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HOUSE BILL NO. 990

House Amendments in [] — January 27, 2012

A *BILL to amend and reenact §§ 29.1-100 and 29.1-529 of the Code of Virginia, relating to the use of nonlethal control measures against elk.*

Patron Prior to Engrossment—Delegate Morefield

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That §§ 29.1-100 and 29.1-529 of the Code of Virginia are amended and reenacted as follows:**

§ 29.1-100. Definitions.

As used in and for the purposes of this title only, or in any of the regulations of the Board, unless the context clearly requires a different meaning:

"Bag or creel limit" means the quantity of game, fish or fur-bearing animals that may be taken, caught, or possessed during a period fixed by the Board.

"Board" means the Board of Game and Inland Fisheries.

"Closed season" means that period of time fixed by the Board during which wild animals, birds or fish may not be taken, captured, killed, pursued, hunted, trapped or possessed.

"Conservation police officers" means supervising officers, and regular and special conservation police officers.

"Department" means the Department of Game and Inland Fisheries.

"Director" means the Director of the Department of Game and Inland Fisheries.

"Firearm" means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material.

"Fishing" means taking, capturing, killing, or attempting to take, capture or kill any fish in and upon the inland waters of this Commonwealth.

"Fur-bearing animals" includes beaver, bobcat, fox, mink, muskrat, opossum, otter, raccoon, skunk, and weasel.

"Game" means wild animals and wild birds that are commonly hunted for sport or food.

"Game animals" means deer (*including all Cervidae*), bear, rabbit, fox, squirrel, bobcat and raccoon.

"Game fish" means trout (*including all Salmonidae*), all of the sunfish family (*including largemouth bass, smallmouth bass and spotted bass, rock bass, bream, bluegill and crappie*), walleye or pike perch, white bass, chain pickerel or jackfish, muskellunge, and northern pike, wherever such fish are found in the waters of this Commonwealth and rockfish or striped bass where found above tidewaters or in streams which are blocked from access from tidewaters by dams.

"Hunting and trapping" includes the act of or the attempted act of taking, hunting, trapping, pursuing, chasing, shooting, snaring or netting birds or animals, and assisting any person who is hunting, trapping or attempting to do so regardless of whether birds or animals are actually taken; however, when hunting and trapping are allowed, reference is made to such acts as being conducted by lawful means and in a lawful manner. The Board of Game and Inland Fisheries may authorize by regulation the pursuing or chasing of wild birds or wild animals during any closed hunting season where persons have no intent to take such birds or animals.

"Lawful," "by law," or "law" means the statutes of this Commonwealth or regulations adopted by the Board which the Director is empowered to enforce.

"Migratory game birds" means doves, ducks, brant, geese, swan, coot, gallinules, sora and other rails, snipe, woodcock and other species of birds on which open hunting seasons are set by federal regulations.

"Muzzleloading pistol" means a firearm originally designed, made or intended to fire a projectile (bullet) from one or more barrels when held in one hand and that is loaded from the muzzle or forward end of the cylinder.

"Muzzleloading rifle" means a firearm firing a single projectile that is loaded along with the propellant from the muzzle of the gun.

"Muzzleloading shotgun" means a firearm with a smooth bore firing multiple projectiles that are loaded along with the propellant from the muzzle of the gun.

"Nonmigratory game birds" means grouse, bobwhite quail, turkey and all species of birds introduced into the Commonwealth by the Board.

"Nuisance species" means blackbirds, crows, cowbirds, grackles, English sparrows, starlings, or those species designated as such by regulations of the Board, and those species found committing or about to

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59 commit depredation upon ornamental or shade trees, agricultural crops, wildlife, livestock or other
60 property or when concentrated in numbers and manners as to constitute a health hazard or other
61 nuisance. However, the term nuisance does not include (i) animals designated as endangered or
62 threatened pursuant to §§ 29.1-563, 29.1-564, and 29.1-566, (ii) animals classified as game or
63 fur-bearing animals, and (iii) those species protected by state or federal law.

64 "Open season" means that period of time fixed by the Board during which wild animals, wild birds
65 and fish may be taken, captured, killed, pursued, trapped or possessed.

66 "Pistol" means a weapon originally designed, made, and intended to fire a projectile (bullet) from
67 one or more barrels when held in one hand, and having one or more chambers as an integral part of or
68 permanently aligned with the bore and a short stock at an angle to and extending below the line of the
69 bore that is designed to be gripped by one hand.

70 "Possession" means the exercise of control of any wild animal, wild bird, fish or fur-bearing animal,
71 or any part of the carcass thereof.

72 "Properly licensed person" means a person who, while engaged in hunting, fishing or trapping, or in
73 any other activity permitted under this title, in and upon the lands and inland waters of this
74 Commonwealth, has upon his person all the licenses, permits and stamps required by law.

75 "Regulation" means a regulation duly adopted by the Board pursuant to the authority vested by the
76 provisions of this title.

77 "Revolver" means a projectile weapon of the pistol type, having a breechloading chambered cylinder
78 arranged so that the cocking of the hammer or movement of the trigger rotates it and brings the next
79 cartridge in line with the barrel for firing.

80 "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the
81 shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed
82 metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

83 "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from
84 the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a
85 fixed shotgun shell to fire through a smooth bore or rifled shotgun barrel either a number of ball shot or
86 a single projectile for each single pull of the trigger.

87 "Transportation" means the transportation, either upon the person or by any other means, of any wild
88 animal or wild bird or fish.

89 "Wildlife" means all species of wild animals, wild birds and freshwater fish in the public waters of
90 this Commonwealth.

91 § 29.1-529. Killing of deer [, elk] or bear damaging fruit trees, crops, livestock, or personal
92 property; wildlife creating a hazard to aircraft or motor vehicles.

