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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4068

(By Delegates Stemple, Beach, Coleman, Swartzmiller,
Williams, Yeager and Anderson)

Passed March 13, 2004

In Effect Ninety Days from Passage

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H. B. 4068

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[Passed March 13, 2004; in 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 allowing hunting of coyotes by use of amber colored artificial light with certain restrictions.

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 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 is lawful to hunt or take raccoon, opossum or
18 skunk by the use of artificial light subject to the restrictions set
19 forth in this subdivision: *And provided further*, That it is lawful
20 to hunt or take coyotes by the use of amber colored artificial
21 light subject to the restrictions set forth in this subdivision. No
22 person is guilty of a violation of this subdivision merely
23 because he or she looks for, looks at, attracts or makes motion-
24 less a wild bird or wild animal with or by the use of an artificial
25 light, unless at the time he or she has in his or her possession a
26 firearm, whether cased or uncased, bow, arrow, or both, or other
27 implement or device suitable for taking, killing or trapping a
28 wild bird or wild animal, or unless the artificial light (other than
29 the head lamps of an automobile or other land conveyance) is
30 attached to, a part of, or used from within or upon an automo-
31 bile or other land conveyance.

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

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

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

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

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

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

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

69 ing, any unloaded firearm, being lawfully carried in accordance
70 with the foregoing provisions, shall be so carried only when in
71 a case or taken apart and securely wrapped. During the period
72 from the first day of July to the thirtieth day of September,
73 inclusive, of each year, the foregoing requirements relative to
74 carrying certain unloaded firearms are permissible only from
75 eight-thirty o'clock postmeridian to five o'clock antemeridian,
76 eastern standard time: *Provided*, That the time periods for
77 carrying unloaded and uncased firearms are extended for one
78 hour after the postmeridian times and one hour before the
79 antemeridian times established above if a hunter is preparing to
80 or in the process of transporting or transferring the firearms to
81 or from a hunting site, campsite, home or other place of 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 five
91 o'clock antemeridian on Sunday and the person so doing may
92 carry only a twenty-two caliber firearm for the purpose of
93 humanely dispatching trapped animals. Any person violating
94 the provisions of this subdivision is guilty of a misdemeanor
95 and, upon conviction thereof, in addition to any fines that may
96 be imposed by this or other sections of this code, shall be
97 subject to a one hundred dollar fine;

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

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

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

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

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

117 (16) Hunt, catch, take, kill, capture, pursue, transport,
118 possess or use any migratory game or nongame birds included
119 in the terms of conventions between the United States and Great
120 Britain and between the United States and United Mexican
121 States for the protection of migratory birds and wild mammals
122 concluded, respectively, the sixteenth day of August, one
123 thousand nine hundred sixteen, and the seventh day of Febru-
124 ary, one thousand nine hundred thirty-six, except during the
125 time and in the manner and numbers prescribed by the Federal
126 Migratory Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and
127 regulations made thereunder;

128 (17) Kill, take, catch or have in his or her possession, living
129 or dead, any wild bird, other than a game bird; or expose for
130 sale or transport within or without the state any bird except as
131 aforesaid. No part of the plumage, skin or body of any protected
132 bird shall be sold or had in possession for sale except mounted
133 or stuffed plumage, skin, bodies or heads of the birds legally

134 taken and stuffed or mounted, irrespective of whether the bird
135 was captured within or without this state, except the English or
136 European sparrow (*passer domesticus*), starling (*sturnus*
137 *vulgaris*), and cowbird (*molothrus ater*), which may not be
138 protected and the killing thereof at any time is lawful;

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

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

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

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

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

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

160 (24) Permit any dog owned by him or her or under his or
161 her control to chase, pursue or follow upon the track of any wild
162 animal or wild bird, either day or night, between the first day of
163 May and the fifteenth day of August next following: *Provided,*

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

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

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

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

193 (28) Hunt, catch, take, kill, trap, injure or pursue with
194 firearms or other implement which wildlife can be taken, on
195 private lands on Sunday after the hour of five o'clock

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

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

215 Shall hunting on Sunday be authorized in
216 County?

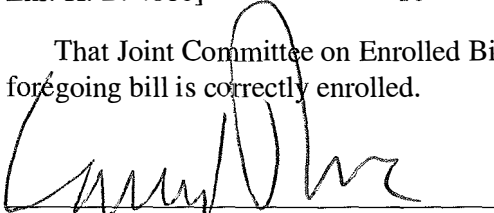
217 [] Yes [] No

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

219 Any local option election to approve or disapprove of the
220 proposed authorization of Sunday hunting within a county shall
221 be in accordance with procedures adopted by the commission.
222 The local option election may be held in conjunction with a
223 primary or general election, or at a special election. Approval
224 shall be by a majority of the voters casting votes on the question
225 of approval or disapproval of 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 reconsidering
229 the action may be held for a period of five years. A local option
230 election may thereafter be held if a written petition of qualified
231 voters residing within the county equal to at least five percent
232 of the number of persons who were registered to vote in the
233 next preceding general election is received by the county
234 commission of the county in which Sunday hunting is autho-
235 rized. The petition may be in any number of counterparts. The
236 election shall take place at the next primary or general election
237 scheduled more than ninety days following receipt by the
238 county commission of the petition required by this subsection:
239 *Provided*, That the issue may not be placed on the ballot until
240 all statutory notice requirements have been met. No local law
241 or regulation providing any penalty, disability, restriction,
242 regulation or prohibition of Sunday hunting may be enacted and
243 the provisions of this article preempt all regulations, rules,
244 ordinances and laws of any county or municipality in conflict
245 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.

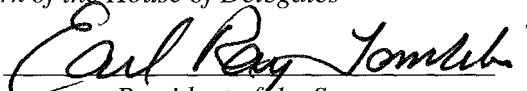
In effect ninety days from passage.



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 5th
day of April, 2004.



Governor

**PRESENTED TO THE
GOVERNOR**

Date 4/2/04

Time 2:15pm