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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2005*



**ENROLLED**

SENATE BILL NO. 476

(By Senators Facemyer, Bowman and Barnes )



PASSED March 22, 2005

In Effect ninety days from Passage

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## **Senate Bill No. 476**

(BY SENATORS FACEMYER, BOWMAN AND BARNES)

[Passed March 22, 2005; 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 use of red-colored artificial light when hunting coyotes.

*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  
2 any time for any person to:

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

5 (2) Dig out, cut out or smoke out, or in any manner take  
6 or attempt to take, any live wild animal or wild bird out of

7 its den or place of refuge except as may be authorized by  
8 rules promulgated by the Director or by law;

9 (3) Make use of, or take advantage of, any artificial light  
10 in hunting, locating, attracting, taking, trapping or killing  
11 any wild bird or wild animal, or to attempt to do so, while  
12 having in his or her possession or subject to his or her  
13 control, or for any person accompanying him or her to  
14 have in his or her possession or subject to his or her  
15 control, any firearm, whether cased or uncased, bow,  
16 arrow, or both, or other implement or device suitable for  
17 taking, killing or trapping a wild bird or animal: *Pro-*  
18 *vided*, That it is lawful to hunt or take raccoon, opossum  
19 or skunk by the use of artificial light subject to the restric-  
20 tions set forth in this subdivision: *Provided, however*,  
21 That it is lawful to hunt or take coyotes by the use of  
22 amber- or red-colored artificial light subject to the  
23 restrictions set forth in this subdivision. No person is  
24 guilty of a violation of this subdivision merely because he  
25 or she looks for, looks at, attracts or makes motionless a  
26 wild bird or wild animal with or by the use of an artificial  
27 light, unless at the time he or she has in his or her posses-  
28 sion a firearm, whether cased or uncased, bow, arrow, or  
29 both, or other implement or device suitable for taking,  
30 killing or trapping a wild bird or wild animal, or unless the  
31 artificial light (other than the head lamps of an automobile  
32 or other land conveyance) is attached to, a part of, or used  
33 from within or upon an automobile or other land convey-  
34 ance.

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

41 (4) Hunt for, take, kill, wound or shoot at wild animals  
42 or wild birds from an airplane, or other airborne convey-  
43 ance, an automobile, or other land conveyance, or from a

44 motor-driven water conveyance, except as authorized by  
45 rules promulgated by the Director;

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

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

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

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

66 (9) Have in his or her possession a loaded firearm or a  
67 firearm from the magazine of which all shells and car-  
68 tridges have not been removed, in or on any vehicle or  
69 conveyance, or its attachments, within the state, except as  
70 may otherwise be provided by law or regulation. Except  
71 as hereinafter provided, between five o'clock postmeridian  
72 of one day and seven o'clock antemeridian, eastern stan-  
73 dard time of the day following, any unloaded firearm,  
74 being lawfully carried in accordance with the foregoing  
75 provisions, shall be so carried only when in a case or taken  
76 apart and securely wrapped. During the period from the  
77 first day of July to the thirtieth day of September, inclu-  
78 sive, of each year, the foregoing requirements relative to

79 carrying certain unloaded firearms are permissible only  
80 from eight-thirty o'clock postmeridian to five o'clock  
81 antemeridian, eastern standard time: *Provided*, That the  
82 time periods for carrying unloaded and uncased firearms  
83 are extended for one hour after the postmeridian times and  
84 one hour before the antemeridian times established above  
85 if a hunter is preparing to or in the process of transporting  
86 or transferring the firearms to or from a hunting site,  
87 campsite, home or other place of abode;

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

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

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

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

111 (14) Catch, take, kill or attempt to catch, take or kill any  
112 fish at any time by any means other than by rod, line and  
113 hooks with natural or artificial lures unless otherwise

114 authorized by law or rules issued by the Director: *Pro-*  
115 *vided*, That snaring of any species of suckers, carp, fallfish  
116 and creek chubs shall at all times be lawful;

