



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

eFILED

8/29/2016 8:19:04 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Natural Resources**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **58-23**

RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 58-23



Rule Id: 10258



Document: 29920



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

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RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

PRIMARY CONTACT

Jerry B. Jenkins
324 4th Avenue

South Charleston, STATE ZIP

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CITE AUTHORITY **W. Va. Code §20-1-7(30)**

AUTHORIZING STATUTE(S) CITATION
W. Va. Code §20-1-7(30)

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Monday, July 25, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
News Release

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Thursday, August 25, 2016

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)

AGENCY **Natural Resources**

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RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

No comments received

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Monday, August 29, 2016

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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CITE AUTHORITY **W. Va. Code §20-1-7(30)**

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. 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.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY **W. Va. Code §20-1-7(30)**

DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS

None

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

**Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in
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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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CITE AUTHORITY **W. Va. Code §20-1-7(30)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

There would be minimal additional administrative expenditures as a result of this rule change.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

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RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0.00	0.00	0.00
PERSONAL SERVICES			
CURRENT EXPENSES			
REPAIRS AND ALTERATIONS			
ASSETS			
OTHER			
ESTIMATED TOTAL REVENUES	0.00	0.00	0.00

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RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

The Division of Natural Resources does not anticipate any significant changes in fees or revenues resulting from the proposed rule change.

Patricia J White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

Changes the Bear violation points to reflect current changes in 20-2-22a of the bear law made during the 2016 legislative session. Clarifies the definition of license to align with the Directors authority to revoke privileges. Enhances revocation period for hunting or fishing while under current revocation. Updates changes made by the 2016 legislative session in 20-2-5(3) and 20-2-5(5). We anticipate that there will be a loss of license sale revenue due to the revocation of a poacher but the increase in wildlife hunting and fishing opportunity should bring in additional license sale revenue.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

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RULE NAME **Revocation of Hunting and Fishing Licenses**

CITE AUTHORITY **W. Va. Code §20-1-7(30)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

SUMMARY:Series 23 revises the current revocation of hunting and fishing licenses rule. Revisions to this rule include language which changes the Bear violation points to reflect current changes in 20-2-22a of the bear law made during the 2016 legislative session. Clarifies the definition of license to align with the Directors authority to revoke privileges. Enhances revocation period for hunting or fishing while under current revocation. Updates changes made by the 2016 legislative session in 20-2-5(3) and 20-2-5(5).

CIRCUMSTANCES:The purpose of this rule is to establish rules that are to be complied with during the revocation process of a persons hunting or fishing licenses.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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Title-Series: 58-23



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TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 23
REVOCATION OF HUNTING AND FISHING LICENSES

§58-23-1. General.

1.1. Scope. -- This legislative rule establishes procedures to govern the revocation and restoration of hunting and fishing licenses and the assignment of points for violations of hunting or fishing laws and rules.

1.2. Authority. -- W. Va. Code §20-1-7(30).

1.3. Filing Date. -- ~~March 25, 2008.~~

1.4. Effective Date. -- ~~March 25, 2008.~~

1.5. Sunset Date. -- This rule will sunset 5 years after the rule becomes effective.

§58-23-2. Definitions.

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

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

2.3. "License" means a hunting or fishing license or lawful authorization to hunt or fish when a license or permit is not required, and any associated tags or stamps, issued or authorized by the Division in accordance with provisions of W. Va. Code §§ 20-2-1 et seq or 20-2B-1 et seq.

2.4. "Lifetime License" means a Class A-L, Class AB-L, Class B-L, Class O-L, Lifetime Class A-1 or Class XS license issued by the Division in accordance with the provisions of W. Va. Code §§20-2B-1 et seq and 20-2-40b.

§58-23-3. Revocation of Licenses.

