

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4184**

BY DELEGATES STANSBURY, HOUSEHOLDER,  
PERDUE, R. PHILLIPS, J. NELSON, AMBLER, B.  
WHITE, ROHRBACH, WESTFALL, R. SMITH AND  
COOPER

[Introduced January 20, 2016; Referred  
to the Committee on Agriculture and Natural Resources  
then the Committee on the Judiciary.]

1 A BILL to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating  
2 to establishing criminal penalties for the illegal taking of deer.

*Be it enacted by the Legislature of West Virginia:*

1 That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
2 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 or by law, it is unlawful at any time for any person to:

2 (1) Shoot at any wild bird or wild animal unless it is plainly visible;

3 (2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild  
4 animal or wild bird out of its den or place of refuge;

5 (3)(A) Use or attempt to use any artificial light or any night vision technology, including  
6 image intensification, thermal imaging or active illumination while hunting, locating, attracting,  
7 taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take  
8 coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology.  
9 Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof,  
10 shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in  
11 jail for not less than ten days nor more than one hundred days;

12 (B) Take a deer prior to the first day of the open season or after the last day of the open  
13 season in the county or part thereof where taken, or any illegal taking of a deer with an artificial  
14 light. Any person who violates this paragraph is guilty of a misdemeanor and, upon conviction,  
15 shall be fined an amount not less than \$1,000 nor more than \$4,000, or confined in a regional  
16 correction facility for a period not to exceed one year, or both fined and confined. Any person  
17 illegally taking a deer and having a previous conviction for that offense shall also be subject to an  
18 additional fine or not less than \$2,000 and nor more than \$4,000 and is subject to a loss of hunting  
19 privileges for five years. Any offense involving illegal taking of a deer done so in the presence of

20 a minor shall be subject to doubling of all fines and penalties. Any damages occurring to real  
21 property, crops and other improvements including damages to robotic deer shall result in fines  
22 being doubled or restitution to landowner, or both fine doubling and restitution.

23 (4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other  
24 airborne conveyance, a drone or other unmanned aircraft, an automobile or other land  
25 conveyance, or from a motor-driven water conveyance;

26 (5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal,  
27 or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the  
28 purposes of hunting, trapping or killing;

29 (6) Take any beaver or muskrat by any means other than a trap;

30 (7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear,  
31 wild turkey, ruffed grouse, pheasant or quail;

32 (8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in  
33 his or her possession the nest or eggs;

34 (9) Carry an uncased or loaded firearm in the woods of this state with the following  
35 permissible exceptions:

36 (A) A person in possession of a valid license or permit during open firearms hunting  
37 season for wild animals and nonmigratory wild birds;

38 (B) A person hunting or taking unprotected species of wild animals, wild birds and  
39 migratory wild birds during the open season, in the open fields, open water and open marshes of  
40 the state;

41 (C) A person carrying a firearm pursuant to sections six and six-a of this article; or

42 (D) A person carrying a firearm for self defense who is not prohibited from possessing  
43 firearms by section seven, article seven, chapter sixty-one of this code;

44 (10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun  
45 with cartridges that have not been removed or a magazine that has not been detached, in or on

46 any vehicle or conveyance, or its attachments,. For the purposes of this section, a rifle or shotgun  
47 whose magazine readily detaches is considered unloaded if the magazine is detached and no  
48 cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of  
49 day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any  
50 unloaded firearm or crossbow may be carried only when in a case or taken apart and securely  
51 wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements  
52 relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian  
53 to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying  
54 unloaded and uncased firearms are extended for one hour after the post meridian times and one  
55 hour before the ante meridian times established in this subdivision, if a person is transporting or  
56 transferring the firearms to or from a hunting site, campsite, home or other abode;

57 (11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which  
58 wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without  
59 the written consent of the landowner any wild animals or wild birds except when a big game  
60 season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of  
61 wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps  
62 previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday  
63 and the person tending the traps may carry firearms for the purpose of humanely dispatching  
64 trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon  
65 conviction thereof, in addition to any fines that may be imposed by this or other sections of this  
66 code, is subject to a \$100 fine;

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

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

70 (14) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by  
71 rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers,

