

Senate Bill No. 278

(By Senator Karnes)

[Introduced January 21, 2015; referred to the Committee on Natural Resources; and then to the
Committee on the Judiciary.]

A BILL to repeal §20-2-42w of the Code of West Virginia, 1931, as amended; and to amend and
reenact §20-2-5, §20-2-5g and §20-2-22a of said code, all relating to hunting; prohibiting
hunting with night vision technology, drone or other unmanned aerial vehicle; and permitting
hunting with crossbows.

Be it enacted by the Legislature of West Virginia:

That §20-2-42w of the Code of West Virginia, 1931, as amended, be repealed; and that §20-
2-5, §20-2-5g and §20-2-22a of said code be amended and reenacted, all 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;

(2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild

1 animal or wild bird out of its den or place of refuge except as may be authorized by rules
2 promulgated by the director or by law;

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

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

21 (4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or

1 other airborne conveyance, a drone or other unmanned aerial conveyance, an automobile, or other
2 land conveyance, or from a motor-driven water conveyance, except as authorized by rules
3 promulgated by the director. It is not a violation of this subdivision merely because a person locates,
4 looks at, attracts or makes motionless a wild bird or wild animal by using the technology described
5 herein, unless at the time the individual has in his or her possession a firearm, whether cased or
6 uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping
7 a wild bird or wild animal;

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

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

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

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

20 (9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm
21 from the magazine of which all shells and cartridges have not been removed, in or on any vehicle

1 or conveyance, or its attachments, within the state, except as may otherwise be provided by law or
2 regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven
3 o'clock antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow,
4 being lawfully carried in accordance with the foregoing provisions, may be so carried only when in
5 a case or taken apart and securely wrapped. During the period from July 1 to September 30,
6 inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are
7 permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard
8 time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for
9 one hour after the postmeridian times and one hour before the antemeridian times established above
10 if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a
11 hunting site, campsite, home or other place of abode;

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

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

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

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

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

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

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

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

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

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

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

12 ~~(20)~~ (19) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow
13 is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths
14 of an inch wide;

15 ~~(21)~~ (20) Take or attempt to take any wildlife with an arrow having an explosive head or
16 shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

17 ~~(22)~~ (21) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft,
18 motor vehicle or other land conveyance;

19 ~~(23)~~ (22) Permit any dog owned by him or her or under his or her control to chase, pursue
20 or follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the
21 August 15 next following: *Provided*, That dogs may be trained on wild animals and wild birds,

1 except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of
2 the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person
3 with his or her written permission or on public lands at any time: *Provided, however,* That
4 nonresidents may not train dogs in this state at any time except during the legal small game hunting
5 season: *Provided further,* That the person training said dogs does not have firearms or other
6 implements in his or her possession during the closed season on wild animals and wild birds,
7 whereby wild animals or wild birds could be taken or killed;

8 ~~(24)~~ (23) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild
9 hunt hereafter referred to as trial: *Provided,* That any person, group of persons, club or organization
10 may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six
11 of this article. The person responsible for obtaining the permit shall prepare and keep an accurate
12 record of the names and addresses of all persons participating in said trial and make same readily
13 available for inspection by any natural resources police officer upon request;

14 ~~(25)~~ (24) Except as provided in section four of this article, hunt, catch, take, kill or attempt
15 to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season
16 established by rule of the director as authorized by subdivision (6), section seven, article one of this
17 chapter;

18 ~~(26)~~ (25) Hunting on public lands on Sunday after five o'clock antemeridian is prohibited;

19 ~~(27)~~ (26) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which
20 wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian:
21 *Provided,* That the provisions of this subdivision do not apply in any county until the county

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

10 On the local option election ballot shall be printed the following:

11 Shall hunting on Sunday be authorized in _____ County?

12 Yes No

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

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

19 If a majority votes against allowing Sunday hunting, no election on the issue may be held for
20 a period of one hundred four weeks. If a majority votes "yes," no election reconsidering the action
21 may be held for a period of five years. A local option election may thereafter be held if a written

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

11 ~~(28)~~(27) Hunt or conduct hunts for a fee where the hunter is not physically present in the
 12 same location as the wildlife being hunted within West Virginia.

13 **§20-2-5g. Use of a crossbow to hunt.**

14 (a) Notwithstanding any other provision of this code to the contrary, a person ~~who possesses~~
 15 ~~a valid Class Y permit in accordance with section forty-two-w of this article may, during the~~
 16 ~~designated archery hunting season,~~ may hunt with a crossbow.

17 (b) Only crossbows meeting all of the following specifications may be used for hunting in
 18 West Virginia:

19 (1) The crossbow has a minimum draw weight of one hundred twenty-five pounds;

20 (2) The crossbow has a working safety; and

21 (3) The crossbow is used with bolts and arrows not less than eighteen inches in length with

1 a broad head having at least two sharp cutting edges, measuring at least 3/4 of an inch in width.

2 **§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property**
 3 **destruction by bear; penalties.**

4 (a) A person in any county of this state may not hunt, capture, or kill any bear, or have in his
 5 or her possession any bear or bear parts, except during the hunting season for bear and in the manner
 6 designated by rules promulgated by the Division of Natural Resources and as provided in this
 7 section. For the purposes of this section, bear parts include, but are not limited to, the pelt,
 8 gallbladder, skull and claws of bear.

