

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 345

BY SENATORS MAYNARD, JEFFRIES, MULLINS, TAKUBO,

CLINE, WELD AND MARONEY

[Originating the Committee on the Judiciary; reported

on February 24, 2017.]

1 A BILL to repeal §20-2-19a of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §20-2-5, §20-2-42g and §20-2-42h of said code; and to amend said code by
3 adding thereto a new section designated §20-2-5i, all relating to hunting; repealing
4 limitations on trappers on Sundays; eliminating local option election regarding hunting on
5 Sunday on private land; permitting hunting on Sunday on private land; clarifying hunting
6 on Sunday on public lands is unlawful; and superseding ballot measures relating to
7 Sunday hunting that have passed or failed prior to the effective date of the amendments.

Be it enacted by the Legislature of West Virginia:

1 That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; that §20-
2 2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted; and that said code be
3 amended by adding thereto a new section, designated §20-2-5i, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

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

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

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

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

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

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

12 (4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other
13 airborne conveyance, a drone or other unmanned aircraft, an automobile or other land

14 conveyance, or from a motor-driven water conveyance;

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

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

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

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

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

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

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

30 (C) A person carrying a firearm pursuant to sections six and six-a of this article; or

31 (D) A person carrying a firearm for self-defense who is not prohibited from possessing
32 firearms by section seven, article seven, chapter sixty-one of this code;

33 (10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun
34 with cartridges that have not been removed or a magazine that has not been detached, in or on
35 any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun
36 whose magazine readily detaches is considered unloaded if the magazine is detached and no
37 cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of
38 day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any
39 unloaded firearm or crossbow may be carried only when in a case or taken apart and securely

40 wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements
41 relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian
42 to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying
43 unloaded and uncased firearms are extended for one hour after the post meridian times and one
44 hour before the ante meridian times established in this subdivision, if a person is transporting or
45 transferring the firearms to or from a hunting site, campsite, home or other abode;

46 ~~(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which~~
47 ~~wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without~~
48 ~~the written consent of the landowner any wild animals or wild birds except when a big game~~
49 ~~season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of~~
50 ~~wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps~~
51 ~~previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday~~
52 ~~and the person tending the traps may carry firearms for the purpose of humanely dispatching~~
53 ~~trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon~~
54 ~~conviction thereof, in addition to any fines that may be imposed by this or other sections of this~~
55 ~~code, is subject to a \$100 fine;~~

56 ~~(12) (11)~~ Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of
57 a ferret;

58 ~~(13) (12)~~ Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

59 ~~(14) (13)~~ Catch, take, kill or attempt to catch, take or kill any fish by any means other than
60 by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of
61 suckers, carp, fallfish and creek chubs is lawful;

62 ~~(15) (14)~~ Employ, hire, induce or persuade, with money, things of value or by any means,
63 any person to hunt, take, catch or kill any wild animal or wild bird except those species in which
64 there is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that
65 is protected by rule, or the sale of which is otherwise prohibited;

66 ~~(16)~~ (15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory
67 game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703,
68 *et seq.*, and its regulations;

69 ~~(17)~~ (16) Kill, take, catch, sell, transport or have in his or her possession, living or dead,
70 any wild bird other than a game bird including the plumage, skin or body of any protected bird,
71 irrespective of whether the bird was captured in or out of this state, except the English or European
72 sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may
73 be killed at any time;

74 ~~(18)~~ (17) Use dynamite, explosives or any poison in any waters of the state for the purpose
75 of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon
76 conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months
77 nor more than three years, or both fined and imprisoned;

78 ~~(19)~~ (18) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the
79 same time;

80 ~~(20)~~ (19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or
81 attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this
82 article;

83 ~~(21)~~ (20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow
84 is equipped with a point having at least two sharp cutting edges measuring in excess of three
85 fourths of an inch wide;

86 ~~(22)~~ (21) Take or attempt to take any wildlife with an arrow having an explosive head or
87 shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

88 ~~(23)~~ (22) Shoot an arrow across any public highway;

89 ~~(24)~~ (23) Permit any dog owned or under his or her control to chase, pursue or follow the
90 tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That
91 dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials

92 may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant,
93 or upon the grounds or lands of another person with his or her written permission, or on public
94 lands at any time. Nonresidents may not train dogs in this state at any time except during the legal
95 small game hunting season. A person training dogs may not have firearms or other implements
96 in his or her possession during the closed season on wild animals and wild birds;

