

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Originating**

## **House Bill 3101**

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[Originating in the Committee on Agriculture and  
Natural Resources then the Judiciary; Reported on

March 17, 2017.]

1 A BILL to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating  
2 to catching, taking, killing or attempting to catch, take or kill any fish by any means within  
3 two hundred feet of agency personnel stocking fish into public waters; creating a  
4 misdemeanor for violations thereof; and providing for criminal penalties.

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

1 That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
2 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) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a  
57 ferret;

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

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

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

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

69 (17) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any

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

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

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

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

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

87 (23) Shoot an arrow across any public highway;

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

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

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

104           (27) Hunting on public lands on Sunday after five o'clock ante meridian is prohibited;

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

118           On the local option election ballot shall be printed the following:

119           Shall hunting on Sunday be authorized on private lands only with the consent of the land  
120 owner in \_\_\_\_\_ County?

121           [ ] Yes

122             No

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

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

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

142            Amendments to this subdivision promulgated during the 2015 regular session of the  
143 Legislature shall have no effect upon the results of elections held prior to their enactment; ~~and~~

144            (29) Hunt or conduct hunts for a fee when the person is not physically present in the same  
145 location as the wildlife being hunted within West Virginia; and

146            (30) Catch, take, kill or attempt to catch, take or kill any fish by any means within two  
147 hundred feet of agency personnel stocking fish into public waters.

NOTE: The purpose of this bill is to create a misdemeanor and criminal penalties for fishing within 200 feet of agency personnel while stocking fish into public waters.

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