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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 204

(By Mr. La Follette, Mr. President)

PASSED March 9th, 1939

In Effect 90 days from Passage

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WILLIAM S. O'BRIEN
SECRETARY OF STATE

ENROLLED

Senate Bill No. 204

(BY MR. LAFON, Mr. President)

[Passed March 9, 1939 ; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section nine, article one-a, section one of article two, sections one, four, seven, eight, ten and twelve-a of article three, sections one, three, five, six, eleven, twelve and fourteen of article four, sections two and four of article five, sections one, two, four, five and seventeen of article six, sections one, three and eleven of article seven, sections one, two and three of article eight, sections one and five of article nine and section four of article ten; and by repealing sections seven to ten, inclusive, of article four,

section three of article six and section four of article eight; and by adding section eleven to article one-a, sections seven-a, seven-b, seven-c, seven-d, seven-e, eight-a and eight-b to article three, section three-a to article four, section two-h to article seven, section nine to article eight-a, sections four-a and ~~six~~-a to article nine and section one-a to article ten, all relating to the game, fish and forests of the state.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting section nine of article one-a, section one of article two, sections one, four, seven, eight, ten and twelve-a of article three, sections one, three, five, six, eleven, twelve and fourteen of article four, sections two and four of article five, sections one, two, four, five and seventeen of article six, sections one, three and eleven of article seven, sections one, two and three of article eight, sections one and five of article nine and section four of article ten; and by repealing sections seven to ten, inclusive, of article four, section three of article six and section four of article eight; and by adding section eleven to article one-a,

sections seven-a, seven-b, seven-c, seven-d, seven-e, eight-a and eight-b to article three, section three-a to article four, section two-h to article seven, section nine to article eight-a, sections four-a and six-a to article nine and section one-a to article ten, all to read as follows:

Article 1-A. Director of Conservation.

Sec. 9. *Legal Services by Attorney General and Prosecuting Attorneys; Employment of Other Attorneys.* The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the director, without additional compensation, such legal services as he shall require of them in the discharge of his duties under the provisions of this chapter.

The director may, in an emergency and with prior approval of the attorney general, employ an attorney to act in proceedings wherein criminal charges are brought against an employee or appointee of the commission because of action taken in the line of duty. Not to exceed one hundred dollars shall be so expended by the director in any one case.

Sec. 11. *Cooperation with Federal Government in Wildlife Projects.* The state of West Virginia hereby assents to the pro-

visions of the act of Congress entitled "An Act to provide that the United States shall aid the states in wildlife restoration projects and for other purposes," approved September second, one thousand nine hundred thirty-seven, (Public No. four hundred fifteen, seventy-fifth Congress) and the director is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and with rules and regulations promulgated by the Secretary of Agriculture thereunder. Funds accruing to the state from license fees paid by hunters shall not be diverted for any purpose other than the activities in this chapter.

Article 2. Game Protectors.

Section 1. *Appointment; Compensation; Qualifications; Uniforms.* The director shall, in accordance with other provisions of general law relating to the appointment and compensation of the personnel of the state government, appoint game protectors and fix their compensation. Game protectors shall serve during the will and pleasure of the director. The director may also appoint special game pro-

8 tectors to serve for such periods of time as may be neces-
9 sary.

10 Persons appointed as game protectors shall be men in-
11 terested and experienced in the work for which they are
12 selected. They shall be selected as follows:

13 1. An applicant shall apply to the director for appoint-
14 ment upon blanks furnished for that purpose by the di-
15 rector;

16 2. The application shall be accompanied by the certificates
17 of the judge of the circuit court, the sheriff, and the prosecut-
18 ing attorney of the county in which the applicant resides to
19 the effect that the applicant is a person of good moral
20 character, not of intemperate habits, and has never been
21 convicted of a felony and not more than once of a mis-
22 demeanor;

23 3. The director shall examine the applicant with respect
24 to his qualifications and fitness for the position. No person
25 shall be appointed unless he passes the examination in a
26 satisfactory manner. The director shall prescribe the kind,
27 style and material of uniforms to be worn by game pro-
28 tectors. Uniforms and other equipment furnished to game

29 protectors shall be and remain the property of the state.

Article 3. General Provisions Respecting Game, Birds, Fish and Frogs.

Section 1. *State Ownership of Game, Birds, Fish and Frogs.*

2 The ownership of, and the title to, all wild animals, wild birds,
3 both resident and migratory, and all fish and frogs, and all
4 other aquatic life, in the state of West Virginia, are hereby
5 declared to be in the state, as trustee for the people, and no such
6 wild animals, wild birds, fish or frogs, or other aquatic life,
7 shall be taken or killed in any manner, or at any time, except
8 the person so taking or killing the same shall consent that the
9 title thereto shall be and remain in the State of West Vir-
10 ginia, for the purpose of regulating the taking, use and
11 disposition of the same after such taking or killing; and the
12 taking or killing of wild animals, birds, fish or frogs, and all
13 other aquatic life, at any time or in any manner by any
14 person, shall be deemed such consent. But nothing herein
15 contained shall make unlawful the bringing in of game or
16 fowl acquired lawfully in another state.

Sec. 4. *Unlawful Acts on Sunday.* It shall be unlawful

2 on Sundays to:

3 1. Carry an uncased gun in the woods, fields or streams of

4 this state, except at, or on the way to or from, a regularly
5 used skeet, target or trap shooting ground;

6 2. Hunt, catch, kill, trap, injure or pursue with intent to
7 catch, kill, trap or injure any wild animals, wild birds, or any
8 other animal or bird protected under the provisions of this
9 chapter.

