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2001 MAY -1 P 2: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

House Bill No. 2146

(By Delegates R. Thompson and Perdue)



Passed April 14, 2001

In Effect Ninety Days from Passage

FILED

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H. B. 2146

(BY DELEGATES R. THOMPSON AND PERDUE)

[Passed April 14, 2001; 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 the prohibition against hunting on Sunday on private lands without the written consent of the landowner; and requiring a local option election on the issue of whether Sunday hunting should be permitted in the county.

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.

§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:

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

5 (2) Dig out, cut out or smoke out, or in any manner take or
6 attempt to take, any live wild animal or wild bird out of its den
7 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 in
10 hunting, locating, attracting, taking, trapping or killing any wild
11 bird or wild animal, or to attempt to do so, while having in his
12 or her possession or subject to his or her control, or for any
13 person accompanying him or her to have in his or her posses-
14 sion or subject to his or her control, any firearm, whether cased
15 or uncased, bow, arrow, or both, or other implement or device
16 suitable for taking, killing or trapping a wild bird or animal:
17 *Provided*, That it may not be unlawful to hunt or take raccoon,
18 opossum or skunk by the use of artificial lights. No person shall
19 be guilty of a violation of this subdivision merely because he or
20 she looks for, looks at, attracts or makes motionless a wild bird
21 or wild animal with or by the use of an artificial light, unless at
22 the time he or she has in his or her possession a firearm,
23 whether cased or uncased, bow, arrow, or both, or other
24 implement or device suitable for taking, killing or trapping a
25 wild bird or wild animal, or unless the artificial light (other than
26 the head lamps of an automobile or other land conveyance) is
27 attached to, a part of, or used from within or upon an automo-
28 bile or other land conveyance.

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

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

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

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

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

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

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

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

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

96 (11) Hunt with firearms or long bow while under the
97 influence of intoxicating liquor;

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

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

102 (14) 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 hooks
104 with natural or artificial lures unless otherwise authorized by
105 law or rules issued by the director: *Provided*, That snaring of
106 any species of suckers, carp, fallfish and creek chubs shall at all
107 times be lawful;

108 (15) Employ or hire, or induce or persuade, by the use of
109 money or other things of value, or by any means, any person to
110 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 for,
112 catch, take or kill any fish, amphibian or aquatic life which is
113 protected by the provisions of this chapter or rules of the
114 director, or the sale of which is prohibited;

115 (16) Hunt, catch, take, kill, capture, pursue, transport,
116 possess or use any migratory game or nongame birds included
117 in the terms of conventions between the United States and Great
118 Britain and between the United States and United Mexican
119 States for the protection of migratory birds and wild mammals
120 concluded, respectively, the sixteenth day of August, one
121 thousand nine hundred sixteen, and the seventh day of Febru-
122 ary, one thousand nine hundred thirty-six, except during the
123 time and in the manner and numbers prescribed by the Federal
124 Migratory Bird Treaty Act and regulations made thereunder;

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

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

137 (18) 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 shall be guilty of a felony and, upon conviction
141 thereof, shall be fined not more than five hundred dollars or
142 imprisoned for not less than six months nor more than three
143 years, or both fined and imprisoned;

144 (19) 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 (20) Have a crossbow in the woods or fields or use a
147 crossbow to hunt for, take or attempt to take any wildlife;

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

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

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

158 (24) Permit any dog owned by him or her or under his or
159 her control to chase, pursue or follow upon the track of any wild
160 animal or wild bird, either day or night, between the first day of
161 May and the fifteenth day of August next following: *Provided,*
162 That dogs may be trained on wild animals and wild birds,
163 except deer and wild turkeys, and field trials may be held or
164 conducted on the grounds or lands of the owner or by his or her

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

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

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

189 (27) Hunting on public lands on Sunday after five o'clock
190 antemeridian is prohibited; and

191 (28) Hunt, catch, take, kill, trap, injure or pursue with
192 firearms or other implement which wildlife can be taken, on
193 private lands on Sunday after the hour of five o'clock
194 antemeridian: *Provided,* That the provisions of this subdivision
195 do not apply in any county until the county commission of the
196 county holds an election on the question of whether the

197 provisions of this subdivision prohibiting hunting on Sunday
198 shall apply within the county and the voters approve the
199 allowance of hunting on Sunday in the county. The election
200 shall be determined by a vote of the resident voters of the
201 county in which the hunting on Sunday is proposed to be
202 authorized. The county commission of the county in which
203 Sunday hunting is proposed shall give notice to the public of
204 the election by publication of the notice as a Class II-0 legal
205 advertisement in compliance with the provisions of article
206 three, chapter fifty-nine of this code, and the publication area
207 for the publication shall be the county in which the election is
208 to be held. The date of the last publication of the notice shall
209 fall on a date within the period of the fourteen consecutive days
210 next preceding the election.

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

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

215 Yes No

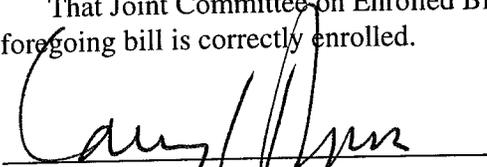
216 (Place a cross mark in the square opposite your choice.)

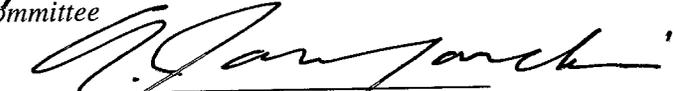
217 Any local option election to approve or disapprove of the
218 proposed authorization of Sunday hunting within a county shall
219 be in accordance with procedures adopted by the commission.
220 The local option election may be held in conjunction with a
221 primary or general election, or at a special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

224 If a majority votes against allowing Sunday hunting, no
225 election on the issue may be held for a period of one hundred
226 four weeks. If a majority votes "yes" no election reconsidering
227 the action may be held for a period of five years. A local option

228 election may thereafter be held if a written petition of qualified
229 voters residing within the county equal to at least five percent
230 of the number of persons who were registered to vote in the
231 next preceding general election is received by the county
232 commission of the county in which Sunday hunting is autho-
233 rized. The petition may be in any number of counterparts. The
234 election shall take place at the next primary or general election
235 scheduled more than ninety days following receipt by the
236 county commission of the petition required by this subsection:
237 *Provided*, That the issue may not be placed on the ballot until
238 all statutory notice requirements have been met. No local law
239 or regulation providing any penalty, disability, restriction,
240 regulation or prohibition of Sunday hunting may be enacted,
241 and the provisions of this article preempt all regulations, rules,
242 ordinances and laws of any county or municipality in conflict
243 with this subdivision.

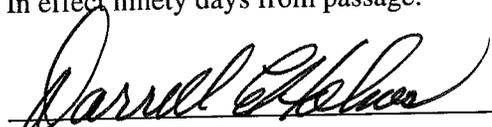
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

Originating in the House.

In effect ninety days from passage.

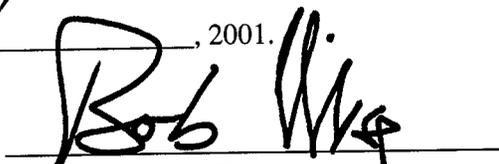

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2001.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/01

Time 3:10 p