

H. B. 4322

(BY DELEGATES TALBOTT, CROSIER, ROMINE,
SHAVER, HAMILTON, AZINGER AND IRELAND)
[BY REQUEST OF THE DIVISION OF NATURAL RESOURCES]

[Introduced January 27, 2012; referred to the
Committee on Natural Resources then the Judiciary.]

A BILL 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.

- 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
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 its
7 den 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
10 in hunting, locating, attracting, taking, trapping or killing any
11 wild bird or wild animal, or to attempt to do so, while having
12 in his or her possession or subject to his or her control, or for
13 any person accompanying him or her to have in his or her
14 possession or subject to his or her control, any firearm,
15 whether cased or uncased, bow, arrow, or both, or other
16 implement or device suitable for taking, killing or trapping a
17 wild bird or animal: *Provided*, That it is lawful to hunt or
18 take coyote, fox, raccoon, opossum or skunk by the use of
19 artificial light subject to the restrictions set forth in this
20 subdivision. ~~*Provided, however*, That it is lawful to hunt or~~
21 ~~take coyotes by the use of amber, green or red-colored~~

22 ~~artificial light subject to the restrictions set forth in this~~
23 ~~subdivision~~ No person is guilty of a violation of this
24 subdivision merely because he or she looks for, looks at,
25 attracts or makes motionless a wild bird or wild animal with
26 or by the use of an artificial light, unless at the time he or she
27 has in his or her possession a firearm, whether cased or
28 uncased, bow, arrow, or both, or other implement or device
29 suitable for taking, killing or trapping a wild bird or wild
30 animal, or unless the artificial light (other than the head
31 lamps of an automobile or other land conveyance) is attached
32 to, a part of or used from within or upon an automobile or
33 other land conveyance.

34 Any person violating the provisions of this subdivision is
35 guilty of a misdemeanor and, upon conviction thereof, shall
36 for each offense be fined not less than \$100 nor more than
37 \$500 and shall be confined in jail for not less than ten days
38 nor more than one hundred days;

39 (4) Hunt for, take, kill, wound or shoot at wild animals or
40 wild birds from an airplane, or other airborne conveyance, an

41 automobile, or other land conveyance, or from a motor-
42 driven water conveyance, except as authorized by rules
43 promulgated by the director;

44 (5) Take any beaver or muskrat by any means other than
45 by trap;

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

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

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

60 unprotected species of wild animals and wild birds and
61 migratory wild birds, during the open season, in the open
62 fields, open water and open marshes of the state;

63 (9) Have in his or her possession a crossbow with a
64 nocked bolt, a loaded firearm or a firearm from the magazine
65 of which all shells and cartridges have not been removed, in
66 or on any vehicle or conveyance, or its attachments, within
67 the state, except as may otherwise be provided by law or
68 regulation. Except as hereinafter provided, between five
69 o'clock postmeridian of one day and seven o'clock
70 antemeridian, eastern standard time of the day following, any
71 unloaded firearm or crossbow, being lawfully carried in
72 accordance with the foregoing provisions, may be so carried
73 only when in a case or taken apart and securely wrapped.
74 During the period from July 1 to September 30, inclusive, of
75 each year, the foregoing requirements relative to carrying
76 certain unloaded firearms are permissible only from eight-
77 thirty o'clock postmeridian to five o'clock antemeridian,
78 eastern standard time: *Provided*, That the time periods for

79 carrying unloaded and uncased firearms are extended for one
80 hour after the postmeridian times and one hour before the
81 antemeridian times established above if a hunter is preparing
82 to or in the process of transporting or transferring the
83 firearms to or from a hunting site, campsite, home or other
84 place of abode;

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

98 a misdemeanor and, upon conviction thereof, in addition to
99 any fines that may be imposed by this or other sections of this
100 code, is subject to a \$100 fine;

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

103 ~~(12)~~ (11) Hunt, catch, take, kill, injure or pursue a wild
104 animal or bird with the use of a ferret;