Sec. 7. *Possession of Wild Animals or Wild Birds, etc.* No
2 person shall have in his possession, except during the open sea-
3 son therefor, any wild animals, wild birds, fish or frogs pro-
4 tected under the provisions of this chapter, unless such pos-
5 session is in accordance with a permit issued by the director
6 under sections seven-a to seven-d, inclusive, of this article.

7 The director, or his duly authorized agents, may hunt, kill,
8 capture or maintain in captivity, at any time, any wild ani-
9 mals, wild birds, fish or frogs for the purpose of scientific re-
10 search, propagation, protection or distribution.

Sec. 7-a. *Permit for Scientific or Propagation Purposes.*
2 The director may issue a permit to a person to hunt, kill, cap-
3 ture or maintain in captivity wild animals, wild birds, fish or
4 frogs, or any of them, exclusively for scientific or propagation
5 purposes, but not for any commercial purposes. A permit

6 shall be issued only upon written application to the director
7 setting forth at least :

8 1. The number and kind of animals, birds, fish or frogs to
9 be taken ;

10 2. The purpose and manner of taking ;

11 3. The name and residence of the person applying for the
12 permit.

13 A fee of one dollar shall accompany each application.

Sec. 7-b. *Permit for Keeping of Pets.* The director may
2 issue a permit to a person to keep and maintain in captivity
3 as a pet, a wild animal or wild bird that has been acquired
4 from a commercial dealer or during the legal open season. A
5 permittee shall, upon the request of the director, furnish a de-
6 tailed list of wild animals or wild birds kept under authority
7 of the permit.

Sec. 7-c. *Permits for Roadside Menageries.* The director
2 may issue a permit for the keeping and maintaining in cap-
3 tivity of wild animals, wild birds, fish or frogs as a roadside
4 menagerie. A permit shall not be issued unless :

5 1. The animals, birds, fish or frogs have been purchased
6 from a licensed commercial dealer, either within or without

7 the state, or have been taken during the legal open season in
8 this state;

9 2. The director is satisfied that provisions for the housing
10 and care of wild life to be kept in captivity and for the pro-
11 tection of the public are proper and adequate.

12 A fee of fifteen dollars shall accompany each application for
13 such permit.

14 The director shall adopt and enforce reasonable rules and
15 regulations for the housing, care, treatment, feeding and sani-
16 tation of animals, birds, fish or frogs kept in a roadside
17 menagerie, and for the protection of the public against injury
18 by them.

Sec. 7-d. Permits; Expiration and Revocation; Sales Under.

2 A permit issued in accordance with sections seven-a to seven-c,
3 inclusive, of this article, shall expire on the thirty-first day of
4 December following the date of issue, and may be revoked by
5 the director for cause. A permittee shall not sell or barter any
6 animals, birds, fish or frogs, taken or held under authority of
7 the permit, without the prior written permission of the di-
8 rector: *Provided, however,* That a permittee under this sec-
9 tion shall have the right to sell or transfer to his successor

10 any roadside menagerie which he has been authorized to
11 operate.

Sec. 7-e. *Dealers in Furs and Pelts; Licenses and Permits;*
2 *Reports to Director; Revocation of License.* A person shall not
3 buy or deal in raw furs, pelts or skins of fur-bearing animals
4 unless licensed so to do in accordance with this section.

5 The director may issue licenses for buying or dealing in raw
6 furs, pelts, or skins or fur-bearing animals as follows:

7 1. A resident county license, which shall apply only to the
8 county or counties designated on the license and shall be is-
9 sued only to persons who have been bona fide residents of this
10 state for a period of at least six months prior to the date of
11 application, and of a county in which the privilege is to be
12 exercised. A license shall apply to the county for which is-
13 sued and to such adjacent counties as are designated in the
14 application for the license. A fee of one dollar for each
15 county shall accompany the application.

16 2. A resident state-wide license, which shall apply to all
17 counties in the state and shall be issued only to persons who
18 have been bona fide residents of this state for a period of at
19 least six months prior to the date of application. A fee of

20 ten dollars shall accompany the application.

21 3. A non-resident state-wide license, which shall apply to all
22 counties in the state and shall be issued only to non-residents.

23 A fee of fifty dollars shall accompany the application.

24 4. An agent's permit, which shall apply to a person em-
25 ployed by a licensee under (1), (2), or (3) above, to buy or
26 deal as an agent of the licensee other than at the place of busi-
27 ness of the licensee. A fee of two dollars and fifty cents for
28 each such agent shall accompany the application.

29 A license or permit shall expire on the last day of the calen-
30 dar year during which it was issued. Fees collected under
31 this section shall be paid into the state treasury forthwith in
32 the same manner, and shall be credited to the same fund, as
33 hunting and fishing license fees.

34 A licensee under this section shall, on or before April first
35 of each year, make an annual report to the director with re-
36 spect to the number and kind of furs purchased. The report
37 shall be in the form and shall contain such information as the
38 director may prescribe. Failure or refusal to make the re-
39 port as required by the director shall be cause for revocation
40 of, or refusal to renew, the license.

41 A license or permit issued under this section may be revoked
42 for cause.

Sec. 8. *Open Seasons and Bag Limits; Publication;*

2 *Change or Suspension of Open Seasons; Sectional Meetings.*

3 The director shall, by regulation, fix the open seasons with
4 respect to wild animals, fur-bearing animals, wild birds, fish
5 and frogs. He may prescribe different open seasons of varying
6 length in the several counties of the state. The director shall fix
7 the open seasons for hunting and fishing in the several counties
8 of the state as soon as possible after the first of each calendar
9 year. Open seasons so fixed shall be published, upon determin-
10 ation, in four newspapers of general circulation throughout
11 the state at least once each week for two successive weeks.

