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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

SENATE BILL NO. Ce 3f

(By Senator Fanning, et al)

PASSED March 8, 2003

In Effect from Passage

FILED

2003 MAR 20 P 5: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 634

(BY SENATORS FANNING, BOWMAN, HELMICK,
LOVE, ROSS AND WHITE)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two of said chapter, all relating to defining crow as a gamebird; and setting hunting season for crows.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article two of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly
2 requires a different meaning:

3 "Agency" means any branch, department or unit of the
4 state government, however designated or constituted.

5 "Alien" means any person not a citizen of the United
6 States.

7 "Bag limit" or "creellimit" means the maximum number
8 of wildlife which may be taken, caught, killed or possessed
9 by any person.

10 "Bona fide resident, tenant or lessee" means a person
11 who permanently resides on the land.

12 "Citizen" means any native born citizen of the United
13 States and foreign born persons who have procured their
14 final naturalization papers.

15 "Closed season" means the time or period during which
16 it shall be unlawful to take any wildlife as specified and
17 limited by the provisions of this chapter.

18 "Commission" means the natural resources commission.

19 "Commissioner" means a member of the advisory
20 commission of the natural resources commission.

21 "Director" means the director of the division of natural
22 resources.

23 "Fishing" or "to fish" means the taking, by any means,
24 of fish, minnows, frogs or other amphibians, aquatic
25 turtles and other forms of aquatic life used as fish bait.

26 "Fur-bearing animals" include: (a) The mink; (b) the
27 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f)
28 the skunk and civet cat, commonly called polecat; (g) the
29 otter; (h) the red fox; (i) the gray fox; (j) the wildcat,
30 bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

31 “Game” means game animals, game birds and game fish
32 as herein defined.

33 “Game animals” include: (a) The elk; (b) the deer; (c) the
34 cottontail rabbits and hares; (d) the fox squirrels,
35 commonly called red squirrels, and gray squirrels and all
36 their color phases - red, gray, black or albino; (e) the
37 raccoon; (f) the black bear; and (g) the wild boar.

38 “Game birds” include: (a) The anatidae, commonly
39 known as swan, geese, brants and river and sea ducks; (b)
40 the rallidae, commonly known as rails, sora, coots,
41 mudhens and gallinales; (c) the limicolae, commonly
42 known as shorebirds, plover, snipe, woodcock, sandpipers,
43 yellow legs and curlews; (d) the galli, commonly known as
44 wild turkey, grouse, pheasants, quails and partridges (both
45 native and foreign species); (e) the columbidae, commonly
46 known as doves; (f) the icteridae, commonly known as
47 blackbirds, redwings and grackle; and (g) the corvidae,
48 commonly known as crows.

49 “Game fish” include: (a) Brook trout; (b) brown trout; (c)
50 rainbow trout; (d) golden rainbow trout; (e) largemouth
51 bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass;
52 (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern
53 pike; (m) rock bass; (n) white bass; (o) white crappie; (p)
54 black crappie; (q) all sunfish species; (r) channel catfish; (s)
55 flathead catfish; (t) sauger; and (u) all game fish hybrids.

56 “Hunt” means to pursue, chase, catch or take any wild
57 birds or wild animals.

58 “Lands” means land, waters and all other appurtenances
59 connected therewith.

60 “Migratory birds” means any migratory game or
61 nongame birds included in the terms of conventions
62 between the United States and Great Britain and between
63 the United States and United Mexican States, known as
64 the “Migratory Bird Treaty Act” for the protection of
65 migratory birds and game mammals concluded,

66 respectively, the sixteenth day of August, one thousand
67 nine hundred sixteen, and the seventh day of February,
68 one thousand nine hundred thirty-six.

69 “Nonresident” means any person who is a citizen of the
70 United States and who has not been a domiciled resident
71 of the state of West Virginia for a period of thirty
72 consecutive days immediately prior to the date of his or
73 her application for a license or permit except any full-time
74 student of any college or university of this state, even
75 though he or she is paying a nonresident tuition.

76 “Open season” means the time during which the various
77 species of wildlife may be legally caught, taken, killed or
78 chased in a specified manner and shall include both the
79 first and the last day of the season or period designated by
80 the director.

81 “Person”, except as otherwise defined elsewhere in this
82 chapter, means the plural “persons” and shall include
83 individuals, partnerships, corporations or other legal
84 entities.

85 “Preserve” means all duly licensed private game
86 farmlands, or private plants, ponds or areas, where
87 hunting or fishing is permitted under special licenses or
88 seasons other than the regular public hunting or fishing
89 seasons.

90 “Protected birds” means all wild birds not included
91 within the definition of “game birds” and “unprotected
92 birds”.

