20-2-7 and 20-2-50a

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 41

TITLE OF RULE BEING AMENDED: Wildlife Damage Control Agents

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

FILED

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OFFICE WEST VIRGINIA
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TITLE 58
LEGISLATIVE RULE
BUREAU DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 41
WILDLIFE DAMAGE CONTROL AGENTS

§58-41-1. General.

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

1.2. Authority. -- W. Va. Code § 20-2-7 and § 20-2-50a.

1.3. Filing Date. -- ~~May 10, 1996.~~

1.4. Effective Date. -- ~~August 8, 1996.~~

§58-41-2. Definitions.

2.1. "Wildlife Damage Control Agent" or "agent 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 Subdivisions ~~7.1.7., 7.1.8., and 7.1.9.~~ 7.1.g., 7.1.h., and 7.1.i. of this rule and as defined in W. Va. Code §20-1-2.

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

2.4. "Division" means the Division of Natural Resources.

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

§58-41-3. Licensing.

3.1. A person seeking a wildlife damage control license shall complete a written application on forms supplied by the Director and submit the completed application. ~~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.~~ 3.1.a. The name of the applicant, and the applicant's address, telephone number, date of birth, social security number and state business tax number.

~~3.1.1.a.~~ 3.1.a.1. An applicant must be eighteen (18) years of age or older to be issued a wildlife damage control license; and

~~3.1.2.~~ 3.1.b. 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.~~ 3.2. The applicant ~~must~~ shall demonstrate his or her knowledge of wildlife damage control procedures, laws, rules, and policies through the satisfactory completion of a written test.

3.3. An applicant who does not achieve the minimum score required for the satisfactory completion of the written test shall wait a minimum of thirty (30) days prior to re-testing.

3.24. A wildlife damage control license is valid for a period of one calendar year and must be renewed annually.

~~3.2.1.~~ 3.2.a. The Division shall test all agents at five (5) year intervals upon application for license renewal.

3.35. The license is not transferable.

§58-41-4. Annual Fee.

4.1. The Division shall charge an annual fee of fifty ~~dollar~~ dollars (\$50) for issuance of a wildlife damage control license to agents who charge a fee for their services.

~~4.1.1.~~ 4.1.a. A corporation, partnership, firm, business or other commercial entity, club, or organization having multiple agents ~~may license each agent annually for twenty percent (20%) of the license fee after payment of the initial fifty dollar (\$50) license fee. shall pay the annual license fee plus a fee of ten dollars (\$10) for each agent annually.~~

4.2. The Division shall waive the fifty dollar (\$50) annual fee for employees of a municipal or other government agency, when the employee is acting as an agent for the agency.

§58-41-5. Background Check.

5.1. Upon receipt of a completed application, the ~~district conservation~~ natural resource police officer in the district of the applicant's residence, shall determine if the applicant has, within the last five (5) years, been convicted of a violation of any federal or state statute or rule or regulation which is related to the activity for which the license is sought. ~~If he or she~~ the natural resource police officer determines that a violation exists, the Division shall not issue a wildlife damage control license for a period of at least five (5) years after the violation.

§58-41-6. Training.

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

§58-41-7. Procedures.

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

~~7.1.1.~~ 7.1.a. The agent is not exempt from compliance with the provisions of other state, local, or federal laws.

~~7.1.2.~~ 7.1.b. The wildlife damage control agent shall identify the offending wildlife, if possible, and recommend methods of control, estimated costs, and advantages and disadvantages of each method. The agent shall explain how much of the problem will be resolved by the recommended methods.

~~7.1.3.~~ 7.1.c. While engaged in wildlife damage control, the agent ~~must~~ shall obey all hunting and trapping laws and rules with the following exceptions:

~~7.1.3.a.~~ 7.1.c.1. Traps may be set at any time;

~~7.1.3.b.~~ 7.1.c.2. Woodchucks may be controlled by gas cartridges;

~~7.1.3.c.~~ 7.1.c.3. Wildlife dens of authorized species in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule 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.~~ 7.1.c.4. Authorized species of wildlife in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule may be taken by net, bait, or trap;

~~7.1.3.e.~~ 7.1.c.5. Authorized species in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule may be possessed for up to 72 hours during the closed season; ~~and~~

~~7.1.4.f.~~ 7.1.c.6. Wildlife damage control agents may use electronic means to check on the status of a trap while acting pursuant to the authority granted under the license. If the electronic device malfunctions or in any way ceases to provide the wildlife damage control agent with real-time updates on the trap, the wildlife damage control agent shall physically check the trap within 24 hours; and

~~7.1.3.f.~~ 7.1.c.7. Agents may be authorized to use other methods of control as recommended by the district wildlife biologist or district ~~conservation~~ natural resource police officer.

~~7.1.4.~~ 7.1.d. 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.~~ 7.1.e. Agents shall use ~~leg~~foot-hold traps in municipalities of the type approved by the Director and shall set the traps so as to avoid free roaming pets. If pets are captured the agent shall release them to the owners when the owner can be identified, release them at the site of capture or release them to appropriate county officials. An agent shall immediately release wildlife species not responsible for nuisance or damage.