12 The director may :

13 1. When he finds such action necessary to protect the
14 forests or the wildlife of the state, change the bag limits on
15 wild animals, wild birds, fur-bearing animals, fish and frogs.
16 Before a change becomes effective, the director shall give no-
17 tice by publication of the order in two newspapers of general
18 circulation throughout the state, once each week for two suc-
19 cessive weeks, with the last publication not later than two

20 weeks prior to the date the change becomes effective;

21 2. Omit or suspend for a fixed and definite period, or
22 change the date of open seasons for the catching of fish in a
23 stream or part of a stream in this state. The order shall
24 definitely fix the stream, or part thereof, by a proper descrip-
25 tion. Before the suspension becomes effective, the director
26 shall give notice by publication of the order once each week
27 for two successive weeks in a newspaper of the county in which
28 the stream is located;

29 3. Omit, limit, or suspend for a fixed and definite period
30 open seasons for the killing of any wild animals or wild birds
31 in any county. The order shall state the species and kinds
32 of birds or animals and the period of limitation or suspension.
33 Before the order becomes effective the director shall give no-
34 tice by publication of the order in four newspapers of general
35 circulation throughout the state, once each week for two suc-
36 cessive weeks, with the last publication at least two weeks prior
37 to the effective date of the order.

38 For the purpose of giving the various sections of the state
39 an opportunity to be heard concerning open seasons for their
40 respective areas, the director shall, and before such seasons

41 are fixed for the various counties of the state as soon as practicable after the beginning of each calendar year, hold meetings at
42 Beekley, Charleston, Elkins, Martinsburg, Morgantown and
43 Parkersburg.

Sec. 8-a. *Suspension of Hunting Season in Emergencies.*

2 The director may, with the prior approval of the governor, in
3 case of an emergency such as drought, forest fire hazard, or
4 epidemic of disease among wild animals or wild birds suspend
5 open hunting seasons upon any or all wild animals or wild
6 birds in any or all counties of the state. The suspension shall
7 continue during the existence of the emergency and until
8 rescinded by the director. The director may, with prior approval of the governor, add the period of suspension to the
9 open season if conditions requiring the suspension have abated.
10 Suspension of open seasons may be made upon twenty-four
11 hours' notice. Notice shall be given by announcement through
12 all licensed radio broadcasting stations in the state, and by
13 delivery of a copy of the order of suspension to the associated
14 press at the state capital and any seasons so suspended with
15 prior approval of the governor shall be reopened through
16 notification in the same manner.

Sec. 8-b. *Penalties under Sections Eight and Eight-a.* A person who fishes, or who hunts or kills, in violation of an order of the director issued in accordance with section eight or section eight-a of this article shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section fourteen of this article.

Section 10. *Sale of Game, Birds, Fish or Frogs.* No person shall purchase or offer to purchase, sell or offer to sell, expose for sale, or have in his possession for the purpose of sale :

1. Any, or any part of, elk, deer, squirrel, rabbit, wild turkey, ruffed grouse, quail, woodcock, wild duck, wild goose, wild swan, wild brant, snipe, sandpiper, or any of the song or insectivorous birds of the state ; except as permitted by section twelve-a, article three of this chapter : *Provided, however,* That the sale of rabbits shall not be prohibited in Wayne County.

2. Any, or any part of, trout of any species, salmon of any species, pike of any species, pike, perch or wall-eyed pike, bass of any species, perch of any species, pickerel of any species, or any frog, caught or captured within this state, except as permitted by section thirteen, article six of this chapter.

17 No person, including a common carrier, shall (except as per-
18 mitted by section thirteen, article six of this chapter) trans-
19 port, carry or convey, or receive for such purpose, any of the
20 animals or birds, or of the fish or frogs, listed under (1) and
21 (2) above, caught or killed in this state, if such person
22 knows, or has reason to believe, that such animals, birds,
23 fish or frogs have been or are to be sold.

24 The selling or exposing for sale, having in possession for
25 sale, transporting or carrying in violation of this section
26 shall each constitute a separate offense.

27 The director may extend the application of this section
28 to animals, birds, fish or frogs not listed under (1) or (2)
29 above, if he finds that such additional species require the
30 protection accorded by this section.

31 The provisions of this section shall not apply to animals,
32 birds, fish or frogs raised under the authority of a license
33 issued in accordance with section twelve-a of this article.

Sec. 12-a. *License for Private Game Preserve for Purpose*
2 *of Propagating Game for Commercial Purposes.* The director
3 may issue a license for the operation of a private game pre-
4 serve for propagation of game animals or game birds for

5 commercial purposes. The license shall authorize the holder
6 to breed or raise game as specified by the license and to sell
7 the same dead or alive, or to sell the eggs of game birds, in
8 accordance with regulations prescribed by the director.

9 A license issued under this section shall expire on the
10 last day of the calendar year during which it was issued.
11 The annual license fee shall be five dollars.

12 Application for a license under this section shall design-
13 nate the property whereon the preserve is to be established.
14 Before the license is issued, the director shall determine
15 that the property is properly enclosed, that the provisions
16 for housing and sanitation are proper and adequate, and
17 that the safety of the public is protected.

