

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 451

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MARONEY, RUCKER, SMITH, SWOPE, WELD, AND CLINE

[Originating in the Committee on the Judiciary;

Reported on February 15, 2018]

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, all relating generally to hunting and fishing;
3 authorizing the use of certain technologies for hunting coyote, fox, racoon, opossum, and
4 skunk; regulating firearm use and possession in certain places; prohibiting the use of a
5 drone or unmanned aircraft to wound, harass, or transport wildlife; allowing certain
6 persons to carry a rifle or shotgun for self-defense, with certain exceptions; creating a
7 misdemeanor and providing penalties for catching, taking, killing or attempting to catch,
8 take, or kill any fish by any means within 200 feet of agency personnel stocking fish into
9 public waters; removing limit on starting time for Sunday hunting on private lands with the
10 landowner's permission; providing that the misdemeanor offenses of hunting, trapping, or
11 fishing on the lands of another person, entering posted lands, violations of trout fishing
12 laws and rules, and destroying posted land signs will all carry penalties equivalent to the
13 penalty for the offense of criminal trespass; providing increased penalties upon conviction
14 of second and subsequent violations of certain natural resources laws; permitting Sunday
15 hunting on public lands; permitting noodling, or fishing for catfish using one's bare hands;
16 and making technical changes.

Be it enacted by the Legislature of West Virginia:

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, including
10 image intensification, thermal imaging, or active illumination. Any person violating this subdivision
11 is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less
12 than \$100 nor more than \$500, and shall be confined in jail for not less than 10 days nor more
13 than 100 days;

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

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

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

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

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

25 (9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state
26 forests, state wildlife management areas, or state rail trails with the following permissible
27 exceptions:

28 (A) A person in possession of a valid license or permit during open firearms hunting
29 season for wild animals and nonmigratory wild birds where hunting is lawful;

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

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

35 (D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from
36 possessing firearms by ~~section seven, article seven, chapter sixty-one of this code~~ under state or
37 federal law; or

38 (E) A person carrying a rifle or shotgun for self-defense who is not prohibited from
39 possessing firearms under state or federal law: *Provided*, That this exception does not apply to
40 an uncased rifle or shotgun carried specifically in a state park, state forest recreational facilities,
41 and marked trails within state park or state forest borders.

42 ~~(10) Have in his or her possession a crossbow with a nocked bolt or a rifle or shotgun with~~
43 ~~cartridges that have not been removed or a magazine that has not been detached, in or on any~~
44 ~~vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun~~
45 ~~whose magazine readily detaches is considered unloaded if the magazine is detached and no~~
46 ~~cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of~~
47 ~~day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any~~
48 ~~unloaded firearm or crossbow may be carried only when in a case or taken apart and securely~~
49 ~~wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements~~
50 ~~relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian~~
51 ~~to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying~~
52 ~~unloaded and uncased firearms are extended for one hour after the post meridian times and one~~
53 ~~hour before the ante meridian times established in this subdivision, if a person is transporting or~~
54 ~~transferring the firearms to or from a hunting site, campsite, home or other abode. Possess a~~
55 loaded rifle or shotgun, a bow with a nocked arrow, or crossbow with a nocked bolt, in or on any
56 vehicle or conveyance, or its attachments. A rifle or shotgun with cartridges that have not been
57 removed or a magazine that has not been detached is considered loaded. For the purposes of

58 this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the
59 magazine is detached and no cartridges remain in the rifle or shotgun itself;

60 (11) Carry any unloaded firearm, bow, or crossbow in or on any vehicle or conveyance, or
61 its attachments, that is not in a case or taken apart and securely wrapped between 30 minutes
62 after sunset until 30 minutes before sunrise: *Provided*, That the time periods for carrying unloaded
63 and uncased firearms or crossbows are extended for one hour after sunset as established in this
64 subdivision, if a person is transporting or transferring the firearms or crossbows to or from a
65 hunting site, campsite, home, or other abode;

66 ~~(11)~~ (12) Hunt, catch, take, kill, injure, or pursue a wild animal or wild bird with the use of
67 a ferret;

68 ~~(12)~~ (13) Buy raw furs, pelts, or skins of fur-bearing animals unless licensed to do so;

69 ~~(13)~~ (14) Catch, take, kill, or attempt to catch, take, or kill any fish by any means other
70 than by rod, line, and hooks with natural or artificial lures, unless otherwise authorized by the
71 director: *Provided*, That snaring of any species of suckers sucker, carp, fallfish, and creek chubs
72 chub is lawful; and catching catfish by hand are lawful if done by a holder of a valid license issued
73 pursuant to §20-2-1 *et seq.* of this code or is exempted from licensure pursuant to §20-2-27 or
74 §20-2-28 of this code;

75 ~~(14)~~ (15) Employ, hire, induce, or persuade, with money, things of value, or by any means,
76 any person to hunt, take, catch, or kill any wild animal or wild bird except those species in which
77 there is no closed season; or to fish for, catch, take, or kill any fish, amphibian, or aquatic life that
78 is protected by rule, or the sale of which is otherwise prohibited;

79 ~~(15)~~ (16) Hunt, catch, take, kill, capture, pursue, transport, possess, or use any migratory
80 game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U.S.C. § 703,
81 *et seq.*, and its regulations;

82 ~~(16)~~ (17) Kill, take, catch, sell, transport, or have in his or her possession, living or dead,
83 any wild bird other than a game bird, including the plumage, skin, or body of any protected bird,

