

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

House Bill No. 4322

(By Delegates Talbott, Crosier, Romine,
Shaver, Hamilton, Azinger and Ireland)
[By Request of the Division of Natural Resources]



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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H. B. 4322

(BY DELEGATES TALBOTT, CROSIER, ROMINE,
SHAVER, HAMILTON, AZINGER AND IRELAND)
[BY REQUEST OF THE DIVISION OF NATURAL RESOURCES]

[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to hunting; adding coyote and fox to the list of species in which any color artificial light is permitted for hunting at night; removing redundant language relating to hunting while under the influence of alcohol; and referencing Class Y special crossbow hunting permits.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it
4 is plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take
6 or attempt to take, any live wild animal or wild bird out of its
7 den or place of refuge except as may be authorized by rules
8 promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light
10 in hunting, locating, attracting, taking, trapping or killing any
11 wild bird or wild animal, or to attempt to do so, while having
12 in his or her possession or subject to his or her control, or for
13 any person accompanying him or her to have in his or her
14 possession or subject to his or her control, any firearm,
15 whether cased or uncased, bow, arrow, or both, or other
16 implement or device suitable for taking, killing or trapping a
17 wild bird or animal: *Provided*, That it is lawful to hunt or
18 take coyote, fox, raccoon, opossum or skunk by the use of
19 artificial light subject to the restrictions set forth in this
20 subdivision. No person is guilty of a violation of this
21 subdivision merely because he or she looks for, looks at,
22 attracts or makes motionless a wild bird or wild animal with
23 or by the use of an artificial light, unless at the time he or she
24 has in his or her possession a firearm, whether cased or
25 uncased, bow, arrow, or both, or other implement or device
26 suitable for taking, killing or trapping a wild bird or wild
27 animal, or unless the artificial light (other than the head
28 lamps of an automobile or other land conveyance) is attached
29 to, a part of or used from within or upon an automobile or
30 other land conveyance.

31 Any person violating the provisions of this subdivision is
32 guilty of a misdemeanor and, upon conviction thereof, shall
33 for each offense be fined not less than \$100 nor more than
34 \$500 and shall be confined in jail for not less than ten days
35 nor more than one hundred days;

36 (4) Hunt for, take, kill, wound or shoot at wild animals or
37 wild birds from an airplane, or other airborne conveyance, an

38 automobile, or other land conveyance, or from a motor-driven
39 water conveyance, except as authorized by rules promulgated
40 by the director;

41 (5) Take any beaver or muskrat by any means other than
42 by trap;

43 (6) Catch, capture, take or kill by seine, net, bait, trap or
44 snare or like device of any kind any wild turkey, ruffed
45 grouse, pheasant or quail;

46 (7) Destroy or attempt to destroy needlessly or willfully
47 the nest or eggs of any wild bird or have in his or her
48 possession the nest or eggs unless authorized to do so under
49 rules promulgated by or under a permit issued by the director;

50 (8) Except as provided in section six of this article, carry
51 an uncased or loaded gun in any of the woods of this state
52 except during the open firearms hunting season for wild
53 animals and nonmigratory wild birds within any county of the
54 state unless he or she has in his or her possession a permit in
55 writing issued to him or her by the director: *Provided*, That
56 this section does not prohibit hunting or taking of unprotected
57 species of wild animals and wild birds and migratory wild
58 birds, during the open season, in the open fields, open water
59 and open marshes of the state;

60 (9) Have in his or her possession a crossbow with a
61 nocked bolt, a loaded firearm or a firearm from the magazine
62 of which all shells and cartridges have not been removed, in
63 or on any vehicle or conveyance, or its attachments, within
64 the state, except as may otherwise be provided by law or
65 regulation. Except as hereinafter provided, between five
66 o'clock postmeridian of one day and seven o'clock
67 antemeridian, eastern standard time of the day following, any
68 unloaded firearm or crossbow, being lawfully carried in

69 accordance with the foregoing provisions, may be so carried
70 only when in a case or taken apart and securely wrapped.
71 During the period from July 1 to September 30, inclusive, of
72 each year, the foregoing requirements relative to carrying
73 certain unloaded firearms are permissible only from eight-
74 thirty o'clock postmeridian to five o'clock antemeridian,
75 eastern standard time: *Provided*, That the time periods for
76 carrying unloaded and uncased firearms are extended for one
77 hour after the postmeridian times and one hour before the
78 antemeridian times established above if a hunter is preparing
79 to or in the process of transporting or transferring the firearms
80 to or from a hunting site, campsite, home or other place of
81 abode;