~~7.1.6.~~ 7.1.f. All trapping devices must have the agent's name and address on a durable plate or tag attached to the trapping device.

~~7.1.7.~~ 7.1.g. A wildlife damage control license authorizes the agent to control problem animals of the following species or groups of species: pigeons (rock ~~dove~~ pigeon), house sparrow, European starling, red-winged blackbird, brown-headed cowbird, grackle, opossum, moles, bats, cottontail rabbit, snapping turtle, snakes, chipmunk, grey squirrel, fox squirrel, red squirrel, southern flying squirrel, woodchuck, muskrat, rats, mice, voles, raccoon, weasels, red fox, gray fox, coyote, mink and striped skunk, provided that the species listed in subdivision ~~7.1.9.~~ 7.1.i. may not be killed, captured, or disturbed. Crow, grackle, red-winged blackbird, and brown-headed cowbird may be controlled under state and federal rules and regulations.

7.1.g.1. An agent shall follow bat exclusion guidelines which have been developed by the Division and which are provided to agents upon issuance of his or her Wildlife Damage Control Agent license.

~~7.1.8.~~ 7.1.h. An agent may control the following species or groups of species, only with prior approval of the district wildlife biologist and the district ~~conservation~~ natural resource police officer: white-tailed deer, black bear, bobcat, fisher, beaver, otter, wild turkey, wild boar, elk and any species not listed in subdivision ~~7.1.7. and 7.1.9.~~ 7.1.g. and 7.1.i. of this rule. An agent may only take federally protected birds with a U.S. Fish and Wildlife Service depredation permit.

~~7.1.9.~~ 7.1.i. The following species or group of species shall not be controlled by wildlife damage control agents: migratory birds (except as listed in subdivisions ~~7.1.7. and 7.1.8.~~ 7.1.g. and 7.1.h. of this rule), salamanders, frogs, toads, turtles (except as listed in subdivision ~~7.1.7.~~ 7.1.g. of this rule), 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 getula getula), long-tailed shrew (Sorex dispar), pygmy shrew (Sorex hoyi), Northern northern water shrew (Sorex palustris), eastern small-footed myotis (Myotis subulatus leibii), Northern northern long-eared bat (Myotis septentrionalis), Indiana bat (Myotis sodalis), Rafinesque's big-eared bat (Plecotus Corynorhinus rafinesquii), Virginia big-eared bat (Plecotus Corynorhinus townsendii virginianus), Northern flying squirrel (Glaucomys sabrinus), Allegheny woodrat (Neotoma Magister), 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 or candidate species as designated by the Endangered Species Act of 1973, as amended.

§58-41-8. Disposition of Nuisance Wildlife.

8.1. The agent shall euthanize in a humane manner, or liberate at the site of capture, any nuisance wildlife which are captured alive. The agent shall not relocate and release any captured wildlife without the prior approval of the district wildlife biologist.

~~8.1.1. 8.1.a.~~ The sale, trade, barter or donation of any live or dead wildlife or parts of wildlife taken under this license is prohibited. 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 agent may retain the carcass or parts of the carcass up to the legal season limit. The agent shall dispose of carcasses which are not used in a manner consistent with state and local laws and regulations.

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

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.

8.4. If any person is bitten or exposed to an animal during the disposition of nuisance wildlife, the agent shall immediately notify the West Virginia Department of Health and Human Resources - local health department in the county in which the incident occurred, and the district wildlife biologist. The agent shall retain the animal and/or carcass for disease testing purposes and coordinate directly with the West Virginia Department of Health and Human Resources.

§58-41-9. Records and Reports.

9.1. The following records and reports are required:

~~9.1.1. 9.1.a.~~ All agents ~~An agent~~ shall keep daily records on all investigated wildlife damage complaints. The records shall include the date of the investigations, the name of the complainant, the number and species of ~~animal~~ animals involved, the type of damage, the disposition of the complaint, and ~~such~~ any other information as required by the Director ~~may require~~. Records of all wildlife taken shall be available for inspection by a ~~conservation~~ natural resources police officer at any reasonable time.

~~9.1.2. 9.1.b.~~ ~~An~~ The agent shall file an annual report ~~shall be filed~~ with the Law Enforcement Section, Division of Natural Resources, at the end of each calendar year. The report shall be on forms supplied by the Director and shall accompany the application for renewal of the

animal damage control license. The Division shall not renew the animal damage control license until ~~such time as~~ a satisfactory annual report is received. The report shall include ~~such~~ any information as required by the Director and shall be complete and legible.

§58-41-10. Revocation and Suspension.

10.1. ~~A~~ The Director may revoke 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 agent's license for a period determined by the Director. A person whose license has been suspended may request a formal hearing within thirty (30) days before a review board to show cause why the license should not be suspended. The review board ~~will~~ shall 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 is final.

§58-41-11. 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.