Enrolled
Committee Substitute
for
Senate Bill 451

SENATORS MAYNARD, CLEMENTS, FERNS, GAUNCH,
MARONEY, RUCKER, SMITH, SWOPE, WELD, AND CLINE,
original sponsors

[Passed March 6, 2018; in effect 90 days from passage]
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AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-9 of said code, all relating generally to hunting and fishing; authorizing the use of certain technologies for hunting coyote, fox, racoon, opossum, and skunk; regulating firearm use and possession in certain places; prohibiting the use of a drone or unmanned aircraft to wound, harass, or transport wildlife; allowing certain persons to carry firearms, including handguns, rifles, or shotguns, for self-defense with certain exceptions; creating a misdemeanor and providing penalties for catching, taking, killing or attempting to catch, take, or kill any fish by any means within 200 feet of agency personnel stocking fish into public waters; removing a limitation on the starting time for Sunday hunting on private lands with the landowner’s permission; requiring crossbows and bows be cased when in a motor vehicle during certain times; prohibiting nocked bows from being transported in a motor vehicle; providing that the misdemeanor offenses of hunting, trapping, or fishing on the lands of another person, entering posted lands, hunting on private land on Sunday without written permission, and destroying posted land signs will all carry penalties equivalent to the penalty for the offense of criminal trespass; providing increased penalties upon conviction of second and subsequent violations of certain natural resources laws; permitting Sunday hunting on public lands; permitting noodling, or fishing for catfish using one’s bare hands; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, 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;
(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging, or active illumination while hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal: Provided, That it is lawful to hunt or take coyote, fox, raccoon, opossum, or skunk by the use of artificial light or night vision technology, including image intensification, thermal imaging, or active illumination. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $100 nor more than $500, and shall be confined in jail for not less than 10 days nor more than 100 days;

(4) Hunt, take, kill, wound, harass, or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile, or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take, wound, harass, transport, or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping, or killing;

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

(7) Catch, capture, take, hunt, or kill by seine, net, bait, trap, or snare or like device a wild turkey, ruffed grouse, pheasant, or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas, or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;
(B) A person hunting or taking unprotected species of wild animals, wild birds, and migratory wild birds during the open season, in the open fields, open water, and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to §20-2-6 of this code;

(D) A person carrying a firearm for self-defense who is not prohibited from possessing firearms under state or federal law; or

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: Provided, That this exception does not apply to an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities and marked trails within state park or state forest borders.

(10) Possess a loaded rifle or shotgun, a bow with a nocked arrow, or crossbow with a nocked bolt, in or on any vehicle or conveyance, or its attachments. A rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached is considered loaded. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself;

(11) Carry any unloaded firearm, bow, or crossbow in or on any vehicle or conveyance, or its attachments, that is not in a case or taken apart and securely wrapped between 30 minutes after sunset until 30 minutes before sunrise: Provided, That the time periods for carrying unloaded and uncased firearms or crossbows are extended for one hour after sunset as established in this subdivision, if a person is transporting or transferring the firearms or crossbows to or from a hunting site, campsite, home, or other abode;

(12) Hunt, catch, take, kill, injure, or pursue a wild animal or wild 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 by any means other than by rod, line, and hooks with natural or artificial lures, unless otherwise authorized by the director: Provided, That snaring of any species of sucker, carp, fallfish, and creek chub and catching catfish by hand are lawful if done by a holder of a valid license issued pursuant to §20-2-1 et seq. of this code or is exempted from licensure pursuant to §20-2-27 or §20-2-28 of this code;

(15) Employ, hire, induce, or persuade, with money, things of value, or by any means, any person to hunt, take, catch, or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take, or kill any fish, amphibian, or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess, or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and its regulations;

(17) Kill, take, catch, sell, transport, or have in his or her possession, living or dead, any wild bird other than a game bird, including the plumage, skin, or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), and cowbird (Molothrus ater), which may be killed at any time;

(18) Use dynamite, explosives, or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony, and upon conviction thereof, shall be fined not more than $500 or confined for not less than six months nor more than three years, or both fined and confined;

(19) Have a bow and gun, or have a gun and any arrow, 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 except as otherwise provided in §20-2-5g and §20-2-42w of this code;
(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;

(24) Permit any dog owned or under his or her control to chase, pursue, or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: 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 upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements for taking wildlife in his or her possession during the closed season on wild animals and wild birds, except a person carrying a firearm for self-defense who is not prohibited from possessing firearms under state or federal law;

(25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race, or wild hunt: Provided, That any person, group of persons, club, or organization may hold a trial upon obtaining a permit pursuant to §20-2-56 of this code. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

(26) Hunt, catch, take, kill, or attempt to hunt, catch, take, or kill any wild animal, wild bird, or wild fowl except during open seasons;

(27) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia; and
(28) Catch, take, kill, or attempt to catch, take, or kill any fish by any means within 200 feet of division personnel engaged in stocking fish in public waters.

(b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt throughout the State of West Virginia on private lands on Sundays with the written consent of the private landowner pursuant to §20-2-7 of this code, and it is lawful to hunt throughout the State of West Virginia on federal land where hunting is permitted, in state forests, on land owned or leased by the state for wildlife purposes, and on land managed by the state for wildlife purposes pursuant to a cooperative agreement.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-9. Violations of chapter generally; penalties.

Any person violating any of the provisions of this chapter or rules promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $20 nor more than $300, or confined in jail not less than 10 or more than 100 days, or be both fined and confined within the limitations aforesaid and, in the case of a violation by a corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided: Provided, That any person violating §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code shall be guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than $100 nor more than $500, or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined. A person who is convicted of a second offense of violation of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code is guilty of a misdemeanor and shall be fined not less than $500 nor more than $1,000 or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined. A person who is convicted of a third and subsequent offense of violation of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code is guilty of a misdemeanor, and shall be fined not less than $1,000 nor more than $1,500, or shall
be confined for not less than 10 days nor more than 100 days, or both fined and confined:

Provided, however, That any person who is in violation of §20-2-27 of this code as a result of their failure to have a valid Class E nonresident hunting and trapping license, as defined by §20-2-42d of this code, or a valid Class EE nonresident bear hunting license, as defined by §20-2-42e of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $500, or confined in jail not less than 10 nor more than 100 days, or both fined and confined: Provided further, That any person who is in violation of §20-2-27 of this code as a result of their failure to have a Class F nonresident fishing license, as defined by §20-2-42f of this code, shall be guilty of a misdemeanor and, upon conviction thereof, fined not less than $100 nor more than $300 or confined in jail not less than 10 nor more than 100 days, or both fined and confined: And provided further, That any person violating any parking or speeding regulations as promulgated by the director on any state parks, state forests, public hunting and fishing areas, and all other lands and waters owned, leased, or under the control of the Division of Natural Resources shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2 nor more than $100 or confined in jail not more than 10 days, or both fined and confined.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 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 27th Day of March, 2018.

Governor
PRESENTED TO THE GOVERNOR

Time 10:15 am