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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 *4th*
Day of *April* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/29/05

Time 2:58pm