105 ~~(13)~~ (12) Buy raw furs, pelts or skins of fur-bearing
106 animals unless licensed to do so;

107 ~~(14)~~ (13) Catch, take, kill or attempt to catch, take or kill
108 any fish at any time by any means other than by rod, line and
109 hooks with natural or artificial lures unless otherwise
110 authorized by law or rules issued by the Director: *Provided*,
111 That snaring of any species of suckers, carp, fallfish and
112 creek chubs shall at all times be lawful;

113 ~~(15)~~ (14) Employ or hire, or induce or persuade, by the
114 use of money or other things of value, or by any means, any
115 person to hunt, take, catch or kill any wild animal or wild
116 bird except those species on which there is no closed season,

117 or to fish for, catch, take or kill any fish, amphibian or
118 aquatic life which is protected by the provisions of this
119 chapter or rules of the director or the sale of which is
120 prohibited;

121 ~~(16)~~ (15) Hunt, catch, take, kill, capture, pursue,
122 transport, possess or use any migratory game or nongame
123 birds included in the terms of conventions between the
124 United States and Great Britain and between the United
125 States and United Mexican States for the protection of
126 migratory birds and wild mammals concluded, respectively,
127 August 16, 1916, and February 7, 1936, except during the
128 time and in the manner and numbers prescribed by the federal
129 Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and
130 regulations made thereunder;

131 ~~(17)~~ (16) Kill, take, catch or have in his or her
132 possession, living or dead, any wild bird other than a game
133 bird; or expose for sale or transport within or without the
134 state any bird except as aforesaid. No part of the plumage,
135 skin or body of any protected bird may be sold or had in

136 possession for sale except mounted or stuffed plumage, skin,
137 bodies or heads of the birds legally taken and stuffed or
138 mounted, irrespective of whether the bird was captured
139 within or without this state, except the English or European
140 sparrow (*passer domesticus*), starling (*sturnus vulgaris*) and
141 cowbird (*molothrus ater*), which may not be protected and the
142 killing thereof at any time is lawful;

143 ~~(18)~~ (17) Use dynamite or any like explosive or
144 poisonous mixture placed in any waters of the state for the
145 purpose of killing or taking fish. Any person violating the
146 provisions of this subdivision is guilty of a felony and, upon
147 conviction thereof, shall be fined not more than \$500 or
148 imprisoned for not less than six months nor more than three
149 years, or both fined and imprisoned;

150 ~~(19)~~ (18) Have a bow and gun, or have a gun and any
151 arrow or arrows, in the fields or woods at the same time;

152 ~~(20)~~ (19) Have a crossbow in the woods or fields or use
153 a crossbow to hunt for, take or attempt to take any wildlife
154 ~~unless the person possesses a Class Y permit except as~~
155 otherwise provided in section 42w of this article;

156 ~~(21)~~ (20) Take or attempt to take turkey, bear, elk or deer
157 with any arrow unless the arrow is equipped with a point
158 having at least two sharp cutting edges measuring in excess
159 of three fourths of an inch wide;

160 ~~(22)~~ (21) Take or attempt to take any wildlife with an
161 arrow having an explosive head or shaft, a poisoned arrow or
162 an arrow which would affect wildlife by any chemical action;

163 ~~(23)~~ (22) Shoot an arrow across any public highway or
164 from aircraft, motor-driven watercraft, motor vehicle or other
165 land conveyance;

166 ~~(24)~~ (23) Permit any dog owned by him or her or under
167 his or her control to chase, pursue or follow upon the track of
168 any wild animal or wild bird, either day or night, between
169 May 1 and the August 15 next following: *Provided*, That
170 dogs may be trained on wild animals and wild birds, except
171 deer and wild turkeys, and field trials may be held or
172 conducted on the grounds or lands of the owner or by his or
173 her bona fide tenant or tenants or upon the grounds or lands
174 of another person with his or her written permission or on