18 A licensee shall, before game of any kind, raised under
19 the authority of a license, is shipped out of the state, offer
20 the game for sale to the director. The director shall, with-
21 in ten days, advise the licensee whether he will purchase.
22 If the director does not purchase, the game may be shipped
23 to another state.

24 The director may make such rules and regulations as he
25 may find necessary and proper for the sale of game animals

26 and birds raised by a licensee.

27 The director may revoke a license issued under this sec-
28 tion for cause.

Article 4. Game and Fur-bearing Animals.

Section 1. Game and Fur-bearing Animals Defined; Other

2 *Species; Publication.* For the purpose of this chapter, the
3 following are game animals: Elk, deer, rabbits, gray, black and
4 fox squirrels and raccoons; and the following are fur-bearing
5 animals: opossums, beavers, otter, mink, raccoons, muskrat,
6 skunk and red fox.

7 Whenever the director finds that the application of this
8 chapter is necessary to the protection and preservation of
9 any other species of wild animals, he may, by formal order,
10 include such other species within the definition of game
11 or fur-bearing animals, as the case may be, for the pur-
12 poses of this chapter. The director shall give notice of this
13 order by publication once each week for two successive
14 weeks in two newspapers of general circulation throughout
15 the state.

Sec. 3. Hunting Deer; Notice to Game Protector of Acci-

2 *dental Killing, etc.; Official Tag for Legally Killed Deer;*
3 *Penalties.* No person shall hunt, capture or kill any deer in

4 this state except in open season. A licensed person may
5 hunt, capture or kill a buck deer with one or both horns
6 branched, but only during the open season fixed by the
7 director for the county concerned. The provisions of this
8 section shall not apply to a licensed owner of deer which
9 are kept in a park or field sufficiently enclosed reasonably
10 to prevent escape therefrom.

11 No person shall :

12 1. Kill more than one deer in any one open season of
13 the year ;

14 2. Hunt, pursue, shoot or kill any fawn, doe, or deer
15 other than a buck with one or both horns branched ;

16 3. Have in his possession the fresh skin or any other part
17 of a doe, fawn, or illegally killed buck ;

18 4. Chase or hunt deer with dogs, or permit his dogs to
19 hunt or chase deer ;

20 5. Kill a deer that is being chased by, or is fleeing from dogs ;

21 6. Catch, capture or kill any deer by means of poison baits,
22 salt lick, natural or artificial, trap or snare, or devices of any
23 kind ;

24 7. Hunt, pursue, catch or kill a deer between sunset on one

25 day and sunrise of the next day;

26 8. Kill or wound a deer while the deer is in a stream,
27 lake or pond;

28 9. Participate further in the hunt after he has killed his
29 legal limit of deer if he has firearms of any description in his
30 possession;

31 10. Hunt deer with a shotgun using ammunition loaded with
32 more than one solid ball, or rifles using rim-fire ammunition
33 of less than twenty-five calibre.

34 A person who kills or wounds a deer by accident, such as
35 by striking it with an automobile, or has knowledge that a
36 deer is in distress for any reason whatever, shall promptly
37 notify a game protector or other proper officer of the fact.

38 Any person who kills a deer during the open season shall
39 securely attach to its head an official tag furnished by the
40 director. The director shall furnish such official tags and
41 shall distribute them to game protectors, county clerks, sher-
42 iffs, state police, and other qualified officers. The tag shall
43 specify the date and place of killing, the person by whom
44 killed, the person hunting with him at the time, and the
45 length and branching of horns or antlers. The person who

46 killed the deer shall mail a duplicate of the tag to the director
47 within five days after the deer is killed. The deer shall not
48 be removed from the county where killed until the tag is at-
49 tached, and is checked and countersigned by a game protector
50 or other duly authorized officer or agent of the director.

51 Any person who violates this section shall be guilty of a
52 misdemeanor and, upon conviction, shall be fined not less than
53 one hundred nor more than three hundred dollars, and con-
54 fined in the county jail not less than thirty days, nor more
55 than ninety days: *Provided, however,* That any person who
56 kills a deer illegally during the open season therefor and
57 voluntarily reports same to a game protector or other officer
58 shall be fined not less than fifty dollars nor more than one
59 hundred dollars.

Sec. 3-a. *Capture or Killing of Dogs Chasing Deer.* A game
2 protector, or other duly authorized officer, shall take into pos-
3 session any dog known to have hunted or chased deer and shall
4 advertise in a newspaper of general circulation in the county,
5 that he has the dog in his possession, giving a description of the
6 dog and stating the circumstances under which it was taken.

7 He shall hold the dog for a period of ten days, and shall
8 report the facts in full to the director.

9 If, within ten days, the owner does not claim the dog, the
10 game protector or other officer shall destroy it. In this event
11 the cost of keep and advertising shall be paid by the director.

12 If, within ten days, the owner claims the dog, he may
13 repossess it on the payment of the cost of advertising and
14 the cost of keep, not exceeding fifty cents per day.

15 A game protector, or other duly authorized officer, after
16 a bona fide but unsuccessful effort to capture dogs detected
17 chasing or pursuing deer, may kill such dogs.

Sec. 5. *Hunting Squirrels.* No person shall, in any county
2 of this state, hunt, capture or kill, grey, black or fox squirrels,
3 or have in his possession a squirrel or any part thereof, in-
4 cluding fresh pelts, except during the open season for that
5 county, as fixed by the director.

Sec. 6. *Hunting or Possession of Fur-bearing Animals.* No
2 person shall, in any county of this state, hunt, capture, trap or
3 kill any fur-bearing animals as defined by section one of this
4 article, or have in his possession any fur-bearing animal, or
5 part thereof, except during the open season for that county.