82 (10) Hunt, catch, take, kill, trap, injure or pursue with
83 firearms or other implement by which wildlife may be taken
84 after the hour of five o'clock antemeridian on Sunday on
85 private land without the written consent of the landowner any
86 wild animals or wild birds except when a big game season
87 opens on a Monday, the Sunday prior to that opening day will
88 be closed for any taking of wild animals or birds after five
89 o'clock antemeridian on that Sunday: *Provided*, That traps
90 previously and legally set may be tended after the hour of
91 five o'clock antemeridian on Sunday and the person so doing
92 may carry only a twenty-two caliber firearm for the purpose
93 of humanely dispatching trapped animals. Any person
94 violating the provisions of this subdivision is guilty of a
95 misdemeanor and, upon conviction thereof, in addition to any
96 fines that may be imposed by this or other sections of this
97 code, is subject to a \$100 fine;

98 (11) Hunt, catch, take, kill, injure or pursue a wild animal
99 or bird with the use of a ferret;

100 (12) Buy raw furs, pelts or skins of fur-bearing animals
101 unless licensed to do so;

102 (13) Catch, take, kill or attempt to catch, take or kill any
103 fish at any time by any means other than by rod, line and
104 hooks with natural or artificial lures unless otherwise
105 authorized by law or rules issued by the Director: *Provided,*
106 That snaring of any species of suckers, carp, fallfish and
107 creek chubs shall at all times be lawful;

108 (14) Employ or hire, or induce or persuade, by the use of
109 money or other things of value, or by any means, any person
110 to hunt, take, catch or kill any wild animal or wild bird except
111 those species on which there is no closed season, or to fish
112 for, catch, take or kill any fish, amphibian or aquatic life
113 which is protected by the provisions of this chapter or rules
114 of the director or the sale of which is prohibited;

115 (15) Hunt, catch, take, kill, capture, pursue, transport,
116 possess or use any migratory game or nongame birds
117 included in the terms of conventions between the United
118 States and Great Britain and between the United States and
119 United Mexican States for the protection of migratory birds
120 and wild mammals concluded, respectively, August 16, 1916,
121 and February 7, 1936, except during the time and in the
122 manner and numbers prescribed by the federal Migratory
123 Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations
124 made thereunder;

125 (16) Kill, take, catch or have in his or her possession,
126 living or dead, any wild bird other than a game bird; or
127 expose for sale or transport within or without the state any
128 bird except as aforesaid. No part of the plumage, skin or
129 body of any protected bird may be sold or had in possession
130 for sale except mounted or stuffed plumage, skin, bodies or
131 heads of the birds legally taken and stuffed or mounted,
132 irrespective of whether the bird was captured within or
133 without this state, except the English or European sparrow
134 (*passer domesticus*), starling (*sturnus vulgaris*) and cowbird

135 (molothrus ater), which may not be protected and the killing
136 thereof at any time is lawful;

137 (17) Use dynamite or any like explosive or poisonous
138 mixture placed in any waters of the state for the purpose of
139 killing or taking fish. Any person violating the provisions of
140 this subdivision is guilty of a felony and, upon conviction
141 thereof, shall be fined not more than \$500 or imprisoned for
142 not less than six months nor more than three years, or both
143 fined and imprisoned;

144 (18) Have a bow and gun, or have a gun and any arrow or
145 arrows, in the fields or woods at the same time;

146 (19) Have a crossbow in the woods or fields or use a
147 crossbow to hunt for, take or attempt to take any wildlife
148 except as otherwise provided in section 42w of this article;

149 (20) Take or attempt to take turkey, bear, elk or deer with
150 any arrow unless the arrow is equipped with a point having
151 at least two sharp cutting edges measuring in excess of three
152 fourths of an inch wide;

153 (21) Take or attempt to take any wildlife with an arrow
154 having an explosive head or shaft, a poisoned arrow or an
155 arrow which would affect wildlife by any chemical action;

156 (22) Shoot an arrow across any public highway or from
157 aircraft, motor-driven watercraft, motor vehicle or other land
158 conveyance;

