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H. B. 2822

(By Delegates R. Smith, J. Nelson, Butler, Wagner, Anderson,
Ambler, D. Evans, Scott Cadle, Hartman, R. Phillips and Gearheart)

[Introduced February 19, 2015; referred to the
Committee on Agriculture and Natural Resources then the Judiciary.]

A BILL to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting, from March 1 through June 30, the training of dogs to be used in hunting bears under certain circumstances.

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.

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

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

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

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting,

1 taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his
2 or her possession or subject to his or her control, or for any person accompanying him or her to have
3 in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow,
4 arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or
5 animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the
6 use of artificial light subject to the restrictions set forth in this subdivision. No person is guilty of
7 a violation of this subdivision merely because he or she looks for, looks at, attracts or makes
8 motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he
9 or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other
10 implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the
11 artificial light (other than the head lamps of an automobile or other land conveyance) is attached to,
12 a part of or used from within or upon an automobile or other land conveyance.

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

16 (4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or
17 other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water
18 conveyance, except as authorized by rules promulgated by the director;

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

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

22 (7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or

1 have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by
2 or under a permit issued by the director;

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

9 (9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm
10 from the magazine of which all shells and cartridges have not been removed, in or on any vehicle
11 or conveyance, or its attachments, within the state, except as may otherwise be provided by law or
12 regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven
13 o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow,
14 being lawfully carried in accordance with the foregoing provisions, may be so carried only when in
15 a case or taken apart and securely wrapped. During the period from July 1 to September 30,
16 inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are
17 permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern
18 standard time: *Provided*, That the time periods for carrying unloaded and uncased firearms are
19 extended for one hour after the postmeridian times and one hour before the antemeridian times
20 established above if a hunter is preparing to or in the process of transporting or transferring the
21 firearms to or from a hunting site, campsite, home or other place of abode;

22 (10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which

1 wildlife may be taken after the hour of five o'clock antemeridian on Sunday on private land without
2 the written consent of the landowner any wild animals or wild birds except when a big game season
3 opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild
4 animals or birds after five o'clock antemeridian on that Sunday: *Provided*, That traps previously and
5 legally set may be tended after the hour of five o'clock antemeridian on Sunday and the person so
6 doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped
7 animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and,
8 upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this
9 code, is subject to a \$100 fine;

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

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

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

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

21 (15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or
22 nongame birds included in the terms of conventions between the United States and Great Britain and

1 between the United States and United Mexican States for the protection of migratory birds and wild
2 mammals concluded, respectively, August 16, 1916, and February 7, 1936, except during the time
3 and in the manner and numbers prescribed by the federal Migratory Bird Treaty Act, 16 U.S.C. §703,
4 et seq., and regulations made thereunder;

5 (16) Kill, take, catch or have in his or her possession, living or dead, any wild bird other than
6 a game bird; or expose for sale or transport within or without the state any bird except as aforesaid.
7 No part of the plumage, skin or body of any protected bird may be sold or had in possession for sale
8 except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or
9 mounted, irrespective of whether the bird was captured within or without this state, except the
10 English or European sparrow (*passer domesticus*), starling (*sturnus vulgaris*) and cowbird (*molothrus*
11 *ater*), which may not be protected and the killing thereof at any time is lawful;

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

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

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

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

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

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

5 (23) Permit any dog owned by him or her or under his or her control to chase, pursue or
6 follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the
7 August 15 next following: *Provided*, That dogs may be trained on wild animals and wild birds,
8 except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of
9 the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person
10 with his or her written permission or on public lands at any time: *Provided, however*, That
11 nonresidents may not train dogs in this state at any time except during the legal small game hunting
12 season: *Provided further*, That the person training said dogs does not have firearms or other
13 implements in his or her possession during the closed season on wild animals and wild birds,
14 whereby wild animals or wild birds could be taken or killed: *And provided further, That*
15 notwithstanding any of the above provisions, a person may not, from March 1 through June 30, train
16 a dog to be used in hunting bears, unless the dog is in the immediate control of the trainer;

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

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

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

6 (27) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which
7 wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian:
8 *Provided*, That the provisions of this subdivision do not apply in any county until the county
9 commission of the county holds an election on the question of whether the provisions of this
10 subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the
11 allowance of hunting on Sunday in the county. The election is determined by a vote of the resident
12 voters of the county in which the hunting on Sunday is proposed to be authorized. The county
13 commission of the county in which Sunday hunting is proposed shall give notice to the public of the
14 election by publication of the notice as a Class II-0 legal advertisement in compliance with the
15 provisions of article three, chapter fifty-nine of this code and the publication area for the publication
16 is the county in which the election is to be held. The date of the last publication of the notice shall
17 fall on a date within the period of the fourteen consecutive days next preceding the election.

18 On the local option election ballot shall be printed the following:

19 Shall hunting on Sunday be authorized in _____ County?

20 Yes No

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

22 Any local option election to approve or disapprove of the proposed authorization of Sunday

1 hunting within a county shall be in accordance with procedures adopted by the commission. The
2 local option election may be held in conjunction with a primary or general election or at a special
3 election. Approval shall be by a majority of the voters casting votes on the question of approval or
4 disapproval of Sunday hunting at the election.

5 If a majority votes against allowing Sunday hunting, no election on the issue may be held for
6 a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action
7 may be held for a period of five years. A local option election may thereafter be held if a written
8 petition of qualified voters residing within the county equal to at least five percent of the number of
9 persons who were registered to vote in the next preceding general election is received by the county
10 commission of the county in which Sunday hunting is authorized. The petition may be in any
11 number of counterparts. The election shall take place at the next primary or general election
12 scheduled more than ninety days following receipt by the county commission of the petition required
13 by this subsection: *Provided*, That the issue may not be placed on the ballot until all statutory notice
14 requirements have been met. No local law or regulation providing any penalty, disability, restriction,
15 regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt
16 all regulations, rules, ordinances and laws of any county or municipality in conflict with this
17 subdivision; and

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

NOTE: The purpose of this bill is to prohibit from March 1 through June 30, the training of

dogs to be used in hunting bears under certain circumstances.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.