

1 **H. B. 4145**

2
3 (By Delegates Faircloth, Kump, Folk,
4 Householder, Rowan, Hunt and Walker)

5 [Introduced January 14, 2014; referred to the
6 Committee on Agriculture and Natural Resources then the
7 Judiciary.]
8
9

10 A BILL to amend and reenact §20-2-5 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new section, designated §20-2-42z, all relating to creating a
13 hunting license permitting crossbow hunting; and providing
14 rule-making authority.

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

16 That §20-2-5 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted; and that said code be amended by adding
18 thereto a new section, designated §20-2-42z, all to read as
19 follows:

20 **ARTICLE 2. WILDLIFE RESOURCES.**

21 **§20-2-5. Unlawful methods of hunting and fishing and other**
22 **unlawful acts.**

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

25 (1) Shoot at or to shoot any wild bird or animal unless it is

1 plainly visible to him or her;

2 (2) Dig out, cut out or smoke out, or in any manner take or
3 attempt to take, any live wild animal or wild bird out of its den
4 or place of refuge except as may be authorized by rules promulgated
5 by the director or by law;

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

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

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

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

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

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

20 (8) Except as provided in section six of this article, carry
21 an uncased or loaded gun in any of the woods of this state except
22 during the open firearms hunting season for wild animals and
23 nonmigratory wild birds within any county of the state unless he or
24 she has in his or her possession a permit in writing issued to him
25 or her by the director: *Provided*, That this section does not

1 prohibit hunting or taking of unprotected species of wild animals
2 and wild birds and migratory wild birds, during the open season, in
3 the open fields, open water and open marshes of the state;

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

24 (10) Hunt, catch, take, kill, trap, injure or pursue with
25 firearms or other implement by which wildlife may be taken after

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

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

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

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

24 (14) Employ or hire, or induce or persuade, by the use of
25 money or other things of value, or by any means, any person to

1 hunt, take, catch or kill any wild animal or wild bird except those
2 species on which there is no closed season, or to fish for, catch,
3 take or kill any fish, amphibian or aquatic life which is protected
4 by the provisions of this chapter or rules of the director or the
5 sale of which is prohibited;

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

15 (16) Kill, take, catch or have in his or her possession,
16 living or dead, any wild bird other than a game bird; or expose for
17 sale or transport within or without the state any bird except as
18 aforesaid. No part of the plumage, skin or body of any protected
19 bird may be sold or had in possession for sale except mounted or
20 stuffed plumage, skin, bodies or heads of the birds legally taken
21 and stuffed or mounted, irrespective of whether the bird was
22 captured within or without this state, except the English or
23 European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)
24 and cowbird (*molothrus ater*), which may not be protected and the
25 killing thereof at any time is lawful;

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

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

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

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

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

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

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

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

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

22 (25) Except as provided in section four of this article, hunt,
23 catch, take, kill or attempt to hunt, catch, take or kill any wild
24 animal, wild bird or wild fowl except during the open season
25 established by rule of the director as authorized by subdivision

1 (6), section seven, article one of this chapter;

2 (26) Hunting on public lands on Sunday after five o'clock
3 antemeridian is prohibited;

4 (27) Hunt, catch, take, kill, trap, injure or pursue with
5 firearms or other implement which wildlife can be taken, on private
6 lands on Sunday after the hour of five o'clock antemeridian:
7 *Provided*, That the provisions of this subdivision do not apply in
8 any county until the county commission of the county holds an
9 election on the question of whether the provisions of this
10 subdivision prohibiting hunting on Sunday shall apply within the
11 county and the voters approve the allowance of hunting on Sunday in
12 the county. The election is determined by a vote of the resident
13 voters of the county in which the hunting on Sunday is proposed to
14 be authorized. The county commission of the county in which Sunday
15 hunting is proposed shall give notice to the public of the election
16 by publication of the notice as a Class II-0 legal advertisement in
17 compliance with the provisions of article three, chapter fifty-nine
18 of this code and the publication area for the publication is the
19 county in which the election is to be held. The date of the last
20 publication of the notice shall fall on a date within the period of
21 the fourteen consecutive days next preceding the election.

22 On the local option election ballot shall be printed the
23 following:

24 Shall hunting on Sunday be authorized in _____ County?

25 [] Yes [] No

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

2 Any local option election to approve or disapprove of the
3 proposed authorization of Sunday hunting within a county shall be
4 in accordance with procedures adopted by the commission. The local
5 option election may be held in conjunction with a primary or
6 general election or at a special election. Approval shall be by a
7 majority of the voters casting votes on the question of approval or
8 disapproval of Sunday hunting at the election.

9 If a majority votes against allowing Sunday hunting, no
10 election on the issue may be held for a period of one hundred four
11 weeks. If a majority votes "yes," no election reconsidering the
12 action may be held for a period of five years. A local option
13 election may thereafter be held if a written petition of qualified
14 voters residing within the county equal to at least five percent of
15 the number of persons who were registered to vote in the next
16 preceding general election is received by the county commission of
17 the county in which Sunday hunting is authorized. The petition may
18 be in any number of counterparts. The election shall take place at
19 the next primary or general election scheduled more than ninety
20 days following receipt by the county commission of the petition
21 required by this subsection: *Provided*, That the issue may not be
22 placed on the ballot until all statutory notice requirements have
23 been met. No local law or regulation providing any penalty,
24 disability, restriction, regulation or prohibition of Sunday
25 hunting may be enacted and the provisions of this article preempt

1 all regulations, rules, ordinances and laws of any county or
2 municipality in conflict with this subdivision; and

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

6 **§20-2-42z. Class CB Crossbow hunting licenses.**

7 (a) Notwithstanding any other provision in this code to the
8 contrary, the Director of the Division of Natural Resources may
9 issue a Class CB license entitling the licensee to hunt deer with
10 a crossbow during the archery deer season. The director shall
11 establish a fee for the license: *Provided*, That the fee shall be
12 equal to the fee for archery deer hunting.

13 (b) The director shall propose a rule for legislative approval
14 in accordance with article three, chapter twenty-nine-a of this
15 code implementing this section.

NOTE: The purpose of this bill is to create a hunting license permitting the use of crossbow in hunting deer. The bill grants the Director of the Division of Natural Resources rule-making authority.

§20-2-5 has been amended; therefore, strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§20-2-42z is new; therefore, it has been completely underscored.