175 public lands at any time: *Provided, however,* That
176 nonresidents may not train dogs in this state at any time
177 except during the legal small game hunting season: *Provided*
178 *further,* That the person training said dogs does not have
179 firearms or other implements in his or her possession during
180 the closed season on wild animals and wild birds, whereby
181 wild animals or wild birds could be taken or killed;

182 ~~(25)~~ (24) Conduct or participate in a field trial, shoot-to-
183 retrieve field trial, water race or wild hunt hereafter referred
184 to as trial: *Provided,* That any person, group of persons, club
185 or organization may hold the trial at any time of the year
186 upon obtaining a permit as is provided in section fifty-six of
187 this article. The person responsible for obtaining the permit
188 shall prepare and keep an accurate record of the names and
189 addresses of all persons participating in said trial and make
190 same readily available for inspection by any natural resources
191 police officer upon request;

192 ~~(26)~~ (25) Except as provided in section four of this
193 article, hunt, catch, take, kill or attempt to hunt, catch, take or

194 kill any wild animal, wild bird or wild fowl except during the
195 open season established by rule of the director as authorized
196 by subdivision (6), section seven, article one of this chapter;
197 ~~(27)~~ (26) Hunting on public lands on Sunday after five
198 o'clock antemeridian is prohibited; ~~and~~
199 ~~(28)~~ (27) Hunt, catch, take, kill, trap, injure or pursue
200 with firearms or other implement which wildlife can be taken,
201 on private lands on Sunday after the hour of five o'clock
202 antemeridian: *Provided*, That the provisions of this
203 subdivision do not apply in any county until the county
204 commission of the county holds an election on the question
205 of whether the provisions of this subdivision prohibiting
206 hunting on Sunday shall apply within the county and the
207 voters approve the allowance of hunting on Sunday in the
208 county. The election is determined by a vote of the resident
209 voters of the county in which the hunting on Sunday is
210 proposed to be authorized. The county commission of the
211 county in which Sunday hunting is proposed shall give notice
212 to the public of the election by publication of the notice as a

213 Class II-0 legal advertisement in compliance with the
214 provisions of article three, chapter fifty-nine of this code and
215 the publication area for the publication is the county in which
216 the election is to be held. The date of the last publication of
217 the notice shall fall on a date within the period of the fourteen
218 consecutive days next preceding the election.

219 On the local option election ballot shall be printed the
220 following:

221 Shall hunting on Sunday be authorized in _____
222 County?

223 Yes No

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

225 Any local option election to approve or disapprove of the
226 proposed authorization of Sunday hunting within a county
227 shall be in accordance with procedures adopted by the
228 commission. The local option election may be held in
229 conjunction with a primary or general election or at a special
230 election. Approval shall be by a majority of the voters casting
231 votes on the question of approval or disapproval of Sunday
232 hunting at the election.

233 If a majority votes against allowing Sunday hunting, no
234 election on the issue may be held for a period of one hundred
235 four weeks. If a majority votes "yes," no election
236 reconsidering the action may be held for a period of five
237 years. A local option election may thereafter be held if a
238 written petition of qualified voters residing within the county
239 equal to at least five percent of the number of persons who
240 were registered to vote in the next preceding general election
241 is received by the county commission of the county in which
242 Sunday hunting is authorized. The petition may be in any
243 number of counterparts. The election shall take place at the
244 next primary or general election scheduled more than ninety
245 days following receipt by the county commission of the
246 petition required by this subsection: *Provided*, That the issue
247 may not be placed on the ballot until all statutory notice
248 requirements have been met. No local law or regulation
249 providing any penalty, disability, restriction, regulation or
250 prohibition of Sunday hunting may be enacted and the
251 provisions of this article preempt all regulations, rules,

252 ordinances and laws of any county or municipality in conflict
253 with this subdivision; and
254 ~~(29)~~ (28) Hunt or conduct hunts for a fee where the
255 hunter is not physically present in the same location as the
256 wildlife being 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.