

FILED

2005 MAY -2 P 3: 10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2890

(By Delegate DeLong)



Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 2890

(BY DELEGATE DELONG)

[Passed April 9, 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 generally unlawful methods of hunting; and making it unlawful to hunt or conduct hunts for a fee where the hunter is not in the same physical location as the wildlife.

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: *Provided, however*, That it is lawful to
20 hunt or take coyotes by the use of amber- or red-colored
21 artificial light subject to the restrictions set forth in this subdivi-
22 sion. No person is guilty of a violation of this subdivision
23 merely because he or she looks for, looks at, attracts or makes
24 motionless a wild bird or wild animal with or by the use of an
25 artificial light, unless at the time he or she has in his or her
26 possession a firearm, whether cased or uncased, bow, arrow, or
27 both, or other implement or device suitable for taking, killing
28 or trapping a wild bird or wild animal, or unless the artificial
29 light (other than the head lamps of an automobile or other land
30 conveyance) is attached to, a part of, or used from within or
31 upon an automobile 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 jail
36 for not less than ten days nor more than one hundred days;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

135 European sparrow (*passer domesticus*), starling (*sturnus*
136 *vulgaris*) and cowbird (*molothrus ater*), which may not be
137 protected and the killing thereof at any time is lawful;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

214 Shall hunting on Sunday be authorized in
215 County?

216 [] Yes [] No

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

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

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

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

245 (29) Hunt or conduct hunts for a fee where the hunter is not
246 physically present in the same location as the wildlife being
247 hunted within West Virginia.

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



Chairman Senate Committee



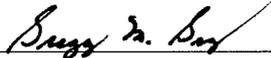
Chairman House Committee

Originating in the House.

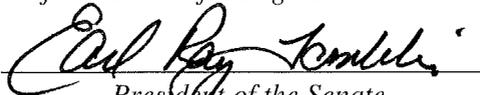
In effect ninety days from passage.



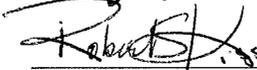
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 2005.



Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 4:35 