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ENROLLED

H. B. 4322

(By Delegates Talbott, Crosier, Romine, Shaver,
Hamilton, Azinger and Ireland)

[By Request of the Division of Natural Resources]

[Passed March 10, 2012; 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 hunting; adding coyote and fox to the list of species in which any color artificial light is permitted for hunting at night; removing redundant language relating to hunting while under the influence of alcohol; and referencing Class Y special crossbow hunting permits.

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.

Except as authorized by the director, it is unlawful at any time for any person to:

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

1 (2) Dig out, cut out or smoke out, or in any manner take or
2 attempt to take, any live wild animal or wild bird out of its den
3 or place of refuge except as may be authorized by rules promulgated
4 by the director or by law;

5 (3) Make use of, or take advantage of, any artificial light in
6 hunting, locating, attracting, taking, trapping or killing any wild
7 bird or wild animal, or to attempt to do so, while having in his or
8 her possession or subject to his or her control, or for any person
9 accompanying him or her to have in his or her possession or subject
10 to his or her control, any firearm, whether cased or uncased, bow,
11 arrow, or both, or other implement or device suitable for taking,
12 killing or trapping a wild bird or animal: *Provided*, That it is
13 lawful to hunt or take coyote, fox, raccoon, opossum or skunk by
14 the use of artificial light subject to the restrictions set forth
15 in this subdivision. No person is guilty of a violation of this
16 subdivision merely because he or she looks for, looks at, attracts
17 or makes motionless a wild bird or wild animal with or by the use
18 of an artificial light, unless at the time he or she has in his or
19 her possession a firearm, whether cased or uncased, bow, arrow, or
20 both, or other implement or device suitable for taking, killing or
21 trapping a wild bird or wild animal, or unless the artificial light
22 (other than the head lamps of an automobile or other land
23 conveyance) is attached to, a part of or used from within or upon
24 an automobile or other land conveyance.

1 Any person violating the provisions of this subdivision is
2 guilty of a misdemeanor and, upon conviction thereof, shall for
3 each offense be fined not less than \$100 nor more than \$500 and
4 shall be confined in jail for not less than ten days nor more than
5 one hundred days;

6 (4) Hunt for, take, kill, wound or shoot at wild animals or
7 wild birds from an airplane, or other airborne conveyance, an
8 automobile, or other land conveyance, or from a motor-driven water
9 conveyance, except as authorized by rules promulgated by the
10 director;

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

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

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

20 (8) Except as provided in section six of this article, carry
21 an uncased or loaded gun in any of the woods of this state except
22 during the open firearms hunting season for wild animals and
23 nonmigratory wild birds within any county of the state unless he or
24 she has in his or her possession a permit in writing issued to him

1 or her by the director: *Provided*, That this section does not
2 prohibit hunting or taking of unprotected species of wild animals
3 and wild birds and migratory wild birds, during the open season, in
4 the open fields, open water and open marshes of the state;

5 (9) Have in his or her possession a crossbow with a nocked
6 bolt, a loaded firearm or a firearm from the magazine of which all
7 shells and cartridges have not been removed, in or on any vehicle
8 or conveyance, or its attachments, within the state, except as may
9 otherwise be provided by law or regulation. Except as hereinafter
10 provided, between five o'clock postmeridian of one day and seven
11 o'clock antemeridian, eastern standard time of the day following,
12 any unloaded firearm or crossbow, being lawfully carried in
13 accordance with the foregoing provisions, may be so carried only
14 when in a case or taken apart and securely wrapped. During the
15 period from July 1 to September 30, inclusive, of each year, the
16 foregoing requirements relative to carrying certain unloaded
17 firearms are permissible only from eight-thirty o'clock
18 postmeridian to five o'clock antemeridian, eastern standard time:
19 *Provided*, That the time periods for carrying unloaded and uncased
20 firearms are extended for one hour after the postmeridian times and
21 one hour before the antemeridian times established above if a
22 hunter is preparing to or in the process of transporting or
23 transferring the firearms to or from a hunting site, campsite, home
24 or other place of abode;

1 (10) Hunt, catch, take, kill, trap, injure or pursue with
2 firearms or other implement by which wildlife may be taken after
3 the hour of five o'clock antemeridian on Sunday on private land
4 without the written consent of the landowner any wild animals or
5 wild birds except when a big game season opens on a Monday, the
6 Sunday prior to that opening day will be closed for any taking of
7 wild animals or birds after five o'clock antemeridian on that
8 Sunday: *Provided*, That traps previously and legally set may be
9 tended after the hour of five o'clock antemeridian on Sunday and
10 the person so doing may carry only a twenty-two caliber firearm for
11 the purpose of humanely dispatching trapped animals. Any person
12 violating the provisions of this subdivision is guilty of a
13 misdemeanor and, upon conviction thereof, in addition to any fines
14 that may be imposed by this or other sections of this code, is
15 subject to a \$100 fine;

16 (11) Hunt, catch, take, kill, injure or pursue a wild
17 animal or bird with the use of a ferret;

18 (12) Buy raw furs, pelts or skins of fur-bearing animals
19 unless licensed to do so;

20 (13) Catch, take, kill or attempt to catch, take or kill any
21 fish at any time by any means other than by rod, line and hooks
22 with natural or artificial lures unless otherwise authorized by law
23 or rules issued by the Director: *Provided*, That snaring of any
24 species of suckers, carp, fallfish and creek chubs shall at all

1 times be lawful;