97 ~~(25)~~ (24) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial,
98 water race or wild hunt: *Provided*, That any person, group of persons, club or organization may
99 hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person
100 responsible for obtaining the permit shall prepare and keep an accurate record of the names and
101 addresses of all persons participating in the trial and make the records readily available for
102 inspection by any natural resources police officer upon request;

103 ~~(26)~~ (25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild
104 bird or wild fowl except during open seasons;

105 ~~(27) Hunting~~ (26) Hunt on public lands on Sunday after five o'clock ante meridian is
106 prohibited; and

107 ~~(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which~~
108 ~~wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian:~~
109 ~~*Provided*, That the provisions of this subdivision do not apply in any county until the county~~
110 ~~commission of the county holds an election on the question of whether the provisions of this~~
111 ~~subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve~~
112 ~~the allowance of hunting on Sunday in the county. The election is determined by a vote of the~~
113 ~~resident voters of the county in which the hunting on Sunday is proposed to be authorized. The~~
114 ~~county commission of the county in which Sunday hunting is proposed shall give notice to the~~
115 ~~public of the election by publication of the notice as a Class II-0 legal advertisement in compliance~~
116 ~~with the provisions of article three, chapter fifty-nine of this code and the publication area for the~~
117 ~~publication is the county in which the election is to be held. The date of the last publication of the~~

118 ~~notice shall fall on a date within the period of the fourteen consecutive days next preceding the~~
119 ~~election.~~

120 ~~On the local option election ballot shall be printed the following:~~

121 ~~Shall hunting on Sunday be authorized on private lands only with the consent of the land~~
122 ~~owner in _____ County?~~

123 ~~Yes~~

124 ~~No~~

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

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

131 ~~If a majority votes against allowing Sunday hunting, an election on the issue may not be~~
132 ~~held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering~~
133 ~~the action may not be held for a period of five years. A local option election may thereafter be~~
134 ~~held if a written petition of qualified voters residing within the county equal to at least five percent~~
135 ~~of the number of persons who were registered to vote in the next preceding general election is~~
136 ~~received by the county commission of the county in which Sunday hunting is authorized. The~~
137 ~~petition may be in any number of counterparts. The election shall take place at the next primary~~
138 ~~or general election scheduled more than ninety days following receipt by the county commission~~
139 ~~of the petition required by this subsection: *Provided*, That the issue may not be placed on the~~
140 ~~ballot until all statutory notice requirements have been met. No local law or regulation providing~~
141 ~~any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and~~
142 ~~the provisions of this article preempt all regulations, rules, ordinances and laws of any county or~~
143 ~~municipality in conflict with this subdivision.~~

144 ~~Amendments to this subdivision promulgated during the 2015 regular session of the~~
145 ~~Legislature shall have no effect upon the results of elections held prior to their enactment; and~~
146 ~~(29) (27) Hunt or conduct hunts for a fee when the person is not physically present in the~~
147 ~~same location as the wildlife being hunted within West Virginia.~~

§20-2-5i. Lawful Sunday hunting on private property.

1 Notwithstanding any ballot measure relating to Sunday hunting that has passed or failed
2 prior to the effective date of the amendments to this section promulgated during the 2017 regular
3 session of the Legislature, it is lawful to hunt throughout the State of West Virginia on private
4 lands on Sundays after the hour of five o'clock ante meridian with the written consent of the private
5 landowner.

§20-2-42g. Class H nonresident small game hunting license.

1 A Class H license is a nonresident small game hunting license and entitles the licensee to
2 hunt small game in all counties of the state, except as prohibited by rules of the director or Natural
3 Resources Commission and except when additional licenses, stamps or permits are required, for
4 a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties~~
5 ~~closed to Sunday hunting.~~ The fee for the license is \$25. This is a base license and does not
6 require the purchase of a prerequisite license to participate in the activities specified in this
7 section, except as noted.

§20-2-42h. Class J nonresident small game shooting preserve license.

1 A Class J license is a nonresident small game shooting preserve license and entitles the
2 licensee to hunt small game on designated shooting preserves, except as prohibited by rules of
3 the director or Natural Resources Commission and except when additional licenses, stamps or
4 permits are required, for a period of six consecutive hunting days chosen by the licensee,
5 ~~excluding Sunday in counties closed to Sunday hunting.~~ The fee for the license is \$10. This is a
6 base license and does not require the purchase of a prerequisite license to participate in the
7 activities specified in this section, except as noted.