93 “Resident” means any person who is a citizen of the
94 United States and who has been a domiciled resident of
95 the state of West Virginia for a period of thirty consecutive
96 days or more immediately prior to the date of his or her
97 application for license or permit: *Provided*, That a member
98 of the armed forces of the United States who is stationed
99 beyond the territorial limits of this state, but who was a
100 resident of this state at the time of his or her entry into

101 such service and any full-time student of any college or
102 university of this state, even though he or she is paying a
103 nonresident tuition, shall be considered a resident under
104 the provisions of this chapter.

105 “Roadside menagerie” means any place of business,
106 other than commercial game farm, commercial fish
107 preserve, place or pond, where any wild bird, game bird,
108 unprotected bird, game animal or fur-bearing animal is
109 kept in confinement for the attraction and amusement of
110 the people for commercial purposes.

111 “Take” means to hunt, shoot, pursue, lure, kill, destroy,
112 catch, capture, keep in captivity, gig, spear, trap, ensnare,
113 wound or injure any wildlife, or attempt to do so.

114 “Unprotected birds” shall include: (a) The English
115 sparrow; (b) the European starling; and (c) the cowbird;

116 “Wild animals” means all mammals native to the state
117 of West Virginia occurring either in a natural state or in
118 captivity, except house mice or rats.

119 “Wild birds” shall include all birds other than: (a)
120 Domestic poultry - chickens, ducks, geese, guinea fowl,
121 peafowls and turkeys; (b) psittacidae, commonly called
122 parrots and parakeets; and (c) other foreign cage birds
123 such as the common canary, exotic finches and ring dove.
124 All wild birds, either: (a) Those occurring in a natural state
125 in West Virginia; or (b) those imported foreign game birds,
126 such as waterfowl, pheasants, partridges, quail and grouse,
127 regardless of how long raised or held in captivity, shall
128 remain wild birds under the meaning of this chapter.

129 “Wildlife” means wild birds, wild animals, game and
130 fur-bearing animals, fish (including minnows), reptiles,
131 amphibians, mollusks, crustaceans and all forms of
132 aquatic life used as fish bait, whether dead or alive.

133 “Wildlife refuge” means any land set aside by action of
134 the director as an inviolate refuge or sanctuary for the
135 protection of designated forms of wildlife.

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
2 any 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
7 its den or place of refuge except as may be authorized by
8 rules 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
11 any wild bird or wild animal, or to attempt to do so, while
12 having in his or her possession or subject to his or her
13 control, or for any person accompanying him or her to
14 have in his or her possession or subject to his or her
15 control, any firearm, whether cased or uncased, bow,
16 arrow, or both, or other implement or device suitable for
17 taking, killing or trapping a wild bird or animal: *Provided,*
18 That it may not be unlawful to hunt or take raccoon,
19 opossum or skunk by the use of artificial lights. No person
20 is guilty of a violation of this subdivision merely because
21 he or she looks for, looks at, attracts or makes motionless
22 a wild bird or wild animal with or by the use of an
23 artificial light, unless at the time he or she has in his or her
24 possession a firearm, whether cased or uncased, bow,
25 arrow, or both, or other implement or device suitable for
26 taking, killing or trapping a wild bird or wild animal, or
27 unless the artificial light (other than the head lamps of an
28 automobile or other land conveyance) is attached to, a part
29 of, or used from within or upon an automobile or other
30 land conveyance.

31 Any person violating the provisions of this subdivision
32 is guilty of a misdemeanor and, upon conviction thereof,

33 shall for each offense be fined not less than one hundred
34 dollars nor more than five hundred dollars and shall be
35 imprisoned in the county jail for not less than ten days nor
36 more than one hundred days;

37 (4) Hunt for, take, kill, wound or shoot at wild animals
38 or wild birds from an airplane, or other airborne
39 conveyance, an automobile, or other land conveyance, or
40 from a motor-driven water conveyance, except as
41 authorized by rules promulgated by the director;

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

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

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

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

62 (9) Have in his or her possession a loaded firearm or a
63 firearm from the magazine of which all shells and
64 cartridges have not been removed, in or on any vehicle or
65 conveyance, or its attachments, within the state, except as
66 may otherwise be provided by law or regulation. Except
67 as hereinafter provided, between five o'clock postmeridian

68 of one day and seven o'clock antemeridian, eastern
69 standard time of the day following, any unloaded firearm,
70 being lawfully carried in accordance with the foregoing
71 provisions, shall be so carried only when in a case or taken
72 apart and securely wrapped. During the period from the
73 first day of July to the thirtieth day of September,
74 inclusive, of each year, the foregoing requirements relative
75 to carrying certain unloaded firearms are permissible only
76 from eight-thirty o'clock postmeridian to five o'clock
77 antemeridian, eastern standard time: *Provided*, That the
78 time periods for carrying unloaded and uncased firearms
79 are extended for one hour after the postmeridian times and
80 one hour before the antemeridian times established above
81 if a hunter is preparing to or in the process of transporting
82 or transferring the firearms to or from a hunting site,
83 campsite, home or other place of abode;