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

87 ~~(17)~~ (18) Use dynamite, explosives, or any poison in any waters of the state for the
88 purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony, and
89 upon conviction thereof, shall be fined not more than \$500 or ~~imprisoned~~ confined for not less
90 than six months nor more than three years, or both fined and ~~imprisoned~~ confined;

91 ~~(18)~~ (19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the
92 same time;

93 ~~(19)~~ (20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take, or
94 attempt to take any wildlife except as otherwise provided in §20-2-5g and §20-2-42w of this code;

95 ~~(20)~~ (21) Take or attempt to take turkey, bear, elk, or deer with any arrow unless the arrow
96 is equipped with a point having at least two sharp cutting edges measuring in excess of three
97 fourths of an inch wide;

98 ~~(24)~~ (22) Take or attempt to take any wildlife with an arrow having an explosive head or
99 shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;

100 ~~(22)~~ (23) Shoot an arrow across any public highway;

101 ~~(23)~~ (24) Permit any dog owned or under his or her control to chase, pursue, or follow the
102 tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That
103 dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials
104 may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant,
105 or upon the grounds or lands of another person with his or her written permission, or on public
106 lands at any time. Nonresidents may not train dogs in this state at any time except during the
107 legal small game hunting season. A person training dogs may not have firearms or other
108 implements for taking wildlife in his or her possession during the closed season on wild animals

109 and wild birds, except a person carrying a firearm for self-defense who is not prohibited from
110 possessing firearms under state or federal law;

111 ~~(24)~~ (25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial,
112 water race, or wild hunt: *Provided*, That any person, group of persons, club, or organization may
113 hold a trial upon obtaining a permit pursuant to ~~section fifty-six~~ §20-2-56 of this article code. The
114 person responsible for obtaining the permit shall prepare and keep an accurate record of the
115 names and addresses of all persons participating in the trial and make the records readily
116 available for inspection by any natural resources police officer upon request;

117 ~~(25)~~ (26) Hunt, catch, take, kill, or attempt to hunt, catch, take, or kill any wild animal, wild
118 bird, or wild fowl except during open seasons;

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

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

122 (28) Catch, take, kill, or attempt to catch, take, or kill any fish by any means within 200
123 feet of division personnel engaged in stocking fish in public waters.

124 (b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt
125 throughout the State of West Virginia on private lands on Sundays ~~after the hour of five o'clock~~
126 ~~ante meridian~~ with the written consent of the private landowner pursuant to ~~section seven, article~~
127 ~~two of this chapter~~ §20-2-7 of this code, and it is lawful to hunt throughout the State of West
128 Virginia on federal land where hunting is permitted, in state forests, on land owned or leased by
129 the state for wildlife purposes, and on land managed by the state for wildlife purposes pursuant
130 to a cooperative agreement.

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 10 or more than 100 days, or be both fined and
5 confined within the limitations aforesaid and, in the case of a violation by a corporation, every
6 officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor
7 and, upon conviction thereof, shall be subject to the same penalties and punishment as herein
8 provided: *Provided*, That any person violating ~~subdivision (3), section five, article two, §20-2-5b,~~
9 §20-2-7, §20-2-8, or §20-2-10 of this ~~chapter~~ code shall be guilty of a misdemeanor and, upon
10 conviction of a first offense thereof, shall be fined not less than \$100 nor more than \$500, ~~and or~~
11 ~~shall be imprisoned~~ confined for not less than 10 days nor more than 100 days, or both fined and
12 confined. A person who is convicted of a second offense of violation of §20-2-5b, §20-2-7, §20-
13 2-8, or §20-2-10 of this code 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 10 days nor more than 100 days, or both
15 fined and confined. A person who is convicted of a third and subsequent offense of violation of
16 §20-2-5b, §20-2-7, §20-2-8, or §20-2-10 of this code is guilty of a misdemeanor, and shall be
17 fined not less than \$1,000 nor more than \$1,500, or shall be confined for not less than 10 days
18 nor more than 100 days, or both fined and confined: *Provided, however*, That any person who is
19 in violation of §20-2-27 of this code as a result of their failure to have a valid Class E nonresident
20 hunting and trapping license, as defined by ~~section forty-two-d~~ §20-2-42d of this article code, or
21 a valid Class EE nonresident bear hunting license, as defined by ~~section forty-two-e~~ §20-2-42e of
22 this article code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not
23 less than \$250 nor more than \$500, or confined in jail not less than 10 nor more than 100 days,
24 or both fined and ~~imprisoned~~ confined: *Provided further*, That any person who is in violation of
25 ~~section twenty-seven, article two~~ §20-2-27 of this ~~chapter~~ code as a result of their failure to have
26 a Class F nonresident fishing license, as defined by ~~section forty-two-f~~ §20-2-42f of this article
27 code, shall be guilty of a misdemeanor and, upon conviction thereof, fined not less than \$100 nor
28 more than \$300 or confined in jail not less than 10 nor more than 100 days, or both fined and

29 ~~imprisoned~~ confined: *And provided further*, That any person violating any parking or speeding
30 regulations as promulgated by the director on any state parks, state forests, public hunting and
31 fishing areas, and all other lands and waters owned, leased, or under the control of the Division
32 of Natural Resources shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined
33 not less than \$2 nor more than \$100 or ~~imprisoned~~ confined in jail not more than 10 days, or both
34 fined and confined.