3.1. The director shall revoke a license or licenses for the following causes:

3.1.a. Negligent Shooting. Except as provided in Subdivision 5.1.1 of this rule, the hunting and fishing licenses of any person convicted of negligent shooting under the provisions of W. Va. Code §20-2-57 shall be revoked and license privileges shall be suspended for a period of five (5) years. The suspension period begins on the date of conviction;

3.1.b. Amassed Points. The hunting and fishing licenses of any person who amasses ten (10) or more points in any two-year period shall be revoked and license privileges shall be suspended for a period of two (2) years. The suspension period begins on the date on which the ten-point (10) total was reached

3.1.c. False Application. The hunting and fishing licenses of any person who obtained a license or licenses under false pretenses or otherwise in violation of the provisions of W. Va. Code §20-2-30 shall be revoked and license privileges shall be suspended for a period of one (1) year. The suspension period begins on the date of the license's revocation;

~~3.1.d. Illegal Bear Kill. The hunting and fishing licenses of any person convicted of killing a bear in violation of the provisions of W. Va. Code § 21-2-22a shall be revoked and license privileges shall be suspended for a period of two (2) years. The hunting and fishing licenses of any person convicted for a second offense shall be revoked for life.~~ Bear violations. Any person convicted of a violation of 20-2-22a shall be assigned six points on his or her hunting and fishing license, however, the hunting and fishing licenses of any person convicted of a violation of this section which results in the killing or death of a bear shall be suspended for two (2) years. The hunting and fishing licenses of any person convicted for a second offense of this provision shall be suspended for five (5) years. Any person who commits a third or subsequent violation of the provisions will have the persons hunting and fishing licenses suspended for ten (10) years. The suspension period begins on the date of conviction; ~~or~~

3.1.e. Failure to Pay Fines. The hunting and fishing licenses of any person who fails to pay the costs, fines, forfeitures, or penalties imposed by a magistrate court under the provisions of W. Va. Code §50-3-2a for a violation of the State's hunting or fishing laws or rules shall be revoked and license privileges shall be suspended until the costs, fines, forfeitures, or penalties are paid in full.

3.1.f. Failure to Appear. The hunting and fishing licenses of any person who fails to appear or respond in magistrate court for a violation of the State's hunting or fishing laws or rules under the provisions of W. Va. Code §50-3-2a shall be revoked and license privileges shall be suspended until final judgment in the case, and, if a judgment of guilty is entered, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.

3.1.g. Interference with hunters, trappers and fishermen. The license of any person convicted of any violation of W. Va. Code §20-2-2a who holds a West Virginia hunting, fishing or trapping license at the time of conviction shall be revoked for two years. The revocation period begins on the date of conviction.

3.2. If any person is convicted of violating State hunting or fishing laws or rules during the period when his or her license privileges have been suspended, the Director shall extend the suspension period for an additional two (2) years from the ending date of ~~conviction for the latest offense~~ the previous revocation.

3.3. Upon revoking the license of any person, the Division shall immediately send written notification of the revocation to the licensee by certified mail, return receipt requested, to the address given by the licensee on his or her license application.

§58-23-4. Surrender of Licenses.

4.1. A person shall surrender his or her license to the Division ~~or the clerk of any county commission~~ within ten (10) days after receiving notification that the license has been revoked.

~~4.1.1. A clerk of a county commission, upon receiving a surrendered license, shall immediately transmit the license to the Division.~~

4.2. A person shall surrender his or her license to the Division prior to requesting an opportunity for a hearing before the Division under the provisions of Section 8 of this rule.

§58-23-5. Restoration of License Privileges.

5.1. Except as provided in Subdivisions 5.1.a, 5.1.b, and 5.1.c of this Subsection, any person whose license has been revoked may again purchase the license upon the expiration of the period of suspension set forth in Section 3 of this rule.

5.1.a. Any person convicted of an offense under W. Va. Code §20-2-57, other than a negligent shooting which has resulted in the killing of a human being, may, after the expiration of two (2) years from the date of conviction, submit a written petition to the director seeking the restoration of all hunting and fishing license privileges. If the director, upon a full investigation, finds that the petitioner has paid and satisfied all claims against him or her and the circumstances at the time and the nature of the offense indicate that he or she is not likely again to commit a like or similar offense and that the public good does not require that the petitioner's license privileges remain suspended, the director may enter an order restoring full license privileges to the petitioner.

5.1.b. Any person whose license privileges have been suspended as provided for in Subdivisions 3.1.e. and 3.1.f. of this rule shall, upon the expiration of the period of suspension, pay a reinstatement fee of fifty dollars (\$50) to the Division in order to regain license privileges.