6 A person shall not have in his possession the fresh skin, or part
7 thereof, of any fur-bearing animal within the period beginning
8 thirty days after the end of the open season and ending with
9 the first day of the next succeeding open season for such
10 animal in that county.

Sec. 7. This section is hereby repealed.

Sec. 8. This section is hereby repealed.

Sec. 9. This section is hereby repealed.

Sec. 10. This section is hereby repealed.

Sec. 11. *Hunting Red Foxes; Chasing for Sport.* No person
2 shall pursue or injure a red fox in any county of this state,
3 except during the open season for that county: *Provided, how-*
4 *ever,* That the red fox may be chased for sport only, in the
5 counties wherein the red fox is protected; but a person may, at
6 any time, pursue, capture or kill, except by means of poison,
7 a red fox upon his own land, or upon lands as to which he is a
8 bona fide tenant or resident. A person shall not blow up a den
9 or burrow of red foxes in which a red fox has taken refuge.

Sec. 12. *Unlawful Methods of Hunting.* No person shall,
2 at any time:

3 1. Hunt wild animals at night by the use of a spot or jack

4 light, or a light of any kind, except such animals as take
5 refuge in trees;

6 2. Destroy or cut down a tree in which animals den or
7 take refuge, merely for the purpose of taking such animals;

8 3. Kill wild animals or wild birds from an automobile,
9 or other land conveyance, or from a motor-driven craft upon
10 any of the waters of the state.

11 4. Kill squirrels from a craft upon any waters of the state.

Sec. 14. *Traps and Snares.* No person shall, at any time,
2 set or maintain a snare, or other trap upon the improved or
3 enclosed lands of another without the express permission of
4 the owner or tenant of such lands. A person shall not set
5 or maintain a steel or spring bear trap, or a deadfall upon any
6 lands not his own, and then only on lands enclosed by a fence.

Article 5. Birds and Fowls.

Section 2. *Hunting Migratory Game Birds.* No person shall
2 hunt, pursue, catch, capture or kill any wild duck, goose, brant,
3 plover, snipe, woodcock, ortolan, sandpiper, or any other
4 migratory game bird included in the terms of convention
5 between the United States and Great Britain for the pro-
6 tection of such birds, during the closed season prescribed

7 for such birds by federal regulation adopted by the Secre-
8 tary of Agriculture and approved by the President of the
9 United States pursuant to the authority conferred by the
10 act of Congress entitled "An act to give effect to the con-
11 vention between the United States and Great Britain for the
12 protection of migratory birds, concluded at Washington,
13 August sixteenth, nineteen hundred sixteen, and for other
14 purposes," and known by the short title of the "Migratory
15 Bird Treaty Act," or by any amendment thereof.

Sec. 4. *Hunting Wild Turkeys; Report to Director.* No
2 person shall, in any county of this state, hunt, pursue, capture,
3 wound, or kill any wild turkey, or have in his possession any
4 wild turkey, or part thereof, except during the open season for
5 that county. No person shall, during the open season, hunt,
6 pursue, catch or kill wild turkey between sunset of one day
7 and sunrise of the next day or kill more than one wild turkey
8 in any open season.

9 A person who kills a wild turkey in this state shall report
10 the kill to the director in writing, within twenty days,
11 setting forth the date, time and place where killed, and
12 whether the turkey was male or female.

Article 6. Fish and Other Aquatic Life.**Section 1. *Game Fish Defined; Open Seasons and Creel***

2 *Limits; Special Regulations.* For the purpose of this chapter

3 the following are game fish: black bass, green bass, white bass,

4 willow bass, trout, white salmon, jack salmon, jack fish, wall-

5 eyed pike, muskallonge, pickerel and perch.

6 The director, for the purpose of protecting and conserving

7 the fish and other aquatic animal life of the state, as provided

8 by section eight, article three of this chapter, may establish

9 open and closed seasons and creel limits on any or all fish,

10 and regulate the taking and use of all other aquatic life.

11 But water dogs and big salamander shall not be protected

12 at any time.

13 The director may prescribe and enforce special regulations

14 to apply to a stream or any part thereof, that he places under

15 observation for scientific purposes. Regulations may in-

16 clude the filling out and filing of special reports by persons

17 fishing in the stream.

Sec. 2. *Fishing Out of Season Prohibited.* No person shall

2 in any county of this state fish for, catch, take, kill, destroy

3 in any manner, or have in his possession, any fish or other

4 aquatic life except during the open season fixed by the di-
5 rector for that county, or for the streams, as the case
6 may be.

Sec. 3. This section is hereby repealed.

Sec. 4. *Minimum Lengths of Fish and Creel Limits.* The
2 director shall, by regulation, prescribe minimum lengths and
3 creel limits for the various species and kinds of fish of the state.
4 Fish less than the minimum length so prescribed shall be re-
5 turned to the water, with as little injury as possible, immedi-
6 ately after being caught.