117 (15) Employ or hire, or induce or persuade, by the use of  
118 money or other things of value, or by any means, any  
119 person to hunt, take, catch or kill any wild animal or wild  
120 bird except those species on which there is no closed  
121 season, or to fish for, catch, take or kill any fish, amphib-  
122 ian or aquatic life which is protected by the provisions of  
123 this chapter or rules of the Director or the sale of which is  
124 prohibited;

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

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

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

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

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

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

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

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

170 (24) Permit any dog owned by him or her or under his or  
171 her control to chase, pursue or follow upon the track of  
172 any wild animal or wild bird, either day or night, between  
173 the first day of May and the fifteenth day of August next  
174 following: *Provided*, That dogs may be trained on wild  
175 animals and wild birds, except deer and wild turkeys, and  
176 field trials may be held or conducted on the grounds or  
177 lands of the owner or by his or her bona fide tenant or  
178 tenants or upon the grounds or lands of another person  
179 with his or her written permission or on public lands at  
180 any time: *Provided, however*, That nonresidents may not  
181 train dogs in this state at any time except during the legal  
182 small game hunting season: *Provided further*, That the  
183 person training said dogs does not have firearms or other

184 implements in his or her possession during the closed  
185 season on wild animals and wild birds, whereby wild  
186 animals or wild birds could be taken or killed;

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

198 (26) Except as provided in section four of this article,  
199 hunt, catch, take, kill or attempt to hunt, catch, take or kill  
200 any wild animal, wild bird or wild fowl except during the  
201 open season established by rule of the Director as autho-  
202 rized by subdivision (6), section seven, article one of this  
203 chapter;

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

206 (28) Hunt, catch, take, kill, trap, injure or pursue with  
207 firearms or other implement which wildlife can be taken,  
208 on private lands on Sunday after the hour of five o'clock  
209 antemeridian: *Provided*, That the provisions of this  
210 subdivision do not apply in any county until the county  
211 commission of the county holds an election on the question  
212 of whether the provisions of this subdivision prohibiting  
213 hunting on Sunday shall apply within the county and the  
214 voters approve the allowance of hunting on Sunday in the  
215 county. The election is determined by a vote of the  
216 resident voters of the county in which the hunting on  
217 Sunday is proposed to be authorized. The county commis-  
218 sion of the county in which Sunday hunting is proposed  
219 shall give notice to the public of the election by publica-

220 tion of the notice as a Class II-0 legal advertisement in  
221 compliance with the provisions of article three, chapter  
222 fifty-nine of this code and the publication area for the  
223 publication shall be the county in which the election is to  
224 be held. The date of the last publication of the notice shall  
225 fall on a date within the period of the fourteen consecutive  
226 days next preceding the election.

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

229 Shall hunting on Sunday be authorized in \_\_\_\_\_  
230 County?

231 [ ] Yes [ ] No

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

233 Any local option election to approve or disapprove of the  
234 proposed authorization of Sunday hunting within a county  
235 shall be in accordance with procedures adopted by the  
236 commission. The local option election may be held in  
237 conjunction with a primary or general election, or at a  
238 special election. Approval shall be by a majority of the  
239 voters casting votes on the question of approval or disap-  
240 proval of Sunday hunting at the election.

241 If a majority votes against allowing Sunday hunting, no  
242 election on the issue may be held for a period of one  
243 hundred four weeks. If a majority votes "yes", no election  
244 reconsidering the action may be held for a period of five  
245 years. A local option election may thereafter be held if a  
246 written petition of qualified voters residing within the  
247 county equal to at least five percent of the number of  
248 persons who were registered to vote in the next preceding  
249 general election is received by the county commission of  
250 the county in which Sunday hunting is authorized. The  
251 petition may be in any number of counterparts. The  
252 election shall take place at the next primary or general  
253 election scheduled more than ninety days following receipt  
254 by the county commission of the petition required by this

255 subsection: *Provided*, That the issue may not be placed on  
256 the ballot until all statutory notice requirements have been  
257 met. No local law or regulation providing any penalty,  
258 disability, restriction, regulation or prohibition of Sunday  
259 hunting may be enacted and the provisions of this article  
260 preempt all regulations, rules, ordinances and laws of any  
261 county or municipality in conflict with this subdivision.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the *4<sup>th</sup>*  
Day of *April* 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/29/05

Time 2:58pm