

1 **Senate Bill No. 407**

2 (By Senators Laird and Beach)

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[Introduced January 24, 2012; referred to the Committee on
Natural Resources; and then to the Committee on the Judiciary.]

10 A BILL to amend and reenact §20-2-5 of the Code of West Virginia,
11 1931, as amended, relating to hunting; adding coyote and fox
12 to the list of species in which any color artificial light is
13 permitted for hunting at night; removing redundant language
14 relating to hunting while under the influence of alcohol; and
15 referencing Class Y special crossbow hunting permits.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §20-2-5 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 2. WILDLIFE RESOURCES.**

20 **§20-2-5. Unlawful methods of hunting and fishing and other**
21 **unlawful acts.**

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

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

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

7 (3) Make use of, or take advantage of, any artificial light in
8 hunting, locating, attracting, taking, trapping or killing any wild
9 bird or wild animal, or to attempt to do so, while having in his or
10 her possession or subject to his or her control, or for any person
11 accompanying him or her to have in his or her possession or subject
12 to his or her control, any firearm, whether cased or uncased, bow,
13 arrow, or both, or other implement or device suitable for taking,
14 killing or trapping a wild bird or animal: *Provided*, That it is
15 lawful to hunt or take coyote, fox, raccoon, opossum or skunk by
16 the use of artificial light subject to the restrictions set forth
17 in this subdivision: ~~*Provided, however, That it is lawful to hunt*~~
18 ~~*or take coyotes by the use of amber, green or red colored*~~
19 ~~*artificial light subject to the restrictions set forth in this*~~
20 ~~*subdivision.*~~ No person is guilty of a violation of this

21 subdivision merely because he or she looks for, looks at, attracts
22 or makes motionless a wild bird or wild animal with or by the use
23 of an artificial light, unless at the time he or she has in his or
24 her possession a firearm, whether cased or uncased, bow, arrow, or

1 both, or other implement or device suitable for taking, killing or
2 trapping a wild bird or wild animal, or unless the artificial light
3 (other than the head lamps of an automobile or other land
4 conveyance) is attached to, a part of or used from within or upon
5 an automobile or other land conveyance.

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

11 (4) Hunt for, take, kill, wound or shoot at wild animals or
12 wild birds from an airplane, or other airborne conveyance, an
13 automobile, or other land conveyance, or from a motor-driven water
14 conveyance, except as authorized by rules promulgated by the
15 director;

16 (5) Take any beaver or muskrat by any means other than by
17 trap;

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

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

1 (8) Except as provided in section six of this article, carry
2 an uncased or loaded gun in any of the woods of this state except
3 during the open firearms hunting season for wild animals and
4 nonmigratory wild birds within any county of the state unless he or
5 she has in his or her possession a permit in writing issued to him
6 or her by the director: *Provided*, That this section does not
7 prohibit hunting or taking of unprotected species of wild animals
8 and wild birds and migratory wild birds, during the open season, in
9 the open fields, open water and open marshes of the state;

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

1 firearms are extended for one hour after the postmeridian times and
2 one hour before the antemeridian times established above if a
3 hunter is preparing to or in the process of transporting or
4 transferring the firearms to or from a hunting site, campsite, home
5 or other place of abode;

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

21 ~~(11) Hunt with firearms or long bow while under the influence~~
22 ~~of intoxicating liquor;~~

23 ~~(12)~~(11) Hunt, catch, take, kill, injure or pursue a wild
24 animal or bird with the use of a ferret;

1 ~~(13)~~(12) Buy raw furs, pelts or skins of fur-bearing animals
2 unless licensed to do so;

3 ~~(14)~~(13) Catch, take, kill or attempt to catch, take or kill
4 any fish at any time by any means other than by rod, line and hooks
5 with natural or artificial lures unless otherwise authorized by law
6 or rules issued by the Director: *Provided*, That snaring of any
7 species of suckers, carp, fallfish and creek chubs shall at all
8 times be lawful;

9 ~~(15)~~(14) Employ or hire, or induce or persuade, by the use of
10 money or other things of value, or by any means, any person to
11 hunt, take, catch or kill any wild animal or wild bird except those
12 species on which there is no closed season, or to fish for, catch,
13 take or kill any fish, amphibian or aquatic life which is protected
14 by the provisions of this chapter or rules of the director or the
15 sale of which is prohibited;

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

1 ~~(17)~~(16) Kill, take, catch or have in his or her possession,
2 living or dead, any wild bird other than a game bird; or expose for
3 sale or transport within or without the state any bird except as
4 aforesaid. No part of the plumage, skin or body of any protected
5 bird may be sold or had in possession for sale except mounted or
6 stuffed plumage, skin, bodies or heads of the birds legally taken
7 and stuffed or mounted, irrespective of whether the bird was
8 captured within or without this state, except the English or
9 European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)
10 and cowbird (*molothrus ater*), which may not be protected and the
11 killing thereof at any time is lawful;

12 ~~(18)~~(17) Use dynamite or any like explosive or poisonous
13 mixture placed in any waters of the state for the purpose of
14 killing or taking fish. Any person violating the provisions of this
15 subdivision is guilty of a felony and, upon conviction thereof,
16 shall be fined not more than \$500 or imprisoned for not less than
17 six months nor more than three years, or both fined and imprisoned;

18 ~~(19)~~(18) Have a bow and gun, or have a gun and any arrow or
19 arrows, in the fields or woods at the same time;