Sec. 5. *Unlawful Devices and Methods of Fishing.* No
2 person shall kill, catch, or attempt to kill or catch any fish at
3 any time, by:

4 1. The use of seines, nets or traps, or devices of like
5 nature without the written consent of the director. A person
6 may use a seine not more than six feet in length, nor more
7 than four feet in depth for securing minnows for angling,
8 other than minnows classed by the director as game fish. A dip
9 net so used shall not exceed thirty-six square feet in overall
10 area, and its mesh shall not be smaller than one-quarter inch;

11 2. Draining water out of any pool, pond or stream with
12 intent to take or injure fish;

13 3. The use of dynamite, or any like explosive or ex-
14 plosive mixture;

15 4. The use of a poisonous drug or substance;

16 5. The use of electricity or lime;

17 6. The use of firearms;

18 7. Giggging, spearing, gaffing, or grappling, except the
19 director may permit giggging of non-game fish in a stream
20 under the supervision of a representative of the director,
21 other than during the months of April, May and June;

22 8. Any other means other than by rod, line and hooks,
23 with natural or artificial lures.

24 A person shall not sell or purchase a seine more than six
25 feet in length without the prior written permission of the
26 director.

27 The provisions of this section shall not prevent the director
28 from using such methods of catching fish as he shall find
29 necessary and proper for the purposes of propagation and
30 protection.

Sec. 17. *Offenses Generally; Dynamiting or Poisoning Fish;*

2 *Penalties.* A person violating any provision of this article,
3 the punishment for which is not prescribed, shall be guilty
4 of a misdemeanor, and upon conviction thereof, shall, for
5 each offense, be fined not less than twenty nor more than one
6 hundred dollars, or confined in jail not exceeding thirty days
7 or both, or both such fine and imprisonment in the court's
8 discretion.

9 Dynamiting of fish or the killing of fish by any like ex-
10 plosive or explosives or poisonous mixture placed in stream
11 or other waters of this state for the purpose of killing or
12 taking fish, shall be a felony, punishable upon conviction
13 thereof by imprisonment in the penitentiary for not less
14 than six months, nor more than three years, and in the
15 court's discretion, by an additional penalty of not more
16 than five hundred dollars fine.

Article 7. Hunting and Fishing Licenses.

Section 1. *Necessity for License.* No person above the age
2 of fifteen years, who is a citizen of the United States, shall
3 at any time, hunt, pursue, trap for, kill or catch any wild
4 animals, or wild birds, or fish, kill or catch any fish or frogs,
5 of any kind whatsoever, without first having secured a

6 license, and then only during the respective open seasons.
7 A bona fide resident landowner of this state, or his resident
8 children, or his bona fide resident tenant, may hunt, kill,
9 pursue or catch any of the game animals and game birds or
10 fish for, capture or kill any of the fish or frogs of this state
11 on his own land during the open season therefor in accord-
12 ance with regulations and provisions of law applying to
13 such hunting and fishing, without obtaining a license so to
14 do, if said land shall not have been¹² designated and made, in
15 manner provided by law, a state game refuge or reserve.
16 No person under the age of fifteen years shall hunt upon
17 the lands of another unless accompanied by a licensed adult.
18 A resident or non-resident member of any club or organiza-
19 tion or association of persons owning or leasing a game or
20 fish reserve in this state shall not hunt or fish therein without
21 securing a license.

Sec. 2-h. *Duplicate Licenses.* Whenever any license is
2 lost the person to whom the license was issued may make
3 application for a duplicate license to the county clerk from
4 whom the license was purchased. The application shall be

5 accompanied by a fee of fifty cents and an affidavit setting
6 forth the circumstances.

7 A county clerk issuing a duplicate license shall indicate on
8 the face of the license and on the stub that it is a "duplicate"
9 and shall also show the original license number thereon.

10 The county clerk shall report the duplicate issued and attach
11 the said affidavits to his regular monthly license report, to-
12 gether with the fees so collected.

Sec. 3. *Application For; to Whom Made.* A person eligi-
2 ble for a license under sections two-a to two-f, inclusive, of
3 this article shall make application as follows:

4 1. A resident of this state shall make application to the
5 clerk of the county court in any county of the state;

6 2. A non-resident of this state may make application to
7 the clerk of the county court of any county in this state;

8 3. A citizen of Ohio applying for a class E license shall
9 make application to the clerk of the county court of a county
10 bordering upon the State of Ohio;

11 4. An alien, making application for a class F license,
12 shall first apply to the director for the issuance of a permit
13 to obtain a class F license. The director shall issue the

14 permit if he is satisfied that the applicant is legally entitled
15 to a class F license and has bona fide intentions to exercise
16 the license in accordance with the provisions of this chapter.
17 After issuance of the permit an alien may apply to the clerk
18 of the county court of any county in the state for the
19 issuance of a class F license in the same manner as a non-
20 resident of this state. A permit shall remain in force until
21 revoked.

Sec. 11. *Allocation of Funds for Forests and Refuges.* The
2 director shall each year, allocate ten percent of the total
3 revenue obtained from all classes of hunting and fishing
4 licenses for the purchase of lands and the maintenance of
5 state forests, and game and fish refuges. Not more than
6 fifty percent of the amount so allocated may be expended
7 for patrolling such lands, protecting wild game and fish
8 thereon, the improvement of wildlife habitat, and other
9 necessary maintenance and operation.

**Article 8. State Forests, Game and Fish Refuges and Public
Shooting Grounds.**

Section 1. *Acquisition of Suitable Lands by Director;
2 Maintenance Thereof as State Forests or Game and Fish*

3 *Refuges.* The director may with the consent of the governor
4 purchase, in the name of the state, out of funds set aside for
5 the purpose, or out of any unused funds in his hands, lands
6 suitable for forest culture; state forests; fish refuges; game
7 refuges or public shooting grounds. Purchase may be made on
8 terms requiring not less than one-third of the purchase price
9 to be paid at the time of the conveyance with the residue to be
10 paid in not less than one or two years after date. Without the
11 consent of the governor not more than five dollars per acre
12 shall be paid for lands to be used as game refuges and public
13 shooting grounds. The commission may also receive the gift of
14 such lands by deed or bequest. In all cases of transfers to
15 the state, the fee simple title shall pass to the state, except
16 for the reservation of minerals and mining rights to remove
17 such minerals.