93 A. Whenever deer [, elk] or bear are damaging fruit trees, crops, livestock or personal property
94 utilized for commercial agricultural production in the Commonwealth, the owner or lessee of the lands
95 on which such damage is done shall immediately report the damage to the Director or his designee for
96 investigation. If after investigation the Director or his designee finds that deer or bear are responsible for
97 the damage, he shall authorize in writing the owner, lessee or any other person designated by the
98 Director or his designee to kill such deer or bear when they are found upon the land upon which the
99 damages occurred. However, the Director or his designee shall have the option of authorizing ~~non-lethal~~
100 *nonlethal* control measures rather than authorizing the killing of ~~the~~ *elk or* bear, provided that such
101 measures occur within a reasonable period of time; and whenever deer cause damage on parcels of land
102 of five acres or less, except when such acreage is used for commercial agricultural production, the
103 Director or his designee shall have discretion as to whether to issue a written authorization to kill the
104 deer. The Director or his designee may limit such authorization by specifying in writing the number of
105 animals to be killed and duration for which the authorization is effective and may in proximity to
106 residential areas and under other appropriate circumstances limit or prohibit the authorization between
107 11:00 p.m. and one-half hour before sunrise of the following day. The Director or his designees issuing
108 these authorizations shall specify in writing that only antlerless deer shall be killed, unless the Director
109 or his designee determines that there is clear and convincing evidence that the damage was done by deer
110 with antlers. Any owner or lessee of land who has been issued a written authorization shall not be
111 issued an authorization in subsequent years unless he can demonstrate to the satisfaction of the Director
112 or his designee that during the period following the prior authorization, the owner or his designee has
113 hunted bear or deer on the land for which he received a previous authorization.

114 B. Subject to the provisions of subsection A, the Director or his designee may issue a written
115 authorization to kill deer causing damage to residential plants, whether ornamental, noncommercial
116 agricultural, or other types of residential plants. The Director may charge a fee not to exceed actual
117 costs. The holder of this written authorization shall be subject to local ordinances, including those
118 regulating the discharge of firearms.

119 C. Whenever wildlife is creating a hazard to the operation of any aircraft or to the facilities
120 connected with the operation of aircraft, the person or persons responsible for the safe operation of the

121 aircraft or facilities shall report such fact to the Director or his designee for investigation. If after
122 investigation the Director or his designee finds that wildlife is creating a hazard, he shall authorize such
123 person or persons or their representatives to kill wildlife when the wildlife is found to be creating such a
124 hazard. As used in this subsection, the term "wildlife" shall not include any federally protected species.

125 D. Whenever deer are creating a hazard to the operation of motor vehicle traffic within the corporate
126 limits of any city, the operator of a motor vehicle may report such fact to the Director or his designee
127 for investigation. If after investigation the Director or his designee finds that deer are creating a hazard
128 within such city, he may authorize responsible persons, or their representatives, to kill the deer when
129 they are found to be creating such a hazard.

130 E. Whenever deer are damaging property in a locality in which deer herd population reduction has
131 been recommended in the current Deer Management Plan adopted by the Board, the owner or lessee of
132 the lands on which such damage is being done may report such damage to the Director or his designee
133 for investigation. If after investigation the Director or his designee finds that deer are responsible for the
134 damage, he may authorize in writing the owner, lessee or any other person designated by the Director or
135 his designee to kill such deer when they are found upon the land upon which the damages occurred.
136 The Director or his designee also may limit such authorization by specifying in writing the number of
137 animals to be killed and the period of time for which the authorization is effective. The requirement in
138 subsection A of this section, that an owner or lessee of land demonstrate that during the period
139 following the prior authorization deer or bear have been hunted on his land, shall not apply to any
140 locality that conducts a deer population control program authorized by the Department.

141 F. The Director or his designee may revoke or refuse to reissue any authorization granted under this
142 section when it has been shown by a preponderance of the evidence that an abuse of the authorization
143 has occurred. Such evidence may include a complaint filed by any person with the Department alleging
144 that an abuse of the written authorization has occurred. Any person aggrieved by the issuance, denial or
145 revocation of a written authorization can appeal the decision to the Department of Game and Inland
146 Fisheries. Any person convicted of violating any provision of the hunting and trapping laws and
147 regulations shall be entitled to receive written authorization to kill deer or bear. However, such person
148 shall not (i) be designated as a shooter nor (ii) carry out the authorized activity for a person who has
149 received such written authorization for a period of at least two years and up to five years following his
150 most recent conviction for violating any provision of the hunting and trapping laws and regulations. In
151 determining the appropriate length of this restriction, the Director shall take into account the nature and
152 severity of the most recent violation and of any past violations of the hunting and trapping laws and
153 regulations by the applicant. No person shall be designated as a shooter under this section during a
154 period when such person's hunting license or privileges to hunt have been suspended or revoked.

155 G. The Director or his designee may authorize, subject to the provisions of this section, the killing of
156 deer over bait within the political boundaries of any city or town, or any county with a special late
157 antlerless season, in the Commonwealth when requested by a certified letter from the governing body of
158 such locality.

159 H. The parts of any deer or bear killed pursuant to this section or wildlife killed pursuant to
160 subsection C shall not be used for the purposes of taxidermy, mounts, or any public display unless
161 authorized by the Director or his designee. However, the meat of any such animal may be used for
162 human consumption. The carcass and any unused meat of any such animal shall be disposed of within
163 24 hours of being killed. Any person who violates any provision of this subsection is guilty of a Class 3
164 misdemeanor.

165 I. It is unlawful to willfully and intentionally impede any person who is engaged in the lawful killing
166 of a bear or deer pursuant to written authorization issued under this section. Any person convicted of a
167 violation of this subsection is guilty of a Class 3 misdemeanor.