9 (b) A person who kills a bear shall, within twenty-four hours after the killing, deliver the bear
 10 or fresh skin to a natural resources police officer or checking station for tagging. A Division of
 11 Natural Resources tag shall be affixed to it before any part of the bear may be transported more than
 12 seventy-five miles from the point of kill. The Division of Natural Resources tag shall remain on the
 13 skin until it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to
 14 the state for disposal to a charitable institution, school or as otherwise designated by the Division
 15 of Natural Resources.

16 (c) It is unlawful:

17 (1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this
 18 article, in addition to a hunting license as prescribed in this article;

19 (2) To hunt a bear with:

20 (A) A shotgun using ammunition loaded with more than one solid ball; or

21 (B) A rifle of less than twenty-five caliber using rimfire ammunition; ~~or~~;

- 1 ~~(C) A crossbow;~~
- 2 (3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps
- 3 or deadfalls other than as authorized in this section;
- 4 (4) To shoot at or kill:
- 5 (A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed
- 6 weight, after removal of all internal organs;
- 7 (B) Any bear accompanied by a cub; or,
- 8 (C) Any bear cub so accompanied, regardless of its weight;
- 9 (5) To possess any part of a bear not tagged in accordance with the provisions of this section;
- 10 (6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear
- 11 except under the direct supervision of division personnel;
- 12 (7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those
- 13 designated by the Division of Natural Resources for the hunting of bear;
- 14 (8) To pursue a bear with a pack of dogs other than the pack used at the beginning of the hunt
- 15 once the bear is spotted and the chase has begun;
- 16 (9) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of
- 17 this section;
- 18 (10) To organize for commercial purposes or to professionally outfit a bear hunt or to give
- 19 or receive any consideration whatsoever or any donation in money, goods or services in connection
- 20 with a bear hunt notwithstanding the provisions of sections twenty-three and twenty-four of this
- 21 article; or

1 (11) For any person who is not a resident of this state to hunt bear with dogs or to use dogs
2 in any fashion for the purpose of hunting bear in this state except in legally authorized hunts.

3 (d) The following provisions apply to bear destroying property:

4 (1) (A) Any property owner or lessee who has suffered damage to real or personal property,
5 including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused
6 by an act of a bear may complain to any natural resources police officer of the Division of Natural
7 Resources for protection against the bear.

8 (B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances
9 of the complaint. If the officer is unable to personally investigate the complaint, he or she shall
10 designate a wildlife biologist to investigate on his or her behalf.

11 (C) If the complaint is found to be justified, the officer or designated person may, together
12 with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the
13 property damage: *Provided*, That only the natural resources police officer or the wildlife biologist
14 may determine whether to destroy or capture the bear and whether to use dogs to capture or destroy
15 the bear: *Provided, however*, That, if out-of-state dogs are used in the hunt, the owners of the dogs
16 are the only nonresidents permitted to participate in hunting the bear.

17 (2) (A) When a property owner has suffered damage to real or personal property as the result
18 of an act by a bear, the owner shall file a report with the Director of the Division of Natural
19 Resources. The report shall state whether or not the bear was hunted and destroyed and, if so, the
20 sex, weight and estimated age of the bear. The report shall also include an appraisal of the property
21 damage occasioned by the bear duly signed by three competent appraisers fixing the value of the

1 property lost.

2 (B) The report shall be ruled upon and the alleged damages examined by a commission
3 comprised of the complaining property owner, an officer of the division and a person to be jointly
4 selected by the officer and the complaining property owner.

5 (C) The division shall establish the procedures to be followed in presenting and deciding
6 claims under this section in accordance with article three, chapter twenty-nine-a of this code.

7 (D) All claims shall be paid in the first instance from the Bear Damage Fund provided in
8 section forty-four-b of this article. In the event the fund is insufficient to pay all claims determined
9 by the commission to be just and proper, the remainder due to owners of lost or destroyed property
10 shall be paid from the special revenue account of the Division of Natural Resources.

11 (3) In all cases where the act of the bear complained of by the property owner is the killing
12 of livestock, the value to be established is the fair market value of the livestock at the date of death.
13 In cases where the livestock killed is pregnant, the total value is the sum of the values of the mother
14 and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair
15 market value of the issue had it been born.

16 (e) *Criminal penalties.* — (1) Any person who commits a violation of the provisions of this
17 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000
18 nor more than \$5,000, which fine is not subject to suspension by the court, confined in jail not less
19 than thirty nor more than one hundred days, or both fined and confined. Further, the person's
20 hunting and fishing licenses shall be suspended for two years.

21 (2) Any person who commits a second violation of the provisions of this section is guilty of

1 a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,000 nor more than
2 \$7,500, which fine is not subject to suspension by the court, confined in jail not less than thirty days
3 nor more than one year, or both fined and confined. The person's hunting and fishing licenses shall
4 be suspended for life.

5 (3) Any person who commits a third or subsequent violation of the provisions of this section
6 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than
7 \$10,000, which fine is not subject to suspension by the court, imprisoned in a correctional facility
8 not less than one year nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to prohibit hunting with night vision technology, a drone or other unmanned aerial vehicle. The bill permits hunting with crossbows.

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