18 The director shall protect, preserve and maintain lands so
19 acquired as state forests, game or fish refuges or public shoot-
20 ing grounds, for the propagation and distribution of forest
21 trees and for the protection, propagation and distribution of
22 the fish, wild animals, and birds thereon. He may prescribe
23 and enforce rules and regulations consistent with the laws of

24 the state, to carry out that objective. The director may pre-
25 scribe and enforce rules prohibiting all fishing and hunting,
26 pursuing, catching, trapping, capturing and killing of fish,
27 wild animals and birds upon such state forests, and game and
28 fish refuges, for such length of time as he may deem proper.

29 The director may provide special regulations and open sea-
30 sons for the taking of any wild birds, wild animals or fish on
31 such lands in the manner provided by article three, section
32 eight of this chapter.

Sec. 2. *Establishment of Game Refuges and Shooting*

2 *Grounds Thereon; Leasing Lands Therefor.* The director shall
3 establish and maintain game refuges and public shooting
4 grounds on lands purchased, leased, or given for this purpose.
5 Upon such state-owned forests, game refuges or other state-
6 owned or leased lands under its administration, or lands pur-
7 chased from funds derived from the sale of hunting and fish-
8 ing licenses for the establishment of game refuges and public
9 shooting grounds, or upon lands purchased in cooperation
10 with any agency of the federal government or leased there-
11 from or managed cooperatively therewith, the director shall
12 regulate public shooting, and limit the number of game birds,

13 game animals or game fish, which may be taken from such
14 areas open to public shooting in any year. The director may
15 establish special open seasons on any such lands, and may close
16 any such areas, or parts thereof, to public shooting.

17 It shall be unlawful at any time to hunt, pursue or molest in
18 any manner, any animals, birds or fowls on that section of any
19 game refuge and public shooting grounds designated as the
20 game refuge, except that any legally constituted game pro-
21 tector or game refuge keeper or warden may hunt, pursue,
22 catch and kill in any manner predatory animals and preda-
23 tory birds thereon.

24 On the boundary of each state game refuge, there shall be
25 posted in conspicuous places, not more than one hundred and
26 fifty yards apart, notices bearing the following words: "State
27 game refuge—hunting is unlawful," and such other informa-
28 tion or rules and regulations as the director may deem advis-
29 able. On the boundary line of the area surrounding any such
30 refuge which has been established as a public shooting grounds,
31 the director shall have posted in conspicuous places, not more
32 than one hundred and fifty yards apart, notices bearing the
33 following words: "Public shooting grounds", together with

34 information as to when hunting is legal on such tract.

35 The director shall also have the power to lease lands for
36 this purpose for not less than ten year periods, the rental
37 price thereof not to be more than the amount of the taxes
38 on such land, and in no event to exceed ten cents per acre
39 per annum.

Sec. 3. Game Refuges on Lands not Owned by the State.

2 The director may, with the consent of the owner, set apart any
3 tract of land of one hundred acres or more in the state as a
4 game refuge. When such lands have been set apart, the
5 director shall manage them in the same manner and for the
6 same purposes as game refuges owned by the state. Such lands
7 not owned by the state and now operated by the director as
8 game refuges shall, at the expiration of the agreement, be
9 reorganized as game refuges or be discontinued.

Sec. 4. This section is hereby repealed.

**Article 8-a. Emergency Conservation Work; Cooperation with
Federal Government.**

Section 9. Restaurants and Other Facilities at Recreational

2 *Areas.* The director may, in connection with recreational areas
3 in state parks and state forests, operate commissaries, restau-

4 rants and other establishments for the convenience of the
5 public. For these purposes the director may purchase equip-
6 ment, foodstuffs, supplies and commodities, according to law.

Article 9. Forests.

Section 1. *Powers of Directors Over Forests; State Forester
2 and Local Forest Protectors; Compensation.* The director
3 shall have power and authority to protect the forests of the
4 state against injury or destruction by fire, fungus or other
5 disease, to study and make recommendations as to the proper
6 methods for such protection and for forest culture, and to
7 disseminate such information throughout the state. For these
8 purposes the director shall appoint a state forester, who shall
9 be a person duly qualified with technical forestry training and
10 a graduate of a reputable school of forestry, with actual exper-
11 ience in handling forestry field organization.

12 The director shall appoint forest protectors for such forest
13 fire districts as he designates. Local forest protectors shall
14 hold office during the pleasure of the director. The director
15 shall fix the salary to be paid to the state forester, and the
16 compensation to be paid to local forest protectors and other
17 employees.

Sec. 4-a. *Forest Fire Seasons; Permits for Setting Fires;*

2 *Invalidity and Suspensions of Permits.* The period of each
3 year between March twentieth to May twentieth and October
4 fifteenth to December fifteenth are hereby designated as forest
5 fire seasons. No person shall, during the fire season, set on fire
6 or cause to be set on fire any forest land, grass, stubble, brush
7 or slash, either his own or the property of another, without
8 first securing a written or printed permit from the director or
9 his duly authorized agents. The director may prescribe the
10 conditions upon which the permit will be issued and the pre-
11 cautions to be observed in setting such fires.