72 carp, fallfish and creek chubs is lawful;

73 (15) Employ, hire, induce or persuade, with money, things of value or by any means, any  
74 person to hunt, take, catch or kill any wild animal or wild bird except those species in which there  
75 is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is  
76 protected by rule, or the sale of which is otherwise prohibited;

77 (16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game  
78 or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*,  
79 and its regulations;

80 (17) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any  
81 wild bird other than a game bird including the plumage, skin or body of any protected bird,  
82 irrespective of whether the bird was captured in or out of this state, except the English or European  
83 sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may  
84 be killed at any time;

85 (18) Use dynamite, explosives or any poison in any waters of the state for the purpose of  
86 killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction  
87 thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more  
88 than three years, or both fined and imprisoned;

89 (19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same  
90 time;

91 (20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt  
92 to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

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

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

98 (23) Shoot an arrow across any public highway;

99 (24) Permit any dog owned or under his or her control to chase, pursue or follow the tracks  
100 of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs  
101 may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may  
102 be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or  
103 upon the grounds or lands of another person with his or her written permission, or on public lands  
104 at any time. Nonresidents may not train dogs in this state at any time except during the legal small  
105 game hunting season. A person training dogs may not have firearms or other implements in his  
106 or her possession during the closed season on wild animals and wild birds;

107 (25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water  
108 race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a  
109 trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for  
110 obtaining the permit shall prepare and keep an accurate record of the names and addresses of  
111 all persons participating in the trial and make the records readily available for inspection by any  
112 natural resources police officer upon request;

113 (26) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird  
114 or wild fowl except during open seasons;

115 (27) Hunting on public lands on Sunday after five o'clock ante meridian is prohibited;

116 (28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which  
117 wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian:  
118 *Provided*, That the provisions of this subdivision do not apply in any county until the county  
119 commission of the county holds an election on the question of whether the provisions of this  
120 subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve  
121 the allowance of hunting on Sunday in the county. The election is determined by a vote of the  
122 resident voters of the county in which the hunting on Sunday is proposed to be authorized. The  
123 county commission of the county in which Sunday hunting is proposed shall give notice to the

124 public of the election by publication of the notice as a Class II-0 legal advertisement in compliance  
125 with the provisions of article three, chapter fifty-nine of this code and the publication area for the  
126 publication is the county in which the election is to be held. The date of the last publication of the  
127 notice shall fall on a date within the period of the fourteen consecutive days next preceding the  
128 election.

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

130 Shall hunting on Sunday be authorized on private lands only with the consent of the land  
131 owner in \_\_\_\_\_ County?

132  Yes

133  No

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

135 Any local option election to approve or disapprove of the proposed authorization of Sunday  
136 hunting within a county shall be in accordance with procedures adopted by the commission. The  
137 local option election may be held in conjunction with a primary or general election or at a special  
138 election. Approval shall be by a majority of the voters casting votes on the question of approval  
139 or disapproval of Sunday hunting at the election.

140 If a majority votes against allowing Sunday hunting, an election on the issue may not be  
141 held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering  
142 the action may not be held for a period of five years. A local option election may thereafter be  
143 held if a written petition of qualified voters residing within the county equal to at least five percent  
144 of the number of persons who were registered to vote in the next preceding general election is  
145 received by the county commission of the county in which Sunday hunting is authorized. The  
146 petition may be in any number of counterparts. The election shall take place at the next primary  
147 or general election scheduled more than ninety days following receipt by the county commission  
148 of the petition required by this subsection: *Provided*, That the issue may not be placed on the  
149 ballot until all statutory notice requirements have been met. No local law or regulation providing

150 any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and  
151 the provisions of this article preempt all regulations, rules, ordinances and laws of any county or  
152 municipality in conflict with this subdivision.

153 Amendments to this subdivision promulgated during the 2015 regular session of the  
154 Legislature shall have no effect upon the results of elections held prior to their enactment; and

155 (29) Hunt or conduct hunts for a fee when the person is not physically present in the same  
156 location as the wildlife being hunted within West Virginia.

NOTE: The purpose of this bill is to establish criminal penalties for the illegal taking of deer.

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