20 ~~(20)~~(19) Have a crossbow in the woods or fields or use a
21 crossbow to hunt for, take or attempt to take any wildlife ~~unless~~
22 ~~the person possesses a Class Y permit~~ except as otherwise provided
23 in section 42w of this article;

24 ~~(21)~~(20) Take or attempt to take turkey, bear, elk or deer

1 with any arrow unless the arrow is equipped with a point having at
2 least two sharp cutting edges measuring in excess of three fourths
3 of an inch wide;

4 ~~(22)~~(21) Take or attempt to take any wildlife with an arrow
5 having an explosive head or shaft, a poisoned arrow or an arrow
6 which would affect wildlife by any chemical action;

7 ~~(23)~~(22) Shoot an arrow across any public highway or from
8 aircraft, motor-driven watercraft, motor vehicle or other land
9 conveyance;

10 ~~(24)~~(23) Permit any dog owned by him or her or under his or
11 her control to chase, pursue or follow upon the track of any wild
12 animal or wild bird, either day or night, between May 1 and the
13 August 15 next following: *Provided*, That dogs may be trained on
14 wild animals and wild birds, except deer and wild turkeys, and
15 field trials may be held or conducted on the grounds or lands of
16 the owner or by his or her bona fide tenant or tenants or upon the
17 grounds or lands of another person with his or her written
18 permission or on public lands at any time: *Provided, however*, That
19 nonresidents may not train dogs in this state at any time except
20 during the legal small game hunting season: *Provided further*, That
21 the person training said dogs does not have firearms or other
22 implements in his or her possession during the closed season on
23 wild animals and wild birds, whereby wild animals or wild birds
24 could be taken or killed;

1 ~~(25)~~(24) Conduct or participate in a field trial, shoot-to-
2 retrieve field trial, water race or wild hunt hereafter referred to
3 as trial: *Provided*, That any person, group of persons, club or
4 organization may hold the trial at any time of the year upon
5 obtaining a permit as is provided in section fifty-six of this
6 article. The person responsible for obtaining the permit shall
7 prepare and keep an accurate record of the names and addresses of
8 all persons participating in said trial and make same readily
9 available for inspection by any natural resources police officer
10 upon request;

11 ~~(26)~~(25) Except as provided in section four of this article,
12 hunt, catch, take, kill or attempt to hunt, catch, take or kill any
13 wild animal, wild bird or wild fowl except during the open season
14 established by rule of the director as authorized by subdivision
15 (6), section seven, article one of this chapter;

16 ~~(27)~~(26) Hunting on public lands on Sunday after five o'clock
17 antemeridian is prohibited; and

18 ~~(28)~~(27) Hunt, catch, take, kill, trap, injure or pursue with
19 firearms or other implement which wildlife can be taken, on private
20 lands on Sunday after the hour of five o'clock antemeridian:
21 *Provided*, That the provisions of this subdivision do not apply in
22 any county until the county commission of the county holds an
23 election on the question of whether the provisions of this
24 subdivision prohibiting hunting on Sunday shall apply within the

1 county and the voters approve the allowance of hunting on Sunday in
2 the county. The election is determined by a vote of the resident
3 voters of the county in which the hunting on Sunday is proposed to
4 be authorized. The county commission of the county in which Sunday
5 hunting is proposed shall give notice to the public of the election
6 by publication of the notice as a Class II-0 legal advertisement in
7 compliance with the provisions of article three, chapter fifty-nine
8 of this code and the publication area for the publication is the
9 county in which the election is to be held. The date of the last
10 publication of the notice shall fall on a date within the period of
11 the fourteen consecutive days next preceding the election.

12 On the local option election ballot shall be printed the
13 following:

14 Shall hunting on Sunday be authorized in _____ County?

15 [] Yes [] No

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

17 Any local option election to approve or disapprove of the
18 proposed authorization of Sunday hunting within a county shall be
19 in accordance with procedures adopted by the commission. The local
20 option election may be held in conjunction with a primary or
21 general election or at a special election. Approval shall be by a
22 majority of the voters casting votes on the question of approval or
23 disapproval of Sunday hunting at the election.

24 If a majority votes against allowing Sunday hunting, no

1 election on the issue may be held for a period of one hundred four
2 weeks. If a majority votes "yes", no election reconsidering the
3 action may be held for a period of five years. A local option
4 election may thereafter be held if a written petition of qualified
5 voters residing within the county equal to at least five percent of
6 the number of persons who were registered to vote in the next
7 preceding general election is received by the county commission of
8 the county in which Sunday hunting is authorized. The petition may
9 be in any number of counterparts. The election shall take place at
10 the next primary or general election scheduled more than ninety
11 days following receipt by the county commission of the petition
12 required by this subsection: *Provided*, That the issue may not be
13 placed on the ballot until all statutory notice requirements have
14 been met. No local law or regulation providing any penalty,
15 disability, restriction, regulation or prohibition of Sunday
16 hunting may be enacted and the provisions of this article preempt
17 all regulations, rules, ordinances and laws of any county or
18 municipality in conflict with this subdivision.

19 ~~(29)~~(28) Hunt or conduct hunts for a fee where the hunter is
20 not physically present in the same location as the wildlife being
21 hunted within West Virginia.

NOTE: The purpose of this bill is to add coyote and fox to the list of species in which any color of artificial light is permitted for hunting at night. It further strikes language regarding hunting

while intoxicated because West Virginia Code §20-2-57b is more comprehensive. Lastly, the bill makes reference to Class Y special crossbow hunting permits for disabled persons.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language.