

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 416

BY SENATORS MAYNARD AND CLINE

[Introduced January 30, 2018; Referred
to the Committee on Natural Resources; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating
2 to providing that noodling, or fishing for catfish using one’s bare hands, is lawful.

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.

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

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

4 (2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild
5 animal or wild bird out of its den or place of refuge;

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

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

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

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

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

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

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

27 (A) A person in possession of a valid license or permit during open firearms hunting
28 season for wild animals and nonmigratory wild birds where hunting is lawful;

29 (B) A person hunting or taking unprotected species of wild animals, wild birds and
30 migratory wild birds during the open season, in the open fields, open water and open marshes of
31 the state where hunting is lawful;

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

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

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

39 (10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun
40 with cartridges that have not been removed or a magazine that has not been detached, in or on
41 any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun
42 whose magazine readily detaches is considered unloaded if the magazine is detached and no
43 cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of
44 day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any
45 unloaded firearm or crossbow may be carried only when in a case or taken apart and securely
46 wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements
47 relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian

48 to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying
49 unloaded and uncased firearms are extended for one hour after the post meridian times and one
50 hour before the ante meridian times established in this subdivision, if a person is transporting or
51 transferring the firearms to or from a hunting site, campsite, home or other abode;

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

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

55 (13) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by
56 rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers,
57 carp, fallfish and creek chubs, ~~is lawful~~ and noodling, or fishing for catfish using one's bare hands,
58 are lawful;

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

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

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

71 (17) Use dynamite, explosives or any poison in any waters of the state for the purpose of
72 killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction
73 thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more

74 than three years, or both fined and imprisoned;

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

77 (19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt
78 to take any wildlife except as otherwise provided in §20-2-5g and §20-2-42w of this code.

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

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

84 (22) Shoot an arrow across any public highway;

85 (23) Permit any dog owned or under his or her control to chase, pursue or follow the tracks
86 of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs
87 may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may
88 be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or
89 upon the grounds or lands of another person with his or her written permission, or on public lands
90 at any time. Nonresidents may not train dogs in this state at any time except during the legal small
91 game hunting season. A person training dogs may not have firearms or other implements in his
92 or her possession during the closed season on wild animals and wild birds;

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

99 (25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird

100 or wild fowl except during open seasons;

101 (26) Hunt on public lands on Sunday after five o'clock ante meridian;

102 (27) Hunt or conduct hunts for a fee when the person is not physically present in the same
103 location as the wildlife being hunted within West Virginia.

104 (28) Catch, take, kill, or attempt to catch, take or kill any fish by any means within 200 feet
105 of division personnel engaged in stocking fish in public waters.

106 (b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt
107 throughout the State of West Virginia on private lands on Sundays after the hour of five o'clock
108 ante meridian with the written consent of the private landowner pursuant to §20-2-7 of this code.

109 *As amended by Senate Bill 345:*

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

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

113 (2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild
114 animal or wild bird out of its den or place of refuge;

115 (3) Use or attempt to use any artificial light or any night vision technology, including image
116 intensification, thermal imaging or active illumination, while hunting, locating, attracting, taking,
117 trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote,
118 fox, raccoon, opossum or skunk by the use of artificial light or night vision technology;

119 Any person violating this subdivision is guilty of a misdemeanor and, upon conviction
120 thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be
121 confined in jail for not less than 10 days nor more than 100 days;

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

125 (5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal,

126 or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the
127 purposes of hunting, trapping or killing;

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

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

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

133 (9) Carry an uncased or loaded firearm in the woods of this state with the following
134 permissible exceptions:

135 (A) A person in possession of a valid license or permit during open firearms hunting
136 season for wild animals and nonmigratory wild birds;

137 (B) A person hunting or taking unprotected species of wild animals, wild birds and
138 migratory wild birds during the open season, in the open fields, open water and open marshes of
139 the state;

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

141 (D) A person carrying a firearm for self-defense who is not prohibited from possessing
142 firearms by §61-7-7 of this code;

143 (10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun
144 with cartridges that have not been removed or a magazine that has not been detached, in or on
145 any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun
146 whose magazine readily detaches is considered unloaded if the magazine is detached and no
147 cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of
148 day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any
149 unloaded firearm or crossbow may be carried only when in a case or taken apart and securely
150 wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements
151 relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian

152 to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying
153 unloaded and uncased firearms are extended for one hour after the post meridian times and one
154 hour before the ante meridian times established in this subdivision, if a person is transporting or
155 transferring the firearms to or from a hunting site, campsite, home or other abode;

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

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

159 (13) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by
160 rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers,
161 carp, fallfish and creek chubs, ~~is lawful~~ and noodling, or fishing for catfish using one's bare hands,
162 are lawful;

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

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

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

175 (17) Use dynamite, explosives or any poison in any waters of the state for the purpose of
176 killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction
177 thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more

178 than three years, or both fined and imprisoned;

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

181 (19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt
182 to take any wildlife except as otherwise provided in §20-2-5g and §20-2-42w of this code;

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

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

188 (22) Shoot an arrow across any public highway;

189 (23) Permit any dog owned or under his or her control to chase, pursue or follow the tracks
190 of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs
191 may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may
192 be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or
193 upon the grounds or lands of another person with his or her written permission, or on public lands
194 at any time. Nonresidents may not train dogs in this state at any time except during the legal small
195 game hunting season. A person training dogs may not have firearms or other implements in his
196 or her possession during the closed season on wild animals and wild birds;

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

203 (25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird

204 or wild fowl except during open seasons;

205 (26) Hunt on public lands on Sunday after five o'clock ante meridian; and (27) Hunt or
206 conduct hunts for a fee when the person is not physically present in the same location as the
207 wildlife being hunted within West Virginia.

208 (b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt
209 throughout the State of West Virginia on private lands on Sundays after the hour of five o'clock
210 ante meridian with the written consent of the private landowner pursuant to §20-2-7 of this code.

NOTE: The purpose of this bill is to provide that noodling, or fishing for catfish using one's bare hands, is lawful.

During the 2017 Regular Session of the Legislature, this section was amended by House Bill 2679 and Senate Bill 345 and there has been no judicial ruling to determine which, if either, amendments prevail. Both versions have been provided.

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