

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

SENATE BILL NO. 394

(By Mr. Gainer)



PASSED April 5, 1977

In Effect ninty days from Passage



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Senate Bill No. 394

(By MR. GAINER)

[Passed April 5, 1977; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when it is unlawful to carry uncased or loaded guns in woods; making it unlawful to pursue, take, kill, etc., wild mammals protected by conventions between United States, Great Britain and United Mexican States; and setting forth when it is unlawful to train dogs on wild animals or wild birds.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

PART I. WILDLIFE MANAGEMENT.

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

- 1 Except as authorized by the director, it is unlawful
- 2 at any time for any person to:
 - 3 (1) Shoot at or to shoot any wild bird or animal unless
 - 4 it is plainly visible to him;
 - 5 (2) Dig out, cut out, or smoke out, or in any manner
 - 6 take or attempt to take any live wild animal or wild bird
 - 7 out of its den or place of refuge, except as may be
 - 8 authorized by regulations promulgated by the director
 - 9 or by law;
 - 10 (3) Make use of, or take advantage of, any artificial
 - 11 light in hunting, locating, attracting, taking, trapping, or

12 killing any wild bird or wild animal, or to attempt to do
13 so, while having in his possession or subject to his con-
14 trol, or for any person accompanying him to have in his
15 possession or subject to his control, any firearm, whether
16 cased or uncased, bow, arrow, or both, or other implement
17 or device suitable for taking, killing or trapping a wild
18 bird or animal: *Provided*, That it shall not be unlawful
19 to hunt or take raccoon, opossum or skunk by the use of
20 artificial lights. No person shall be guilty of a violation
21 of this subdivision merely because he looks for, looks at,
22 attracts or makes motionless a wild bird or wild animal
23 with or by the use of an artificial light, unless at such
24 time he has in his 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 such artificial light (other than the head
28 lamps of an automobile or other land conveyance) is
29 attached to, a part of, or used from within or upon an
30 automobile or other land conveyance.

31 Any person violating the provisions of this subdivision
32 shall be guilty of a misdemeanor, and, upon conviction
33 thereof, shall for each offense be fined not less than one
34 hundred dollars nor more than five hundred dollars and
35 shall be imprisoned in the county jail for not less than
36 ten days nor more than one hundred days;

37 (4) Hunt for, take, kill, wound or shoot at wild animals
38 or wild birds from an airplane, or other airborne con-
39 veyance, an automobile, or other land conveyance, or from
40 a motor-driven water conveyance, except as may be
41 authorized by regulations promulgated by the director;

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

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

47 (7) Destroy or attempt to destroy needlessly or will-
48 fully the nest or eggs of any wild bird or have in his
49 possession such nest or eggs unless authorized to do so
50 under regulations or under a permit by the director;

51 (8) Except as provided in section six of this article,

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

61 (9) Except as provided in section six of this article,
62 carry an uncased or loaded gun after the hour of five
63 o'clock antemeridian on Sunday in any woods or on any
64 highway, railroad right-of-way, public road, field or stream
65 of this state, except at a regularly used rifle, pistol, skeet,
66 target or trapshooting ground or range;

67 (10) Have in his possession a loaded firearm or a fire-
68 arm from the magazine of which all shells and cartridges
69 have not been removed, in or on any vehicle or convey-
70 ance, or its attachments, within the state, except as may
71 otherwise be provided by law or regulation. Except as
72 hereinafter provided, between five o'clock postmeridian of
73 one day and seven o'clock antemeridian, eastern standard
74 time of the day following, any unloaded firearm, being
75 lawfully carried in accordance with the foregoing provi-
76 sions, shall be so carried only when in a case or taken
77 apart and securely wrapped. During the period from July
78 first to September thirtieth, inclusive, of each year, the
79 foregoing requirements relative to carrying certain un-
80 loaded firearms shall be permissible only from eight-
81 thirty o'clock postmeridian to five o'clock antemeridian,
82 eastern standard time;

83 (11) Hunt, catch, take, kill, trap, injure or pursue with
84 firearms or other implement by which wildlife may be
85 taken after the hour of five o'clock antemeridian on
86 Sunday any wild animals or wild birds: *Provided*, That
87 traps previously and legally set may be tended after the
88 hour of five o'clock antemeridian on Sunday, if the person
89 so doing shall not have firearms or long bow of any
90 description in his possession;

91 (12) Hunt with firearms or long bow while under the
92 influence of intoxicating liquor;