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

9 (15) Hunt, catch, take, kill, capture, pursue, transport,
10 possess or use any migratory game or nongame birds included in the
11 terms of conventions between the United States and Great Britain
12 and between the United States and United Mexican States for the
13 protection of migratory birds and wild mammals concluded,
14 respectively, August 16, 1916, and February 7, 1936, except during
15 the time and in the manner and numbers prescribed by the federal
16 Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations
17 made thereunder;

18 (16) Kill, take, catch or have in his or her possession,
19 living or dead, any wild bird other than a game bird; or expose for
20 sale or transport within or without the state any bird except as
21 aforesaid. No part of the plumage, skin or body of any protected
22 bird may be sold or had in possession for sale except mounted or
23 stuffed plumage, skin, bodies or heads of the birds legally taken
24 and stuffed or mounted, irrespective of whether the bird was

1 captured within or without this state, except the English or
2 European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)
3 and cowbird (*molothrus ater*), which may not be protected and the
4 killing thereof at any time is lawful;

5 (17) Use dynamite or any like explosive or poisonous mixture
6 placed in any waters of the state for the purpose of killing or
7 taking fish. Any person violating the provisions of this
8 subdivision is guilty of a felony and, upon conviction thereof,
9 shall be fined not more than \$500 or imprisoned for not less than
10 six months nor more than three years, or both fined and imprisoned;

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

13 (19) Have a crossbow in the woods or fields or use a crossbow
14 to hunt for, take or attempt to take any wildlife except as
15 otherwise provided in section 42w of this article;

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

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

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

1 conveyance;

2 (23) Permit any dog owned by him or her or under his or her
3 control to chase, pursue or follow upon the track of any wild
4 animal or wild bird, either day or night, between May 1 and the
5 August 15 next following: *Provided*, That dogs may be trained on
6 wild animals and wild birds, except deer and wild turkeys, and
7 field trials may be held or conducted on the grounds or lands of
8 the owner or by his or her bona fide tenant or tenants or upon the
9 grounds or lands of another person with his or her written
10 permission or on public lands at any time: *Provided, however*, That
11 nonresidents may not train dogs in this state at any time except
12 during the legal small game hunting season: *Provided further*, That
13 the person training said dogs does not have firearms or other
14 implements in his or her possession during the closed season on
15 wild animals and wild birds, whereby wild animals or wild birds
16 could be taken or killed;

17 (24) Conduct or participate in a field trial, shoot-to-
18 retrieve field trial, water race or wild hunt hereafter referred to
19 as trial: *Provided*, That any person, group of persons, club or
20 organization may hold the trial at any time of the year upon
21 obtaining a permit as is provided in section fifty-six of this
22 article. The person responsible for obtaining the permit shall
23 prepare and keep an accurate record of the names and addresses of
24 all persons participating in said trial and make same readily

1 available for inspection by any natural resources police officer
2 upon request;

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

8 (26) Hunting on public lands on Sunday after five o'clock
9 antemeridian is prohibited;

10 (27) Hunt, catch, take, kill, trap, injure or pursue with
11 firearms or other implement which wildlife can be taken, on private
12 lands on Sunday after the hour of five o'clock antemeridian:
13 *Provided*, That the provisions of this subdivision do not apply in
14 any county until the county commission of the county holds an
15 election on the question of whether the provisions of this
16 subdivision prohibiting hunting on Sunday shall apply within the
17 county and the voters approve the allowance of hunting on Sunday in
18 the county. The election is determined by a vote of the resident
19 voters of the county in which the hunting on Sunday is proposed to
20 be authorized. The county commission of the county in which Sunday
21 hunting is proposed shall give notice to the public of the election
22 by publication of the notice as a Class II-0 legal advertisement in
23 compliance with the provisions of article three, chapter fifty-nine
24 of this code and the publication area for the publication is the

1 county in which the election is to be held. The date of the last
2 publication of the notice shall fall on a date within the period of
3 the fourteen consecutive days next preceding the election.

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

6 Shall hunting on Sunday be authorized in _____ County?

7 [] Yes [] No

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

9 Any local option election to approve or disapprove of the
10 proposed authorization of Sunday hunting within a county shall be
11 in accordance with procedures adopted by the commission. The local
12 option election may be held in conjunction with a primary or
13 general election or at a special election. Approval shall be by a
14 majority of the voters casting votes on the question of approval or
15 disapproval of Sunday hunting at the election.

16 If a majority votes against allowing Sunday hunting, no
17 election on the issue may be held for a period of one hundred four
18 weeks. If a majority votes "yes," no election reconsidering the
19 action may be held for a period of five years. A local option
20 election may thereafter be held if a written petition of qualified
21 voters residing within the county equal to at least five percent of
22 the number of persons who were registered to vote in the next
23 preceding general election is received by the county commission of
24 the county in which Sunday hunting is authorized. The petition may

1 be in any number of counterparts. The election shall take place at
2 the next primary or general election scheduled more than ninety
3 days following receipt by the county commission of the petition
4 required by this subsection: *Provided*, That the issue may not be
5 placed on the ballot until all statutory notice requirements have
6 been met. No local law or regulation providing any penalty,
7 disability, restriction, regulation or prohibition of Sunday
8 hunting may be enacted and the provisions of this article preempt
9 all regulations, rules, ordinances and laws of any county or
10 municipality in conflict with this subdivision; and

11 (28) Hunt or conduct hunts for a fee where the hunter is not
12 physically present in the same location as the wildlife being
13 hunted within West Virginia.