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

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

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

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

107 (14) Catch, take, kill or attempt to catch, take or kill any
108 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:
111 *Provided*, That snaring of any species of suckers, carp,
112 fallfish and creek chubs shall at all times be lawful;

113 (15) Employ or hire, or induce or persuade, by the use of
114 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
117 season, or to fish for, catch, take or kill any fish,
118 amphibian or aquatic life which is protected by the
119 provisions of this chapter or rules of the director or the
120 sale of which is prohibited;

121 (16) Hunt, catch, take, kill, capture, pursue, transport,
122 possess or use any migratory game or nongame birds
123 included in the terms of conventions between the United
124 States and Great Britain and between the United States
125 and United Mexican States for the protection of migratory
126 birds and wild mammals concluded, respectively, the
127 sixteenth day of August, one thousand nine hundred
128 sixteen, and the seventh day of February, one thousand
129 nine hundred thirty-six, except during the time and in the
130 manner and numbers prescribed by the Federal Migratory
131 Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and regulations
132 made thereunder;

133 (17) Kill, take, catch or have in his or her possession,
134 living or dead, any wild bird, other than a game bird; or
135 expose for sale or transport within or without the state any
136 bird except as aforesaid. No part of the plumage, skin or
137 body of any protected bird shall be sold or had in
138 possession for sale except mounted or stuffed plumage,
139 skin, bodies or heads of the birds legally taken and stuffed
140 or mounted, irrespective of whether the bird was captured

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

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

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

154 (20) Have a crossbow in the woods or fields or use a
155 crossbow to hunt for, take or attempt to take any wildlife;

156 (21) 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
159 excess of three fourths of an inch wide;

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

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

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

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

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

194 (26) Except as provided in section four of this article,
195 hunt, catch, take, kill or attempt to hunt, catch, take or kill
196 any wild animal, wild bird or wild fowl except during the
197 open season established by rule of the director as
198 authorized by subdivision (6), section seven, article one of
199 this chapter;

200 (27) Hunting on public lands on Sunday after five o'clock
201 antemeridian is prohibited; and

202 (28) Hunt, catch, take, kill, trap, injure or pursue with
203 firearms or other implement which wildlife can be taken,
204 on private lands on Sunday after the hour of five o'clock
205 antemeridian: *Provided,* That the provisions of this
206 subdivision do not apply in any county until the county
207 commission of the county holds an election on the question
208 of whether the provisions of this subdivision prohibiting
209 hunting on Sunday shall apply within the county and the
210 voters approve the allowance of hunting on Sunday in the

211 county. The election is determined by a vote of the
212 resident voters of the county in which the hunting on
213 Sunday is proposed to be authorized. The county
214 commission of the county in which Sunday hunting is
215 proposed shall give notice to the public of the election by
216 publication of the notice as a Class II-0 legal
217 advertisement in compliance with the provisions of article
218 three, chapter fifty-nine of this code and the publication
219 area for the publication shall be the county in which the
220 election is to be held. The date of the last publication of
221 the notice shall fall on a date within the period of the
222 fourteen consecutive days next preceding the election.

223 On the local option election ballot shall be printed the
224 following:

225 Shall hunting on Sunday be authorized in _____
226 County?

227 Yes No

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

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

237 If a majority votes against allowing Sunday hunting, no
238 election on the issue may be held for a period of one
239 hundred four weeks. If a majority votes "yes", no election
240 reconsidering the action may be held for a period of five
241 years. A local option election may thereafter be held if a
242 written petition of qualified voters residing within the
243 county equal to at least five percent of the number of
244 persons who were registered to vote in the next preceding
245 general election is received by the county commission of

246 the county in which Sunday hunting is authorized. The
247 petition may be in any number of counterparts. The
248 election shall take place at the next primary or general
249 election scheduled more than ninety days following receipt
250 by the county commission of the petition required by this
251 subsection: *Provided*, That the issue may not be placed on
252 the ballot until all statutory notice requirements have been
253 met. No local law or regulation providing any penalty,
254 disability, restriction, regulation or prohibition of Sunday
255 hunting may be enacted and the provisions of this article
256 preempt all regulations, rules, ordinances and laws of any
257 county or municipality in conflict with this subdivision.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Larry W. ...
.....
Chairman, Senate Committee

Jason Spencer
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

David ...
.....
Clerk of the Senate

Barry ...
.....
Clerk of the House of Delegates

Carl ...
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *20*
Day of *March*, 2003.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/03

Time 9:45a