

H. B. 2209

(By Delegate Manypenny)

[Introduced February 13, 2013; referred to the Committee on Natural Resources then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-10-6, relating to the control of potentially dangerous wild animals, as specified, to protect the public against health and safety risks and to establish criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-10-6, to read as follows:

ARTICLE 10. HUMANE OFFICERS.

§7-10-6. Dangerous wild animals.

(a) The purpose of this section is to protect the public against the serious health and safety risks that dangerous wild animals pose to the community.

(b) The following words and phrases when used in this section have the meanings given to them unless the context clearly indicates otherwise:

"Animal control authority" means humane officer as described in article ten of this code.

"Potentially dangerous wild animal" means one of the animals identified in subsection (c) of this section.

"Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof.

"Possessor" means any person who owns, possesses, keeps, harbors, brings into the state or has custody or control of a potentially dangerous wild animal.

"Wildlife sanctuary" means a nonprofit organization, that cares for animals defined as potentially dangerous and: (1) No activity that is not inherent to the animal's nature, natural conduct or the animal in its natural habitat is conducted; (2) no commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal by-products or animal offspring or the sale of photographic opportunities involving an animal or the use of an animal for any type of entertainment purpose; (3) no unescorted public visitations or direct contact between

the public and an animal; or (4) no breeding of animals occurs in the facility.

(c) Potentially dangerous wild animals are the following types of animals, whether bred in the wild or in captivity, and any or all hybrids thereof: (1) Lions, tigers, cougars, jaguars, cheetahs, leopards, snow leopards and clouded leopards;

(2) Wolves, excluding wolf-hybrids;

(3) All bears;

(4) Animals from the family hyaenidae, such as hyenas;

(5) Rhinoceroses;

(6) All nonhuman primate species;

(7) All elephant species;

(8) All species of the atractaspidae family of the squamata order from the reptilia class and the dispholidus typus of the colubridae family of the same order and same class;

(9) All species of the elapidae family of the squamata order from the reptilia class, such as cobras, mambas, kraits, coral snakes, and Australian tiger snakes;

(10) All species of the hydrophiidae family of the squamata order from the reptilia class, such as sea snakes; (11) Water monitors and crocodile monitors from the varanidae family of the squamata order from the reptilia class;

(12) All species of the viperidae family of the squamata order from the reptilia class, such as rattlesnakes, cottonmouths, bushmasters, puff adders, and gaboon vipers; and

(13) All species of the crocodilia order from the reptilia class, such as crocodiles, alligators, calmans and gavials.

(d) The provisions of this section do not apply to: (1) Institutions accredited or certified by the American Zoo and Aquarium Association or a facility with a current signed Memorandum of Participation with an Association of Zoos and Aquariums Species Survival Plan for breeding of species listed as threatened or endangered pursuant to 16 U.S.C. § 1533; (2) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing an animal at the written request of the animal control authority or acting under the authority of this section;

(3) Animal control authority, law-enforcement officers or county sheriffs acting under the authority of this section; (4) Veterinary hospitals or clinics; (5) A

holder of a valid wildlife rehabilitation permit issued by the West Virginia Division of Natural Resources; (6) Any wildlife sanctuary as defined in subsection (b) of this section; (7) A research facility as defined by the animal welfare act, 7 U.S.C.A. 2131, as amended, for the species of animals for which they are registered. This

includes, but is not limited to, universities, colleges and laboratories holding a valid Class R license under the animal welfare act; (8) Circuses, defined as incorporated, Class C licensees under the animal welfare act, 7 U.S.C.A. 2131, as

amended, that are temporarily in this state and that offer performances by live animals, clowns and acrobats for public entertainment; (9) A person temporarily

transporting a legally owned dangerous wild animal through the state if the transit time is not more than twenty-four hours, the dangerous wild animal is not exhibited and the dangerous wild animal is maintained at all times in a species-appropriate cage or other travel container such that there is no opportunity for physical contact with any member of the public; or (10) A person displaying animals at a fair approved by the West Virginia Department of Agriculture. (e) This section does not require a city or county that does not have an animal control authority to create that office.

(f) Behaviors prohibited under this section are as follows:

(1) A person may not own, possess, keep, harbor, bring into the state or have custody or control of a potentially dangerous wild animal, except as provided in subsection (d) of this section; (2) A person may not breed a potentially dangerous wild animal; (3) A person in legal possession of a potentially dangerous wild animal prior to January 1, 2014, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life and shall:

(A) Maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to January 1, 2014; and (B) Present the paperwork to an animal control or law-enforcement authority upon request. The person has the burden of proving that he or she possessed the animal prior to January 1, 2014.

(g) The animal control authority or a law-enforcement officer may immediately confiscate a potentially dangerous wild animal if: (1) The animal control authority or law-enforcement officer has probable cause to believe that the animal was acquired after January 1, 2014; (2) The animal poses a public safety or health risk;

(3) The animal is in poor health and condition as a result of the possessor; or

(4) The animal is being held in contravention of this section. (h) A

potentially dangerous wild animal that is confiscated under subsection (g) of this section may be returned to the possessor only if the animal control authority or law-enforcement officer establishes that the possessor had possession of the animal prior to January 1, 2014, and the return does not pose a public safety or health risk. (i) When the animal

control authority or law enforcement acts under subsection (g) of this section, the animal control authority or law-enforcement officer shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation and that the possessor must meet the requirements of subsection (h) of this section in order for the animal to be returned to the possessor. (j) If a potentially dangerous wild animal confiscated

under this section is not returned to the possessor, the animal control authority or law-enforcement officer may release the animal to a facility such as a wildlife sanctuary or a facility exempted in subsection (d) of this section. If the animal control authority or law-enforcement officer is unable to relocate the animal within a reasonable period of time,

the animal may be euthanized but only when all reasonable placement options, including relocation to a wildlife sanctuary, are unavailable. (k) This section applies to animal confiscations on or after January 1, 2014.

(l) A city or county may adopt an ordinance governing potentially dangerous wild animals that is more restrictive than this section. However, nothing in this section requires a city or county to adopt an ordinance to be in compliance with this section.

(m) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$2,000 for each animal with respect to which there is a violation and for each day the violation continues.

(n) The animal control authority and its staff and agents, local law-enforcement agents and county sheriffs are authorized and empowered to enforce the provisions of this section.

NOTE: The purpose of this bill is to provide for the control of specific potentially dangerous wild animals to protect the public against health and safety risks and to establish criminal penalties.

§7-10-6 is new; therefore, it has been completely underscored.