

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 3020**

BY DELEGATES HARSHBARGER, HOWELL, COWLES,  
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ELDRIDGE, STATLER AND OVERINGTON

[Reported February 2, 2018; Referred  
to the Committee on Agriculture and Natural Resources  
then the Judiciary.]



1 A BILL to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, and to  
2 amend and reenact §20-7-9 of said code, relating to unlawful acts in natural resources law  
3 generally; unlawful methods of hunting and fishing and other unlawful acts; catching,  
4 taking, killing or attempting to catch, take or kill any fish by any means within two hundred  
5 feet of agency personnel stocking fish into public waters; creating a misdemeanor for  
6 violations thereof; and providing for criminal penalties for such violations; criminal  
7 penalties for the offense of hunting, trapping or fishing on the lands of another person;  
8 criminal penalties for the offense of entering on to posted lands; criminal penalties for the  
9 offense of destroying posted land signs; setting those criminal penalties for such offenses  
10 to be equivalent to those of the offense of criminal trespass, including for conviction of  
11 subsequent offenses of the same; and making technical changes.

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

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.**

1 (a) Except as authorized by the director or by law, it is unlawful at any time for any person  
2 to:  
3 (1) Shoot at any wild bird or wild animal unless it is plainly visible;  
4 (2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild  
5 animal or wild bird out of its den or place of refuge;  
6 (3) Use or attempt to use any artificial light or any night vision technology, including image  
7 intensification, thermal imaging or active illumination while hunting, locating, attracting, taking,  
8 trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote,  
9 fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person  
10 violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each

11 offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less  
12 than ten days nor more than one hundred days;

13 (4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other  
14 airborne conveyance, a drone or other unmanned aircraft, an automobile or other land  
15 conveyance, or from a motor-driven water conveyance;

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

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

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

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

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

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

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

31 (C) A person carrying a firearm pursuant to ~~sections §20-2-6 six and six-a~~ of this article  
32 Code; or

33 (D) A person carrying a firearm for self-defense who is not prohibited from possessing  
34 firearms by ~~section seven, article seven, chapter sixty-one §61-7-7~~ of this Code;

35 (10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun  
36 with cartridges that have not been removed or a magazine that has not been detached, in or on

37 any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun  
38 whose magazine readily detaches is considered unloaded if the magazine is detached and no  
39 cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of  
40 day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any  
41 unloaded firearm or crossbow may be carried only when in a case or taken apart and securely  
42 wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements  
43 relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian  
44 to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying  
45 unloaded and uncased firearms are extended for one hour after the post meridian times and one  
46 hour before the ante meridian times established in this subdivision, if a person is transporting or  
47 transferring the firearms to or from a hunting site, campsite, home or other abode;

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

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

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

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

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

61 (16) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any  
62 wild bird other than a game bird including the plumage, skin or body of any protected bird,

63 irrespective of whether the bird was captured in or out of this state, except the English or European  
64 sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may  
65 be killed at any time;

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

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

72 (19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt  
73 to take any wildlife except as otherwise provided in ~~sections five-g §20-2-5g and forty-two-w §20-~~  
74 2-42w of this ~~article~~ Code;

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

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

80 (22) Shoot an arrow across any public highway;

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

89 (24) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water  
90 race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a  
91 trial upon obtaining a permit pursuant to ~~section fifty-six~~ §20-2-56 of this ~~article~~ Code. The person  
92 responsible for obtaining the permit shall prepare and keep an accurate record of the names and  
93 addresses of all persons participating in the trial and make the records readily available for  
94 inspection by any natural resources police officer upon request;

95 (25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird  
96 or wild fowl except during open seasons;

97 (26) Hunt on public lands on Sunday after five o'clock ante meridian; ~~and~~

98 (27) Hunt or conduct hunts for a fee when the person is not physically present in the same  
99 location as the wildlife being hunted within West Virginia; or

100 (28) Catch, take, kill, or attempt to catch, take or kill any fish by any means within two  
101 hundred feet of division personnel engaged in stocking fish in public waters.

102 (b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt  
103 throughout the State of West Virginia on private lands on Sundays after the hour of five o'clock  
104 ante meridian with the written consent of the private landowner pursuant to §20-2-7 ~~section seven,~~  
105 ~~article two~~ of this ~~chapter~~ Code.

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

**§20-7-9. Violations of chapter generally; penalties.**

1 Any person violating any of the provisions of this chapter or rules promulgated under the  
2 provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a  
3 misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$20 nor  
4 more than \$300 or confined in jail not less than ten or more than one hundred days, or be both  
5 fined and imprisoned within the limitations aforesaid and, in the case of a violation by a  
6 corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of  
7 a misdemeanor and, upon conviction thereof, shall be subject to the same penalties and

8 punishment as herein provided: *Provided*, That any person violating ~~subdivision (3), section five,~~  
9 ~~article two, §20-2-7, §20-2-8, or §20-2-10~~ of this chapter Code shall be guilty of a misdemeanor  
10 and, upon conviction of a first offense thereof, shall be fined not less than \$100 nor more than  
11 \$500 ~~and or~~ shall be ~~imprisoned~~ confined for not less than ten days nor more than one hundred  
12 days, or both fined and confined. A person who is convicted of a second offense of violation of  
13 the aforementioned sections is guilty of a misdemeanor and shall be fined not less than \$500 nor  
14 more than \$1,000 or shall be confined for not less than ten days nor more than one hundred days,  
15 or both fined and confined. A person who is convicted of a third and subsequent offense of  
16 violation of the aforementioned sections is guilty of a misdemeanor and shall be fined not less  
17 than \$1,000 nor more than \$1,500 or shall be confined for not less than ten days nor more than  
18 one hundred days, or both fined and confined: *Provided, however,* That any person who is in  
19 violation of section twenty-seven, article two of this chapter as a result of their failure to have a  
20 valid Class E nonresident hunting and trapping license, as defined by ~~section forty-two-d~~ §20-2-  
21 42d of this ~~article~~ Code, or a valid Class EE nonresident bear hunting license, as defined by  
22 ~~section forty-two-e~~ §20-2-42e of this ~~article~~ Code, shall be guilty of a misdemeanor and, upon  
23 conviction thereof, shall be fined not less than \$250 nor more than \$500, or confined in jail not  
24 less than ten nor more than one hundred days, or both fined and imprisoned: *Provided further*,  
25 That any person who is in violation of ~~section twenty-seven, article two~~ §20-2-27 of this ~~chapter~~  
26 Code as a result of their failure to have a Class F nonresident fishing license, as defined by ~~section~~  
27 ~~forty-two-f~~ §20-2-42f of this ~~article~~ Code, shall be guilty of a misdemeanor and, upon conviction  
28 thereof, fined not less than \$100 nor more than \$300 or confined in jail not less than ten nor more  
29 than one hundred days, or both fined and imprisoned: *And provided further*, That any person  
30 violating any parking or speeding regulations as promulgated by the director on any state parks,  
31 state forests, public hunting and fishing areas and all other lands and waters owned, leased or  
32 under the control of the Division of Natural Resources shall be guilty of a misdemeanor and, upon

- 33 conviction thereof, shall be fined not less than \$2 nor more than \$100 or imprisoned in jail not  
34 more than ten days, or both fined and imprisoned.

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 and to provide that the penalty for hunting, trapping or fishing on the lands of another, entering upon posted lands, or destroying posted land signs shall be equivalent to the penalty for criminal trespass.

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