12 This section shall not be construed to require a permit for
13 the burning of grass, stubble, brush or slash in small quanti-
14 ties and under adequate protection outside of, and not within,
15 three hundred feet of any forest land. If any such burning
16 results in the escape of fire and injury to the property of
17 another such escape shall be prima facie evidence that the
18 burning was not safe and was in violation of this section.

19 The director may refuse, revoke or postpone permits when
20 necessary to prevent danger to life or property. A permit ob-
21 tained through wilful misrepresentation shall be invalid. If

22 the director finds that conditions in any locality of the state
23 so require, he may suspend any or all permits issued under this
24 section and prohibit absolutely the use of fires.

Sec. 5. *Failure of Person to Extinguish Fire Started or*
2 *Used by Him; Penalty; Starting Fire on Lands of Another;*
3 *Penalty; Throwing Lighted Matches, etc., on Forest Land*
4 *During Fire Season.* Any person who, by himself, or by his
5 servants, agents or guides, or as the servant, agent or guide
6 of any other person, shall build any fire, or use an abandoned
7 fire, in a field, public or private road, or adjacent to, or in any
8 woods or forest in this state, shall, before leaving such fire,
9 totally extinguish the same; and upon failure to do so, such
10 person or persons shall be deemed guilty of a misdemeanor,
11 and, on conviction thereof, shall be fined not less than twenty-
12 five dollars nor more than one hundred dollars and the cost of
13 the prosecution, and, upon default in paying such fine and
14 costs, shall be confined in the county jail not more than ninety
15 days unless such fine and costs be sooner paid. A person who,
16 in the course of clearing property of brush, undergrowth,
17 leaves, dry grass or other harmful debris of any kind, uses
18 incendiary means on the property of another, or who for any

19 purpose wilfully starts a fire on the property of another, and
20 as a result causes damage or destruction to the natural re-
21 sources of such property or of adjacent property, shall be
22 guilty of a felony, and upon conviction shall be fined not less
23 than one hundred nor more than five hundred dollars, or
24 imprisoned for not more than one year, or both, in the dis-
25 cretion of the court.

26 A person shall not during the fire season throw any lighted
27 matches, cigars, cigarettes, fire crackers, or other lighted ma-
28 terial on any forest land, private road, public highway or
29 railroad right-of-way within this state.

Sec. 6-a. Stationary Engines; Escape of Fire From; Penalty.

2 During the fire season of each year no person, firm or corpor-
3 ation shall use or operate a saw-mill, steam shovel or other
4 stationary engine which is not provided with an adequate
5 spark arrester and an ash pan kept in constant use and repair,
6 within one-eighth of a mile of any forest land. Escape of fire
7 from such an engine shall be prima facie evidence that such
8 appliance was not maintained properly in compliance with
9 this section. A person, firm or corporation violating this sec-
10 tion shall be guilty of a misdemeanor, and, upon conviction

11 thereof, shall be fined not less than twenty nor more than two
12 hundred dollars.

Article 10. General Criminal Provisions.

Section 1-a. *Property Used for Illegal Purposes; Seizure;*

2 *Disposition.* A game protector or other duly authorized officer,
3 when he takes a person into custody for violation of a pro-
4 vision of this chapter, shall also take and impound any
5 property found in the possession of the accused and susceptible
6 of use in committing the offense of which the person is
7 accused. Such property shall include firearms, fishing equip-
8 ment, traps, boats, dogs, or any other device, appliance or
9 conveyance.

10 If the accused is acquitted the property seized shall be
11 returned. If the accused is convicted, and pays the fine and
12 costs assessed, the property seized shall be returned, but if
13 the accused fails to pay the fine and costs, the property shall
14 be sold at public auction in such manner as the director may
15 prescribe. The proceeds of the sale shall be applied toward
16 the payment of the fine and costs. The remainder, if any,
17 shall be paid to the owner of the seized property.

18 Whenever a person is convicted of a violation of this
19 chapter a second time, the property seized at the time of
20 arrest, shall in any case be declared forfeited to the state
21 and shall be sold in the manner provided by this section.

22 Property seized, the use of which is forbidden by this
23 chapter, or which is unfit or unsafe for further use, shall be
24 declared forfeited to the state and shall be disposed of by the
25 director.

Sec. 4. *Conspiracy to Violate Game or Fish Laws; With-*
2 *holding Information; Obstructing Officers; Penalty; Pro-*
3 *visions of Act Severable.* A person who shields or conspires
4 with another in the commission of a game or fish violation or
5 who encourages a game or fish violation, or who, upon injury,
6 withholds information from the game protector or other officer,
7 or who hinders, obstructs, or interferes with, or attempts to
8 hinder, obstruct or interfere with a game protector, or other
9 officer in the performance of his duties herein shall be guilty of
10 a misdemeanor, and upon conviction shall be fined not less than
11 ten nor more than twenty-five dollars.

12 The provisions of this act shall be construed as severable,

13 and should any provision be held unconstitutional, or for any
14 other reason invalid, the remaining provisions shall not be
15 affected thereby.

16 All acts, or parts of acts in conflict with the provisions of
17 this act are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Wiseman

Chairman Senate Committee

Walter H. Walker

Chairman House Committee

Originated in the *Senate*

Takes effect *twenty days from* passage

Charles F. Smith

Clerk of the Senate

W. L. Hall

Clerk of the House of Delegates

Wm. M. R. Fox

President of the Senate

James E. Thomas

Speaker House of Delegates

The within.....this the.....

day of....., 1939.

Governor

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This cancelled copy received.
for