

1 **H. B. 4329**

2  
3 (By Delegates Caputo (By Request), Longstreth  
4 and Manchin)

5  
6 [Introduced January 27, 2012; referred to the  
7 Committee on Natural Resources then the Judiciary.]

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9  
10 A BILL to amend and reenact §20-2-5 of the Code of West Virginia,  
11 1931, as amended, relating to hunting or taking of unprotected  
12 species of wild animals, wild birds and migratory wild birds  
13 in the woods of this state during open season.

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

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

17 **ARTICLE 2. WILDLIFE RESOURCES.**

18 **§20-2-5. Unlawful methods of hunting and fishing and other**  
19 **unlawful acts.**

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

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

24 (2) Dig out, cut out or smoke out, or in any manner take or  
25 attempt to take, any live wild animal or wild bird out of its den

1 or place of refuge except as may be authorized by rules promulgated  
2 by the director or by law;

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

1 land conveyance.

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

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

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

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

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

21       (8) Except as provided in section six of this article, carry  
22 an uncased or loaded gun in any of the woods of this state except  
23 during the open firearms hunting season for wild animals and  
24 nonmigratory wild birds within any county of the state unless he or

1 she has in his or her possession a permit in writing issued to him  
2 or her by the director: *Provided*, That this section does not  
3 prohibit hunting or taking of unprotected species of wild animals  
4 and wild birds and migratory wild birds, during the open season, in  
5 the woods, open fields, open water and open marshes of the state;

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

1 or other place of abode;

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

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

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

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

23       (14) Catch, take, kill or attempt to catch, take or kill any  
24 fish at any time by any means other than by rod, line and hooks

1 with natural or artificial lures unless otherwise authorized by law  
2 or rules issued by the Director: *Provided*, That snaring of any  
3 species of suckers, carp, fallfish and creek chubs shall at all  
4 times be lawful;

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

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

21 (17) Kill, take, catch or have in his or her possession,  
22 living or dead, any wild bird other than a game bird; or expose for  
23 sale or transport within or without the state any bird except as  
24 aforesaid. No part of the plumage, skin or body of any protected

1 bird may be sold or had in possession for sale except mounted or  
2 stuffed plumage, skin, bodies or heads of the birds legally taken  
3 and stuffed or mounted, irrespective of whether the bird was  
4 captured within or without this state, except the English or  
5 European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)  
6 and cowbird (*molothrus ater*), which may not be protected and the  
7 killing thereof at any time is lawful;

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

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

16       (20) Have a crossbow in the woods or fields or use a crossbow  
17 to hunt for, take or attempt to take any wildlife, unless the  
18 person possesses a Class Y permit;

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

23       (22) Take or attempt to take any wildlife with an arrow having  
24 an explosive head or shaft, a poisoned arrow or an arrow which

1 would affect wildlife by any chemical action;

2       (23) Shoot an arrow across any public highway or from  
3 aircraft, motor-driven watercraft, motor vehicle or other land  
4 conveyance;

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

20       (25) Conduct or participate in a field trial, shoot-to-  
21 retrieve field trial, water race or wild hunt hereafter referred to  
22 as trial: *Provided*, That any person, group of persons, club or  
23 organization may hold the trial at any time of the year upon  
24 obtaining a permit as is provided in section fifty-six of this



1 article. The person responsible for obtaining the permit shall  
2 prepare and keep an accurate record of the names and addresses of  
3 all persons participating in said trial and make same readily  
4 available for inspection by any natural resources police officer  
5 upon request;

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

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

13 (28) Hunt, catch, take, kill, trap, injure or pursue with  
14 firearms or other implement which wildlife can be taken, on private  
15 lands on Sunday after the hour of five o'clock antemeridian:  
16 *Provided*, That the provisions of this subdivision do not apply in  
17 any county until the county commission of the county holds an  
18 election on the question of whether the provisions of this  
19 subdivision prohibiting hunting on Sunday shall apply within the  
20 county and the voters approve the allowance of hunting on Sunday in  
21 the county. The election is determined by a vote of the resident  
22 voters of the county in which the hunting on Sunday is proposed to  
23 be authorized. The county commission of the county in which Sunday  
24 hunting is proposed shall give notice to the public of the election

1 by publication of the notice as a Class II-0 legal advertisement in  
 2 compliance with the provisions of article three, chapter fifty-nine  
 3 of this code and the publication area for the publication is the  
 4 county in which the election is to be held. The date of the last  
 5 publication of the notice shall fall on a date within the period of  
 6 the fourteen consecutive days next preceding the election.

7 On the local option election ballot shall be printed the  
 8 following:

9 Shall hunting on Sunday be authorized in \_\_\_\_\_ County?

10 [ ] Yes [ ] No

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

12 Any local option election to approve or disapprove of the  
 13 proposed authorization of Sunday hunting within a county shall be  
 14 in accordance with procedures adopted by the commission. The local  
 15 option election may be held in conjunction with a primary or  
 16 general election or at a special election. Approval shall be by a  
 17 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  
 20 election on the issue may be held for a period of one hundred four  
 21 weeks. If a majority votes "yes", no election reconsidering the  
 22 action may be held for a period of five years. A local option  
 23 election may thereafter be held if a written petition of qualified  
 24 voters residing within the county equal to at least five percent of

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

14 (29) Hunt or conduct hunts for a fee where the hunter is not  
15 physically present in the same location as the wildlife being  
16 hunted within West Virginia.

NOTE: The purpose of this bill is to provide that a person may carry an uncased or loaded gun in the woods of this state to hunt or take unprotected wild animals during open firearms hunting season.

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