- 93 (13) Possess a ferret;
- 94 (14) Buy raw furs, pelts or skins of fur-bearing
95 animals unless licensed to do so;
- 96 (15) Have in his possession or about his premises,
97 without the written permission of the director, any hunt-
98 ing or fishing paraphernalia which cannot be used lawfully
99 in this state for hunting or fishing, and any conservation
100 officer shall remove and destroy such hunting and fishing
101 paraphernalia, whenever found in this state, and the per-
102 son or persons claiming ownership shall have no recourse
103 at law against such confiscation and destruction;
- 104 (16) Catch, take, kill, or attempt to catch, take or
105 kill any fish at any time by any means other than by rod,
106 line, and hooks with natural or artificial lures unless
107 otherwise authorized by law or regulation issued by the
108 director: *Provided*, That snaring of any species of suckers,
109 carp, fallfish and creek chubs shall at all times be lawful;
- 110 (17) Employ or hire, or induce or persuade, by the use
111 of money or other things of value, or by any means, any
112 person to hunt, take, catch or kill, any wild animal or
113 wild bird except those species on which there is no closed
114 season, or to fish for, catch, take or kill any fish, amphibian
115 or aquatic life which is protected by the provisions of
116 this chapter or regulations of the director, or the sale
117 of which is prohibited;
- 118 (18) Hunt, catch, take, kill, capture, pursue, trans-
119 port, possess or use any migratory game or nongame
120 birds included in the terms of conventions between the
121 United States and Great Britain and between the United
122 States and United Mexican States for the protection of
123 migratory birds and wild mammals concluded, respective-
124 ly, August sixteen, one thousand nine hundred sixteen, and
125 February seven, one thousand nine hundred thirty-six,
126 except during the time and in the manner and numbers
127 prescribed by the Federal Migratory Bird Treaty Act and
128 regulations made thereunder;
- 129 (19) Kill, take, catch, or have in his possession living
130 or dead, any wild bird, other than a game bird; or expose
131 for sale, or transport within or without the state any
132 such bird, except as aforesaid. No part of the plumage,

133 skin or body of any protected bird shall be sold or had in
134 possession for sale, except mounted or stuffed plumage,
135 skin, bodies or heads of such birds legally taken and
136 stuffed or mounted, irrespective of whether such bird
137 was captured within or without this state, except the
138 English or European sparrow (*Passer domesticus*), star-
139 ling (*Sturnus vulgaris*), crow (*Corvus brachyrhynchos*)
140 and cowbird (*Molothrus ater*), which shall not be pro-
141 tected and the killing thereof at any time is lawful;

142 (20) Use dynamite or any like explosive or poisonous
143 mixture placed in any waters of the state for the purpose
144 of killing or taking fish. Any person violating the provi-
145 sions of this subdivision shall be guilty of a felony, and,
146 upon conviction thereof, shall be fined not more than
147 five hundred dollars or imprisoned for not less than six
148 months nor more than three years, or both fined and im-
149 prisoned;

150 (21) Have a bow and gun, or have a gun and any arrow
151 or arrows, in the fields or woods at the same time;

152 (22) Have a crossbow in the woods or fields or use a
153 crossbow to hunt for, take or attempt to take any
154 wildlife;

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

159 (24) Take or attempt to take any wildlife with an
160 arrow having an explosive head or shaft, a poisoned
161 arrow, or an arrow which would affect wildlife by any
162 chemical action;

163 (25) Shoot an arrow across any public highway or from
164 aircraft, motor-driven watercraft, motor vehicle or other
165 land conveyance;

166 (26) Permit any dog owned by him or under his con-
167 trol to chase, pursue or follow upon the track of any wild
168 animal or wild bird, either day or night, between the first
169 day of May and the fifteenth day of August next follow-
170 ing: *Provided*, That dogs may be trained on wild animals
171 and wild birds, except deer and wild turkeys, and field

172 trials may be held or conducted on the grounds of lands
173 of the owner or by his bona fide tenant or tenants or upon
174 the grounds or lands of another person with his written
175 permission or on public lands, at any time: *Provided,*
176 *however,* That notwithstanding any of the above provi-
177 sions, no person may train a dog in any county in which
178 there is a legal bear hunting season, except that residents
179 may train dogs in such counties after the twenty-fourth
180 day of August through the end of the legal small game
181 hunting season: *Provided further,* That nonresidents shall
182 not train dogs in this state at any time except during the
183 legal small game hunting season: *And provided further,*
184 That the person training said dogs does not have firearms
185 or other implements in his possession during the closed
186 season on such wild animals and wild birds, whereby wild
187 animals or wild birds could be taken or killed;

188 (27) Conduct or participate in a field trial, water
189 race or wild hunt hereafter referred to as trial: *Provided,*
190 That any person, group of persons, club or organiza-
191 tion may hold such trial at any time of the year upon
192 obtaining such permit as is provided for in section fifty-
193 six of this article. The person responsible for obtaining
194 said permit shall prepare and keep an accurate record
195 of the names and addresses of all persons participating
196 in said trial, and make same readily available for in-
197 spection by any conservation officer upon request; and

198 (28) Except as provided in section four of this article,
199 hunt, catch, take, kill or attempt to hunt, catch, take or
200 kill any wild animal, wild bird or wild fowl except during
201 the open season established by regulation of the director
202 as authorized by subdivision six, section seven, article
203 one of this chapter.

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

James L. Davis
Chairman, Senate Committee

Glenn C. Christensen
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Sullivan Jr
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within approved this the 15

day of April, 1977.

John R. Ralston
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

APR 9 2 57 PM '77

OFFICE OF THE GOVERNOR

Date April 15, 1977

Time 9:00 A.M.

RECEIVED

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OFFICE
SECY. OF STATE