



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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7/30/2021 3:13:25 PM

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: Natural Resources TITLE-SERIES: 58-23
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 58-23 Revocation of Hunting and Fishing Licenses

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §20-1-7(31) and §20-2-38

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§20-2-38 provides authority for the Director to refuse or revoke a license or permit for cause. §20-1-7(31) authorizes the director to promulgate rules to implement and make effective the powers and duties vested in him or her.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

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

press release

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes procedures to govern the regulation and restoration of hunting and fishing licenses and the assignment of points for violations of hunting and fishing laws and rules.

This revision reflects changes to make the rule current with W.Va Code and current license structure. Technical changes are also included.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is necessary to establish procedures to govern the revocation and restoration of hunting and fishing licenses.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no anticipated impact on the revenue of the state.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no anticipated impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There is no economic impact on the state or its residents anticipated.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There are no anticipated changes in administrative costs or revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jack M Rife -- 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 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)~~(31) and §20-2-38.

1.3. Filing Date. -- ~~May 17, 2017.~~

1.4. Effective Date. -- ~~May 22, 2017.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~May 22, 2022~~ August 1, 2027.

§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.~~ 2.2. "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.~~ 2.3. "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.

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

§58-23-3. Revocation of Licenses.

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

~~3.1.a.~~ 3.1.1. Negligent Shooting. Except as provided in ~~Subdivision~~ subsection 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.~~ 3.1.2. Amassed Points. The hunting and fishing licenses of any person who amasses ~~ten~~

~~(10)~~ 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)~~ 10-point total was reached.

~~3.1.e.~~3.1.3. 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 of the license or licenses.

~~3.1.d.~~3.1.4. Bear violations. Except as set forth in ~~subdivision 6.4.h~~ subsection 6.4.8. of this rule, the hunting and fishing licenses of any person who ~~commits~~ is convicted of a violation of the provisions of W.Va. Code § 20-2-22a which results in the killing or death of a bear shall be suspended for two ~~(2)~~ years; ~~the~~The hunting and fishing licenses of any person who ~~commits~~ is convicted of a second violation of W.Va. Code § 20-2-22a shall be suspended for five ~~(5)~~ years irrespective of whether the violation results in the killing or death of a bear; ~~and the.~~ The hunting and fishing licenses of any person who ~~commits~~ is convicted of a third violation of W.Va. Code § 20-2-22a shall be suspended for ~~ten (10)~~ 10 years irrespective of whether the violation results in the killing or death of a bear.

~~3.1.e.~~3.1.5. 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.~~3.1.6. 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.~~3.1.7. Interference with hunters, trappers, and fishermen. The license or licenses 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 the previous revocation.

3.3. Upon revoking the license or licenses 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.

3.4. All revocation periods shall commence on the date of conviction of the last offense causing the revocation or at the conclusion of any current revocation period, whichever is later.

§58-23-4. Surrender of Licenses.

4.1. Upon the revocation of any license or licenses, the person to whom the same was issued shall, upon having knowledge of such revocation, deliver the license so issued to him or her to the director, his

or her agent, or the clerk of any county commission ~~within ten (10) days~~ forthwith.

~~4.1.a.~~ 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~~ subsections 5.1.1., 5.1.2., and 5.1.3. of this ~~Sub~~section, any person whose license has been revoked may again purchase the license upon the expiration of any period of suspension set forth in Section 3 of this rule.

~~5.1.a.~~ 5.1.1. 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.~~ 5.1.2. Any person whose license privileges have been suspended as provided for in ~~Subdivisions 3.1.e. and 3.1.f.~~ subsections 3.1.5. and 3.1.6. of this rule shall, upon the expiration of the period of suspension, pay a reinstatement fee of ~~fifty dollars (\$50)~~ \$50 to the Division in order to regain license privileges.

~~5.1.b.1.~~ 5.1.2.a. 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.~~ 5.1.2.b. 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.~~ 5.1.2.c. 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.~~ 5.1.3. 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.~~ subsections 3.1.1., 3.1.2., 3.1.4., 3.1.5., 3.1.6., or 3.1.7 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 ~~Sub~~sections 6.2, 6.3, and 6.4 of this ~~Section~~ rule, 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)~~ 10 points to any person found guilty of violating W. Va. Code §20-2-5(3) -- 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, including any image intensification, thermal imaging, or active illumination.

6.3. The Division shall assign ~~ten (10)~~ 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.~~6.4.1. 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.~~6.4.2. W. Va. Code §20-2-11: Illegal sale of wildlife.

~~6.4.c.~~6.4.3. W. Va. Code §20-2-5 (26): Illegally killing deer, boar, or turkey.

~~6.4.d.~~6.4.4. 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.~~6.4.5. W. Va. Code §20-2-5 (14): Taking fish by an illegal method.

~~6.4.f.~~6.4.6. W. Va. Code §20-2-5b and ~~20-1-7(30)~~W. Va. Code of State Rules, Title 58 Series 60, Fishing Regulations: Exceeding the daily creel limit on trout.

~~6.4.g.~~6.4.7. ~~W. Va. Code §20-1-7(30)~~W. Va. Code of State Rules, Title 58 Series 60, Fishing Regulations and W.Va. Code of State Rules, Title 58 Series 61, Special Fishing Rule: Using prohibited bait in a restricted area.

~~6.4.h.~~6.4.8. W. Va. Code §20-2-22a: A first offense violation of this section which does not result in the death or killing of a bear.

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. Notice of Revocation. Upon revoking the license~~(s)~~ or licenses 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)~~ 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)~~ 30 days after the receipt of the revocation notice.

8.3. Hearings. A hearing shall be held by the Division within ~~thirty (30)~~ 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 ~~Sub~~ section 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)~~ 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.~~