5.1.b.1. If the license for which privileges were suspended was a lifetime license, the Division shall return the original license to the licensee upon the receipt of the reinstatement fee.

5.1.b.2. If the license for which privileges were suspended would otherwise continue in effect after the expiration of the period of suspension, the Division shall return the original license to the licensee upon the receipt of the reinstatement fee.

5.1.b.3. If the license for which privileges were suspended would otherwise have expired prior to the expiration of the period of suspension, the licensee shall pay the reinstatement fee to the Division prior to again purchasing a hunting or fishing license.

5.1.c. The Division shall return a lifetime license revoked in accordance with the provisions of Subdivisions 3.1.a, 3.1.b, 3.1.d, 3.1.e., or 3.1.f. of this rule to the licensee upon the expiration of the period of license suspension.

§58-23-6. Assignment of Points.

6.1. Except as provided in Subsections 6.2, 6.3 and 6.4 of this Section, the Division shall assign four (4) points to a person for any violation of hunting or fishing laws or rules.

6.2. The Division shall assign ten (10) points to any person found guilty of violating W. Va. Code §20-2-5(3) -- ~~using any artificial light in hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal (except opossum, raccoon, or skunk), or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, bow, or other implement or device suitable for taking, killing or trapping a wild bird or animal.~~ Using or attempting to use any artificial light or any

night vision technology, including image intensification, thermal imaging or active illumination while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: Provided, that it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology.

6.3. The Division shall assign ten (10) points to any person found guilty of violating W. Va. Code §20-2-5(18) -- using dynamite or any like explosive or poisonous mixture placed in any waters of the State for the purpose of killing or taking fish.

6.4. The Division shall assign six (6) points to any person found guilty of violating any of the following:

6.4.a. W. Va. Code §20-2-4: Illegal possession of wildlife or any part thereof. The Division shall not assign points to any person possessing wildlife or any part thereof that was legally taken during the respective open season.

6.4.b. W. Va. Code §20-2-11: Illegal sale of wildlife.

6.4.c. W. Va. Code §20-2-5 (26): Illegally killing deer, boar or turkey.

6.4.d. W. Va. Code §20-2-5(4): Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

6.4.e. W. Va. Code §20-2-5 (14): Taking fish by an illegal method.

6.4.f. W. Va. Code §20-2-5b and 20-1-7(30): Exceeding the daily creel limit.

6.4.g. W. Va. Code §20-1-7(30): Using prohibited bait in a restricted area.

6.5. Notwithstanding the provisions of this section, points will only be assigned to the violation with the highest point value when more than one charge results from a single incident.

§58-23-7. Removal of Points.

7.1. The Division shall remove points on their second anniversary or upon the restoration of license privileges.

§58-23-8. Hearing and Appeal Procedures.

8.1. Notification. Upon revoking the license(s) of any person, the Division of Natural Resources shall immediately notify the licensee in writing, sent by registered mail to the address given by the licensee in applying for license, and upon his/her request, shall afford an opportunity for a hearing within thirty (30) days after receipt of the request.

8.2. Request for Hearing. Upon receipt of a notice of revocation, the licensee may request an opportunity for a hearing before the Division. The request shall be made in writing to the director within thirty (30) days after the receipt of the revocation notice.

8.3. Hearings. A hearing shall be held by the Division within thirty (30) days after the receipt of a written request from the licensee, conditional upon the receipt of his or her surrendered license in accordance with the provisions of Subsection 4.2 of this rule. The hearing may be conducted in the county in which the licensee resides or any other county designated by the director. A duly authorized agent of the director shall act as the hearings officer. Within thirty (30) days after the hearing, the hearings officer shall issue a finding, and the reasons for the finding, that either upholds or rescinds the revocation. The Division shall immediately send written notification of the finding to the licensee.

8.4. Appeals. The finding of the hearings officer constitutes a final order appealable under the provisions of W. Va. Code §29A-5-4.

§58-23-9. License Fee Refunds.

9.1. A person whose license has been revoked under the provisions of this rule is not eligible for a license fee refund. However, when more than one license of the same class has been purchased by that person in a given year, that person is eligible for a refund for the additional licenses upon the presentation of proof of purchase, unless the additional licenses were procured for fraudulent or illegal purposes.