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
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 time for any person to:

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

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county or regional jail for not less than ten days nor more than one hundred days;
(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the director;

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

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

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

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

(9) Have in his or her possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o’clock postmeridian of one day and seven o’clock antemeridian, eastern standard time of the day follow-
Enr. H. B. 4068]

...ing, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

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

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

(12) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;
(13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

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

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

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

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

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

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

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

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

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

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

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided,
That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: Provided further, That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

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

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

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

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

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

Shall hunting on Sunday be authorized in County?

[ ] Yes [ ] No

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

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.
If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butcher
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Parrish H. Lake

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within is approved this the 5th
day of April, 2004.

Governor

Bob Wise