159 (23) Permit any dog owned by him or her or under his or
160 her control to chase, pursue or follow upon the track of any
161 wild animal or wild bird, either day or night, between May 1
162 and the August 15 next following: *Provided*, That dogs may
163 be trained on wild animals and wild birds, except deer and

164 wild turkeys, and field trials may be held or conducted on the
165 grounds or lands of the owner or by his or her bona fide
166 tenant or tenants or upon the grounds or lands of another
167 person with his or her written permission or on public lands
168 at any time: *Provided, however,* That nonresidents may not
169 train dogs in this state at any time except during the legal
170 small game hunting season: *Provided further,* That the
171 person training said dogs does not have firearms or other
172 implements in his or her possession during the closed season
173 on wild animals and wild birds, whereby wild animals or wild
174 birds could be taken or killed;

175 (24) Conduct or participate in a field trial, shoot-to-
176 retrieve field trial, water race or wild hunt hereafter referred
177 to as trial: *Provided,* That any person, group of persons, club
178 or organization may hold the trial at any time of the year
179 upon obtaining a permit as is provided in section fifty-six of
180 this article. The person responsible for obtaining the permit
181 shall prepare and keep an accurate record of the names and
182 addresses of all persons participating in said trial and make
183 same readily available for inspection by any natural resources
184 police officer upon request;

185 (25) Except as provided in section four of this article,
186 hunt, catch, take, kill or attempt to hunt, catch, take or kill
187 any wild animal, wild bird or wild fowl except during the
188 open season established by rule of the director as authorized
189 by subdivision (6), section seven, article one of this chapter;

190 (26) Hunting on public lands on Sunday after five o'clock
191 antemeridian is prohibited;

192 (27) Hunt, catch, take, kill, trap, injure or pursue with
193 firearms or other implement which wildlife can be taken, on
194 private lands on Sunday after the hour of five o'clock
195 antemeridian: *Provided,* That the provisions of this

196 subdivision do not apply in any county until the county
 197 commission of the county holds an election on the question
 198 of whether the provisions of this subdivision prohibiting
 199 hunting on Sunday shall apply within the county and the
 200 voters approve the allowance of hunting on Sunday in the
 201 county. The election is determined by a vote of the resident
 202 voters of the county in which the hunting on Sunday is
 203 proposed to be authorized. The county commission of the
 204 county in which Sunday hunting is proposed shall give notice
 205 to the public of the election by publication of the notice as a
 206 Class II-0 legal advertisement in compliance with the
 207 provisions of article three, chapter fifty-nine of this code and
 208 the publication area for the publication is the county in which
 209 the election is to be held. The date of the last publication of
 210 the notice shall fall on a date within the period of the fourteen
 211 consecutive days next preceding the election.

212 On the local option election ballot shall be printed the
 213 following:

214 Shall hunting on Sunday be authorized in _____
 215 County?

216 Yes No

217 (Place a cross mark in the square opposite your choice.)

218 Any local option election to approve or disapprove of the
 219 proposed authorization of Sunday hunting within a county
 220 shall be in accordance with procedures adopted by the
 221 commission. The local option election may be held in
 222 conjunction with a primary or general election or at a special
 223 election. Approval shall be by a majority of the voters
 224 casting votes on the question of approval or disapproval of
 225 Sunday hunting at the election.

226 If a majority votes against allowing Sunday hunting, no
227 election on the issue may be held for a period of one hundred
228 four weeks. If a majority votes "yes," no election
229 reconsidering the action may be held for a period of five
230 years. A local option election may thereafter be held if a
231 written petition of qualified voters residing within the county
232 equal to at least five percent of the number of persons who
233 were registered to vote in the next preceding general election
234 is received by the county commission of the county in which
235 Sunday hunting is authorized. The petition may be in any
236 number of counterparts. The election shall take place at the
237 next primary or general election scheduled more than ninety
238 days following receipt by the county commission of the
239 petition required by this subsection: *Provided*, That the issue
240 may not be placed on the ballot until all statutory notice
241 requirements have been met. No local law or regulation
242 providing any penalty, disability, restriction, regulation or
243 prohibition of Sunday hunting may be enacted and the
244 provisions of this article preempt all regulations, rules,
245 ordinances and laws of any county or municipality in conflict
246 with this subdivision; and

247 (28) Hunt or conduct hunts for a fee where the hunter is
248 not physically present in the same location as the wildlife
249 being hunted within West Virginia.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor