

HUNTING AND FISHING LAWS OF VIRGINIA

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH OF VIRGINIA
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HUNTING AND FISHING LAWS OF VIRGINIA

A Report

of the

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, November 1, 1961

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The State game, fish and dog laws have been amended many times since the adoption of the Game, Inland Fish and Dog Code in 1930 and the Commission of Game and Inland Fisheries has adopted and amended numerous regulations pursuant to authority conferred upon it. The need for revising the laws concerning hunting and fishing has been evident for some time.

The General Assembly of 1960 recognized this and adopted House Joint Resolution No. 43, directing the Virginia Advisory Legislative Council to make a study and report upon the game, inland fish and dog laws; this resolution is set forth below.

HOUSE JOINT RESOLUTION NO. 43

Directing the Virginia Advisory Legislative Council to make a study of the game, inland fish and dog laws of Virginia.

Whereas, there has been no general revision of the laws of Virginia relating to game, inland fisheries, and dogs for many years, during which period of time conditions affecting the sports of hunting and fishing and affecting wild life conservation have materially changed in this State, and

Whereas, there are some ambiguities in the present law and some overlapping and duplications therein; now, therefore, be it

Resolved by the House of Delegates of Virginia, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study of the laws of Virginia relating to game, inland fisheries, and dogs, with a view to adapting them to present conditions and to revising and clarifying them where this appears desirable. The Council shall complete its study and make a report to the Governor and General Assembly not later than October one, nineteen hundred sixty-one.

The Council appointed Arthur H. Richardson, member of the House of Delegates representing Dinwiddie county and the city of Petersburg, as Chairman of a Committee to make the preliminary investigation and report. The Council appointed the following to serve upon the Committee

with Mr. Richardson: D. W. Bird, member of the State Senate, and member of the Senate Committee on Fish and Game, Bland, Virginia; John B. Boatwright, attorney, and former member of the House of Delegates, Buckingham; Paul Crockett, attorney, and former member of the House of Delegates, Yorktown; Charles Hamilton, Managing Editor, Richmond News Leader, Richmond; W. H. Irvine, businessman and former member of the House of Delegates, Richmond; Baldwin G. Locher, member of House of Delegates and Chairman of the House Committee on Game and Inland Fisheries, Lexington; Webb Midyette, Chief, Law Enforcement Division, Commission of Game and Inland Fisheries; R. F. Burke Steele, banker, Petersburg; and Alexander Long Wilson, attorney, Arlington. All members of the Committee are hunters and fishermen. Thus, they not only brought to their work a much accumulated knowledge and familiarity with the wishes and desires of the sportsmen, but also the determination to do the best possible job. John B. Boatwright, Jr. and Wildman S. Kincheloe, Jr., served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee began its work by obtaining the views of the Commission of Game and Inland Fisheries as to recommend changes in the game, inland fish and dog laws contained in Title 29 of the Code of Virginia; comments were also sought upon various local fish and game laws. The regulations of the Commission, and the laws referred to were all reviewed with the idea of determining the changes that should be made. After wide publicity, public hearings were held in Wytheville, Lynchburg and Richmond, to which the public was invited. A number of valuable suggestions were received.

The Commission of Game and Inland Fisheries, the Executive Director thereof, the technicians employed by the Commission, the supervising wardens, and a number of game wardens, were requested to, and did, meet with the Committee and make comments and suggestions; many valuable ideas were obtained in this fashion.

After reviewing the material before it, and taking into account the suggestions and recommendations made at the public hearings and meetings, through correspondence and otherwise, the Committee made its report to the Council. Having carefully considered the report of the Committee, the Council makes the recommendations set forth below, for the reasons indicated, which, in its judgment, will serve the best interests of the hunters and fishermen of this State.

RECOMMENDATIONS

1. The great mass of confusingly different local game and fish laws, Commission regulations with local application, and the widely divergent season and bag limits should be eliminated, to be replaced, insofar as possible, by the laws and regulations which are uniform throughout the State and by seasons and bag limits which are uniform as nearly as may be.

2. The statutes concerning the spotlighting of deer and elk should be repealed, to be replaced by a law in two parts, which is designed (a) to allow better enforcement of the present prohibition against spotlighting deer and elk and (b) to reach attempts to take deer and elk by spotlighting which attempts are complete except for displaying a firearm or other weapon; an appropriate gradation in penalties is provided.

3. The Commission of Game and Inland Fisheries should work with county authorities in the establishment of such boat landings as may be necessary for recreational and sporting purposes.

4. The present multiplicity of local laws which impose a big game damage stamp at a prescribed fee should be (a) consolidated in the interest of eliminating minor differences, and (b) revised to allow the local governing body to use funds derived therefrom to prevent damage by bear and deer and to require the stamps of all counties issuing same to be available for sale at the clerk's office of each such county.

5. The bill attached to this report to enable counties to prohibit hunting and shooting near subdivisions should be adopted in order to protect the public.

6. In order to provide better enforcement of the hunting and fishing laws by the game warden, and to obtain more revenue from enforcement of the dog laws by an employee who can devote his full time to that activity, the counties should be encouraged to take over and administer locally the dog laws.

7. In order to protect landowners, not only during the hunting season but also at other times, trespassers must be dealt with firmly. To this end, a bill is attached which would permit a landowner to recover liquidated damages from a trespasser.

8. The bill attached to this report prohibiting discharge of, or having in possession, a loaded rifle or shotgun on a public highway or the right-of-way thereof is essential to the safety of the public and should be adopted.

9. Miscellaneous changes in laws relating to hunting and fishing:

(a) § 19.1-84, which sets forth when search warrants may issue should be amended to add a paragraph numbered (8) to allow search warrants to issue for "game and fish illegally taken and illegal devices used in taking game or fish".

(b) § 29-57 which sets forth who is entitled to county or State resident hunting and fishing licenses should be amended to require an applicant for a county license to have physically resided in the county six consecutive months before his application.

(c) § 29-77 which states when licenses may be revoked should be amended to include violations of Commission regulations and § 33-287, the statute relating to shooting in or along streets or highways; and further to provide that the second conviction, for which the license shall be revoked, must have occurred within two years after the prior conviction.

(d) §§ 29-2.1 and 29-14, and subparagraph (f) of § 29-143 should be amended so as to substitute the word "wild" for the word "game", whenever the latter word is used to modify the word "bird" and "animal", and subparagraph (c) of § 29-143 should be amended to substitute the words "wild bird and/or wild animal" for the word "game".

(e) Subparagraph (o) of § 29-2.1 and subparagraph (f) of § 29-143 should be amended so as to embrace also an attempt to commit the acts mentioned.

(f) Subparagraph (n) of § 29-2.1 and § 29.131 should be amended so as to embrace taking of wild birds and animals as well as the other enumerated acts with reference to them.

(g) Subparagraph (k) of § 29-2.1 should be amended to delete references to “oppossum” and “raccoon”, and subparagraph (1) thereof should be amended to delete reference to “skunk”.

(h) § 29-34 should be amended to include reference to creel limits and trapping of furbearing animals.

(i) Subparagraph (b) of § 29-55 should be amended to refer to fishing in designated waters stocked with trout.

(j) The following sections should be amended as to the fines prescribed: § 29-116, minimum of \$10; § 29-140.1, minimum of \$25.00, and increase maximum to \$250; § 29-149, minimum of \$10, increase maximum to \$100; § 29-153, increase minimum to \$200; § 29-161, increase maximum to \$250; § 29-162, under provision of reporting, increase fine relating to elk to \$100, and fine relating to deer to \$25; § 29-164, increase minimum to \$25, and maximum to \$250; §§ 29-165, 29-165.1 and 29-166, minimum of \$10; § 29-167, minimum of \$25, increase maximum to \$250; and § 29-172, in first paragraph increase maximum to \$250, and in second paragraph change fine to minimum of \$10 and maximum of \$100.

(k) § 29-131 should be amended to delete references to tracking and attempting to track wild birds and wild animals.

(l) § 29-138 should be amended to prohibit taking, killing or attempting to take or kill deer in the water of any stream, rather than prohibiting molesting a deer while swimming in a stream; and to permit members of a landowner’s immediate family to kill rabbits and squirrels during the closed season.

(m) § 29-140 should be amended so as to apply to all wild birds and wild animals.

(n) § 29-142 should be amended to allow muskrats to be hunted by day only.

(o) Subparagraph (a) of § 29-143 should be amended to include use of any other weapon as well as a gun or firearm.

(p) § 29-148 should be amended so as to delete the words “except in Grassy Creek in Mecklenburg County”.

(q) § 29-163 should be amended so as to refer to “wild birds and wild animals” rather than “game”, to refer to “creel limit” as well as “bag limit”, to embrace attempts to take as well as taking, and to make unlawful the possession of over the bag or creel limit while in the forests, fields, and waters.

(r) §§ 29-163.1, 29-175 and 29-176 should be amended to refer to county or municipal courts or judges thereof rather than to “trial justices”.

(s) § 29-166, which permits going on posted property to hunt, fish or trap with the written consent of the owner or his agent, should be broadened to permit doing so in the presence of the owner or his agent.

(t) § 29-176 should be amended to provide appeals from judgments of county or municipal courts in cases involving violation of the hunting trapping, inland fish and dog laws “as in other criminal cases.”

Having given our recommendations, we will now set forth our reasons therefor and number them to correspond with the recommendations.

REASONS FOR RECOMMENDATIONS

1. In recent years, there has been widespread dissatisfaction among Virginia's hunters as to the multiplicity of game laws. Part of this stems from the very make-up of the State, which is split east and west generally by the Blue Ridge mountains into two quite different areas as far as game is concerned. Different climatic conditions are encountered, such as frequency and duration of snow; even different game is found in the two general areas, such as elk in one and none at all in the other. Grouse hunting is popular in some western areas, while it is unknown in most other areas. These are only some of the physical factors which make difficult the formulation of game laws on a State-wide basis.

Still another factor which must be faced is the fact that two agencies have a hand in laws and regulations which cover hunting and fishing.

The Commission of Game and Inland Fisheries promulgates regulations as to seasons and bag limits—but the General Assembly also, from time to time, passes special laws to set special seasons and limits for various localities.

With two rules-making bodies active, it is no wonder that a helter-skelter conglomeration of regulations has plagued sportsmen over the years. This has especially aroused resentment and puzzlement during the past two years. Part of this general resentment stems from a sudden, organized swoop of federal waterfowl wardens into Virginia in 1959-60; these wardens cited numerous Virginians and said there was widespread misunderstanding and violation of federal regulations. Although most cases later were thrown out by federal courts, the episode did clearly establish that there had been some general misunderstanding of regulations; it also was clearly established that hunters needed considerable clarification before any law observance could be expected.

When hunters examined their own general Virginia law, they found even more areas for misunderstanding.

It was stated in the press of the State that hunters, to abide by the law of Virginia, needed to be accompanied by a lawyer and a surveyor.

This statement cannot be considered to be too far-fetched, if one examines just one section of Virginia's regulations.

Let us suppose that you are a deer hunter and want to see what you can do this season. Here are the regulations, as adopted on April 28, 1961:

1. DEER SEASON AND BAG LIMITS: The season for hunting deer shall begin the third Monday in November and close January 5, statewide, with the following exceptions:

(a) In the counties west of the Blue Ridge mountains, and in Amherst west of Route 29, Franklin, Henry, Nelson west of Route 151, Patrick and Pittsylvania deer may be hunted from the third Monday in November for six consecutive hunting days only.

(b) It shall be lawful to hunt deer in Giles County west of New River and in Bland County east of U. S. Routes 21-52 from the third Monday in November for three consecutive hunting days only.

(c) It shall be unlawful to hunt deer at any time in the counties of Arlington, Bedford, Buchanan, Fairfax in that section closed to all hunting, Montgomery and Northampton.

(d) It shall be unlawful to hunt deer with dogs in Henry, Loudoun, Patrick and Franklin counties, in Nelson county in that section west of Route No. 151 and in Amherst county in that section west of Route 29.

BAG LIMITS: The lawful bag limit for deer shall be one buck a season, statewide, with the following exceptions:

(a) One a day, one a season, bucks only, in Amherst west of U. S. Route 29, Bland, Campbell, Carroll, Dickenson, Floyd, Franklin, Giles west of New River, Henry, Nelson west of Route 151, Patrick, Pittsylvania, Pulaski and Tazewell counties.

(b) One a day, one a season, either sex during the first three days of the season, in Alleghany, Augusta, Bath, Botetourt, Clarke, Craig, Frederick, Giles east of New River, Grayson, Highland, Lee, Page, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Warren, Washington, Wise and Wythe counties.

(c) One a day, one a season, either sex, in Accomack on Parramore Island only, Culpeper, Fairfax in sections open for hunting, Fauquier, Greene, Loudoun, Madison, Orange, Prince William and Rappahannock counties.

(d) One a day, two a season, bucks only, in Accomack except Parramore Island, Albermarle, Amelia, Amherst east of U. S. Rt. 29, Appomattox, Brunswick, Buckingham, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Greensville, Henrico, James City, Lunenburg, Mecklenburg, Nansemond in that section lying west of a line beginning at a point on State Highway number ten where it intersects the Isle of Wight County line, thence along such highway to its intersection with the corporate limits of the City of Suffolk, thence through the corporate limits of the city of Suffolk to its intersection with State secondary highway No. 642 (White Marsh Road), and thence along State secondary highway No. 642 in a southerly and westerly direction to State secondary highway No. 604 (The Desert Road), and thence southerly along State secondary highway No. 604 to the North Carolina line, Nelson east of Rt. 151, New Kent, Nottoway, Powhatan, Prince Edward and Surry counties.

(e) One a day, two a season, one of which may be a doe during the first three days of the season, in Fluvanna, Nansemond in that section lying east of the line established in the foregoing paragraph, Norfolk and Princess Anne counties.

(f) One a day, two a season, one of which may be a doe, in Caroline, Essex, Gloucester, Goochland, Halifax, Hanover, King George, King and Queen, King William, Lancaster, Lousia, Mathews, Middlesex, Northumberland, Richmond, Southampton, Spotsylvania, Stafford, Sussex, Westmoreland and York counties and cities of Hampton and Newport News.

(g) One a day, two a season, either sex, may be taken during the open season on the Naval Mine Depot, Cheatham Annex, Fort Eustis, Quantico Marine Base, Camp Peary and Langley Air Force Base properties.

(h) One a day, two a season, one of which may be a doe during the last fifteen days, in Isle of Wight county.

(i) One a day, two a season, one of which may be a doe during the last five days in Prince George county.

While some of the special regulations are clear enough, the need for a compass and a surveyor becomes quite apparent in **BAG LIMITS, SECTION D:**

“One a day, two a season, bucks only, . . . except . . . Nansemond in that section lying west of a line beginning at a point on State Highway No. 10 where it intersects the Isle of Wight county line, thence along such highway to its intersection with the corporate limits of the City of Suffolk, thence through the corporate limits of the City of Suffolk to its intersection with State secondary highway No. 642 (White Marsh Road), and thence along State secondary highway No. 642 in a southerly and westerly direction to State secondary highway No. 604 (The Desert Road), and thence southerly along State secondary highway No. 604 to the North Carolina line, Nelson east of Route 151, New Kent, Nottoway, Powhatan, Prince Edward and Surry counties.”

George Washington, an honorable man and Virginia's first outstanding surveyor, would find it impossible to go deer hunting in Virginia today . . . unless he had a compass.

It must be emphasized that the deer hunting regulations are not the only cause for complaint from Virginia's hunters.

Multitudinous special regulations also plague the bird hunters, as well as hunters who seek grouse, pheasant, rabbit, turkey and foxes. Squirrel regulations are a special evil unto themselves; 37 counties now have their own different squirrel laws.

County lines are not discernible in the woods and fields; on one side of a highway, a hunter may hunt with impunity and perfect legality, yet by crossing a roadway he will be breaking the law. There is nothing there to warn him . . . until a warden shows up to tell him he has done wrong and the court convicts him.

Recreation is rated the second largest “business” in Virginia, second only to manufacturing and ahead of agriculture; hunting and fishing are a large part of the recreation picture. In the Crosley Survey, the recreation “business” was estimated to contribute 100 million dollars per year to the Virginia economy.

Records of the Department of Game and Inland Fisheries show that nearly one-half million hunting licenses were sold in 1960; the number increased nearly 150,000, or 50 per cent since 1949.

All of this is cited to show two things: A tremendous number of people are involved, and a large amount of money is involved which is important to the general economy.

It would seem to be self-evident that all of these people, spending all of this money, are entitled to hunt in an atmosphere of sportsmanship and thorough enjoyment—which is not possible in a haze of regulations beyond the ordinary mortal's comprehension. A sportsman should not have to “hunt at your peril”, as a federal warden explained in citing a waterfowl case.

More laws are not needed, even though there are more hunters. Fewer laws are needed, desperately needed, laws which sportsmen can understand and obey.

Because of hunting and fishing pressure on the supply, game management has become a highly scientific undertaking. Virginia's technicians demonstrably rank among the best, yet they often are shackled by regulations over which they have no control.

Due to all these factors, we are convinced that a vital need exists for a complete overhaul and a new approach in Virginia's hunting and fishing laws.

We therefore strongly urge that all special regulations and special laws be repealed; we urge that broad, general regulations be adopted which sportsmen can understand and obey.

To that end, we strongly recommend splitting the State into two general hunting areas, east and west of the Blue Ridge, with uniformity in laws for those sections.

We urge the General Assembly to pass broad enabling legislation, retaining general control, with the Game Commission delegated to outlining seasons and bag limits; the Game Commission would be expected to give careful consideration based on scientific game management, to any special requests, but to keep the general welfare of the State foremost in mind.

A procedural change such as this is what the people of Virginia want and need.

In all fairness, they deserve nothing less.

2. Virginia is one of the few states on the eastern seaboard which has elk hunting. The elk herds in Bedford, Bland and Giles Counties have furnished sport to resident and nonresident hunters alike. With strict control of hunting, and restocking where advisable, the elk herds should continue to survive if the necessary environment can be maintained.

The deer population of the State has experienced a tremendous surge which began in the thirties and, in spite of an ever increasing kill, has continued to increase. This is due to a number of factors, among which are better law enforcement, improvement in the environmental factors, requiring the penning or dogs during the summer when the fawns are defenseless, and a better understanding and application of the principles of game management. Deer hunting is enjoyed by thousands in the State and the herds have increased to such an extent that the shooting of does is permitted in many places and should be allowed in others.

The hunting of deer and elk in the daylight hours is a sport. The killing of deer and elk at night by blinding them with flashlight, spotlight, or headlights from a motor vehicle is butchery, pure and simple; yet, there are people who enjoy this. In 1958 legislation was drawn to restrict and punish the spotlighting of deer and elk. The present statute is defective in that (1) it is difficult to prove an attempt, (2) the statute refers to firearms "normally used in hunting deer or elk" and in some places .22 caliber are prohibited and hence not "normally used", and (3) the penalty is so severe that only the grossest cases are convicted.

We favor a different approach to the problem. It is thus necessary to repeal the present statute and start out with two statutes: one of them would be modeled upon the present § 29-144.1, except that it would specify the type of weapons to which the statute would apply; we have carefully avoided inclusion of the word "pistol" or "revolver" because many people carry such firearms in their motor vehicles to protect themselves against tragedies such as recently occurred in Lousia County.

This new statute would apply to the case in which the killing or attempt at killing of a deer or elk occurs and the present penalty would be continued.

The other statute would be designed to punish a person in possession of specified weapons using a light or spotlight to cast a light upon a place normally used by deer or elk; this also excludes from its application vehicles or boats in which revolvers or pistols may be found for the same reason as

set forth above. However, people in possession of firearms and in a boat or vehicle normally have no valid reason for flashing lights on areas used by deer or elk; the purpose usually is the spotlighting of deer or elk as part of an attempt to take these creatures in violation of law and every principle of good sportsmanship. The penalty is less severe in this class of case because we believe that an attempt of a preliminary nature such as that outlined should not be dealt with as severely as an attempt which has gone as far as in the other statute which we recommend.

In the first case, all parties are made subject to the same penalty as the person who is engaged in the actual taking or attempt. After all, they cannot be in the vehicle or on the boat when such activities are going on without having some interest in it; it is an established principle of law, as well as a recognized fact, that birds of a feather flock together in criminal activities or other mischief. In the second case, all parties are deemed only prima facie of equal guilt with the person flashing the light, and subject to the same penalties. This would enable a hitchhiker, for instance, to rebut the presumption of guilt.

3. In the past ten years public interest and participation in boating has reached a peak never before seen in this country. Entire families are taking to our rivers, streams and lakes for good healthful enjoyment of the outdoors and for the sport of fishing. Virginia has many streams and lakes but it is often difficult for the boat owner to find a place from which he can launch his craft and at which he can retrieve the same. Most of those who enjoy boating are dependent upon trailers to haul their boats to and from the launching points.

The Commission has established a number of boat landings upon streams for the use of the boating public. These were bought from the owner of the property involved. Counties have long had the authority to establish landings which may be used for such purposes.

We are opposed to granting State or other agencies the power of eminent domain indiscriminately. Use of the power should be limited to the minimum; hence, we are opposed to allowing a State agency to condemn property for boat landings.

The governing bodies of counties are acquainted with the desires and wishes of their citizens and whether or not the establishment of a landing at a given location will operate to the disadvantage of adjoining landowners. It may well be that the Commission could work with county authorities in acquiring tracts of land for landings.

4. At present some counties have the right to impose a big game damage stamp. The differences between these local measures are minor in most cases. In the interest of making the game laws more understandable, we believe that these big game damage stamp laws should be combined to eliminate minor differences without infringing upon the prerogatives of any locality. The proceeds of the stamps are used to defray damage to the landowners by deer or bear. Instances were cited to us in which it would be cheaper to construct fences around orchards to prevent deer damage than it would to pay for the damage done. We believe that the combined law should be amended to allow the local governing body to use the funds not only for paying for damages done but for the purpose of preventing damage. It was also brought to our attention that hunters experience inconvenience from the necessity of traveling to widely scattered county seats to purchase the stamps of the various counties in which they plan to hunt such game. Therefore, we believe that the combined

law should be further amended to require each county issuing this stamp to furnish a supply of its stamps to the clerk's office of every other such county, for sale at each such clerk's office. This would allow a person who is going to hunt big game in two or more counties to buy the necessary stamps readily, and would probably result in the sale of more stamps, with more revenue to the counties involved. The slight loss to each clerk of fees for sales of his own county's stamps should be balanced by fees from sales of stamps for hunting in other counties.

5. Some hunters are careless and bring all sportsmen into disrepute. A particular instance of this is those hunters who shoot near thickly settled areas and may frighten the property owners or cause actual damage to their property by careless shooting. We believe that the county governing bodies should be given authority to regulate or prohibit hunting near subdivisions so that the careless hunter may be punished if necessary and the public be protected in the peaceful enjoyment of their property.

6. For many years the game, fish and dog laws were enforced by the game warden. With the great increase in the number of hunters, changes in the methods of game management, and the great mobility of hunters and fishermen, due to better roads and the automobile, the game warden has found it necessary, if he is to enforce the dog laws, to limit the time available for enforcement of the game and fish laws, and vice versa. The counties and cities, generally, paid 15% of the gross collections of dog licenses to the State Treasurer and retained the remainder in the locality for the purpose of paying for dog damage, payments to game wardens, and other related expenditures. Several localities have special licenses which may exceed the cost of the regular State license.

As it became necessary for the Commission of Game and Inland Fisheries to require more time of the game warden for enforcement of the game laws, the localities increasingly desired more of his time for enforcement of the dog laws. Some counties then obtained legislation for the employment of a special dog warden, paid by the county, and devoting his full time to the enforcement of the dog laws. The results in these counties showed that enforcement of the game laws improved, as did the enforcement of the dog laws, and the locality obtained additional revenue as a result of better enforcement of the dog laws. The success of this led to the adoption of legislation to allow all counties to adopt ordinances providing for the enforcement of the dog laws through the employment of an officer known as the dog warden. Also, any county providing for the enforcement of the dog laws by the dog warden was authorized to fix the amount of the license tax at not more than five dollars.

Almost all of the counties have seen the advantages of this and have adopted ordinances creating the office of dog warden and providing for the enforcement of the dog laws by this warden. We believe that all counties would be much better off if they were to take advantage of the authorization contained in Code § 29-184.2 to provide for local enforcement of the dog laws. The additional revenue to the county, the reduction in claims for damage done to livestock by dogs, and the protection of the public health through the elimination of the stray dog, which is more likely to become rabid, since he wanders at large, are major advantages. The hunters and fishermen benefit not only from the better enforcement of the game laws which the game warden can give in a county employing a dog warden, but also the supply of game is improved through the elimination of the stray, wandering dog. These stray dogs not only prey upon livestock, but also upon game birds and game animals and the damage which they do is incalculable.

We recommend and endorse the employment of dog wardens by the localities and point out that they can easily receive great revenue from the employment of a dog warden since they retain the entire dog license revenues and can also increase such revenues as above stated.

7. As stated earlier, the greater mobility of hunters and fishermen through better highways and more automobiles has led to a great increase in the number of hunters and fishermen. There is a small minority of these men who have no respect for the rights of others and go upon the lands and waters belonging to others which have been clearly posted to keep off trespassers. These violators of our trespass laws bring disrepute upon all sportsmen and more than one sportsman who has gone to a farmhouse to ask permission to hunt on the property has been told that, due to damage done by these irresponsible people, the property is closed to everyone. The property owner frequently has spent considerable sums of money to improve the environment for game and fish, to control predators, and in some cases to restock the supply of game and fish. The property owner has a civil remedy to recover damages from those who violate the sanctity of his property, even though such property is not posted against trespassers. However, it is difficult to prove damages in such cases, even though substantial damages may have occurred.

We believe that the property owner deserves further protection by being given the right, at his option, to institute civil proceedings to recover liquidated damages in the amount of fifty dollars for those who trespass upon his property; if he can prove greater damages, he would be permitted to do so. We hope that this remedy will serve to decrease poaching and to instill a greater respect for the rights of others on the part of those who heretofore have, in many cases, done major damage, knowing that the most they could be forced to pay was a small fine. The landowner who improves his property for hunting and fishing and who maintains hunting dogs for his own and his friends' use should be allowed relief from those who treat his property as if it were theirs in a deliberate and calculated manner; the wonder is that violence has not occurred. Our proposal should tend to reduce this possibility.

8. Under Chapter 148, Acts of Assembly, 1960, carrying loaded firearms on public highways by persons not authorized to hunt on adjacent lands is prohibited in certain counties. By § 33-287 of the Code, shooting in or along any highway is prohibited. The first statute is not State-wide, and the Code section is difficult of enforcement.

In some localities, hunting with rifles larger than a certain caliber is prohibited but even in those areas shotguns loaded with slugs or buckshot can be used and these are dangerous weapons. In addition, there are some hunters who take a stand on or near the highway as a means of violating the statute prohibiting hunting on posted lands, since they allow their dogs to run at large through the adjoining property and drive game to them.

We are desirous of affording hunters every reasonable opportunity to enjoy their sport; this is subject, however, to the absolute need of protecting the public which uses our highways. The bill attached to this report is designed to do this better and to be enforced by the State police, game wardens and all other law enforcement officers. One of the difficulties with the present State-wide law is that, in order to sustain a conviction, there must be proof that the hunter actually fired his weapon. The offense, in our mind, consists of carrying a loaded firearm upon the highway or near it, since the hunter is prepared to shoot at the moment game appears

and the law enforcement officer cannot follow him and wait until game appears.

Under the proposed bill it will be sufficient to sustain a conviction to prove that the weapon carried by the hunter was loaded, with cartridges or shells either in the firing chamber or in the magazine.

A person driving along a highway has no reason to expect that he might be shot inadvertently by a hunter. Within limits, we believe that the highways should be restricted to travelers and the fields and forests should be used by hunters, so that neither group will infringe upon the privileges of the other. Accordingly, the bill attached is designed to prevent hunting on or near the highways, with appropriate penalties being fixed and, since both game laws and public safety are involved, with enforcement being invested in both State and local officers.

The Commission of Game and Inland Fisheries should carry this section in its pamphlet of laws and regulations.

9. Miscellaneous changes in laws relating to hunting and fishing:

(a) There are many times when a game warden has good reason to believe that a person has game and fish illegally taken, stored in a deep freezer or otherwise, upon his property or keeps illegal devices upon his property for taking fish and game. The tradition of our laws is that a general search warrant may not issue; a search warrant may issue if it specifies the property which is sought and must be supported by affidavit of the person who seeks the issuance of the warrant. We concur in these principles. The present law authorizing the issuance of search warrants does not allow a search warrant to issue even though illegal fish and game are on the property or illegal hunting and fishing devices are there. We believe this should be remedied and, accordingly, urge the amendment of § 19.1-84, which states when such warrants may issue, to include in the types of property for which search may be made "game and fish illegally taken and illegal devices used in taking game or fish." The safeguards surrounding the issuance of search warrants and the penalty for improper issue are such as to make sure that abuses will be restricted to the greatest possible degree, that a citizen will be protected in the peaceful use of his property, and that a warrant will not issue unless good cause clearly exists therefor.

(b) Code § 29-57 now allows a county hunting or fishing license to be issued to a person who has resided in the county six consecutive months before his application therefor. The intent of the statute was to require physical residence in order that a bona fide resident would be entitled to such license; however, the statute does not so provide in explicit terms. A person may declare his intention of residing in a county, do some act to evidence such intention, and thereafter be absent for six months and yet be entitled to a county license. We believe the intent of the statute should be made clear and accordingly recommend an amendment that would require physical residence in the county for the required period. This will do no harm to the bona fide county resident but it should tend to eliminate the person who has no intention of becoming a bona fide resident of the county from obtaining a county license when he should have a State license.

(c) § 29-77 allows a hunting or fishing license to be revoked for a second violation of the game laws. Many game laws have been repealed to be replaced by Commission regulations which have the force and effect of law but a license may not be suspended for violation thereof. The

section should be amended to put the laws and the Commission regulations on the same footing and to include the statute, elsewhere proposed to be amended, relating to shooting in or along streets or highways. However, present law allows such revocation for second convictions within any period of time. We feel it would be more reasonable to set a limit on the applicability of this provision and have recommended that this be fixed at two years following any conviction.

(d) § 29-129.1 gives the Game Commission authority to prescribe seasons and bag limits for taking wild birds, animals and fish; § 29-132 also refers to wild birds and wild animals. §§ 29-2.1 and 29-14, together with paragraph (f) of § 29-143, all of which refer to "game" animals or birds, should be amended to make the language uniform and read "wild bird" and "wild animal," as the case may be.

(e) Paragraph (o) of § 29-2.1 and paragraph (f) of § 29-143 which, respectively, define fishing and prohibit shooting any wild bird or wild animal from an automobile should be amended to cover attempts to take fish or to so shoot.

(f) Paragraph (n) of § 29-2.1 which briefly defines hunting and trapping, and § 29-131, which extends the definition, should be amended to cover attempts at hunting and trapping of wild birds and animals.

(g) § 29-132, which classifies various kinds of birds and animals for the purpose of application of the hunting and trapping laws, lists opossum and raccoon as furbearing animals. § 29-2.1, the general definition section, also lists them as game animals. The two sections should conform, and we recommend that subparagraph (k) of § 29-2.1 be changed accordingly to eliminate the reference to opossum and raccoon as game animals. Subparagraph (1) of § 29-2.1 also lists skunks among the furbearing animals. For the purpose of conservation of wildlife and animals the Commission does not feel that skunks should be protected as game or furbearing animals, and we recommend amendment of this subparagraph accordingly.

(h) § 29-34, which allows a warden to inspect game and fish taken by a person without arresting him should be amended to allow inspection for compliance with creel limits and made applicable also to furbearing animals.

(i) § 29-55 which fixes license fees to fish only should be amended in paragraph (b) to limit its application to designated waters stocked with trout.

(j) Many sections of the game laws do not prescribe a minimum fine but only a maximum. In the cases hereinafter set forth, the minimum should be raised as indicated and the maximum increased to take account, in certain cases, of the greater seriousness of the offense. In each case the law is strengthened as indicated.

§ 29-116, which prescribes the penalty for violating Article 2 of Chapter 6, which article deals with miscellaneous permits for raising pheasants, fur farming, breeding and netting fish, etc., should be amended to impose a minimum fine of ten dollars.

§ 29-140.1, which imposes a penalty for hunting with firearms while under the influence of intoxicants or drugs, should be amended to impose a minimum of twenty-five dollars and the maximum should be raised to two hundred fifty dollars. It applies only to people whose actions constitute a serious menace to others.

§ 29-149, which provides a penalty for failing to return certain fish to the waters from which taken when required so to do, should be amended to impose a minimum fine of ten dollars and the maximum should be increased to one hundred dollars. The Commission spends large sums of money to stock these fish.

§ 29-153, which imposes a penalty for dynamiting fish should be amended to raise the minimum penalty to two hundred dollars. These offenders are not sportsmen—they are hogs.

§ 29-161, which prescribes the penalty for violation of the game and fish laws when no other penalty is provided, should be amended to increase the maximum fine to two hundred fifty dollars; this would allow for the more serious offender and would apply only infrequently.

§ 29-162, which provides a penalty for killing elk and deer illegally, with a lesser penalty if the act is reported to the game warden and the carcass delivered to him, should be amended to increase the fine in the case of elk to one hundred dollars and in the case of deer to twenty-five dollars, when the carcass is delivered and report made to the warden. The variation in fines is intended to facilitate the reporting of such animals illegally killed and prevent waste; the amendment takes account of the greater value, in replacement cost, of the two animals.

§ 29-164 imposes a penalty for selling, or offering to sell, wild birds, animals or fish; the minimum fine should be raised to twenty-five dollars and the maximum to two hundred fifty dollars; under the present penalty, a violator might sell the game or fish to pay his fine from the proceeds, with some profit remaining.

§§ 29-165, 29-165.1, and 29-166, all relating to trespass, have no minimum fine and we recommend a minimum of ten dollars; recommendation 7 gives reason for this: protection of the landowner.

§ 29-167, which imposes a penalty for destroying “posted” signs or putting signs on the land of another, has no minimum and we propose a minimum of twenty-five dollars and increasing the maximum to two hundred fifty dollars; these are willful violators, deserve no sympathy, and the landowner should be protected as in number 7 above.

§ 29-172, relating to unlawful devices for taking game, etc., should have the maximum penalty increased to two hundred fifty dollars. The second paragraph has a lesser penalty for use of illegal automatic and repeating shotguns and sets forth the penalty therefor but a minimum fine should be fixed at ten dollars and the maximum fine at one hundred dollars, instead of the penalties set forth previously in this paragraph.

(k) § 29-131 relating to hunting and trapping wild birds and wild animals includes such activities as tracking, pursuing, chasing, shooting, snaring and netting. Under a literal interpretation of this section an innocent person who merely follows tracks from curiosity or interest might be subjected to substantial penalties. We recommend elimination of the words “track” and “tracking” from this section.

(l) § 29-138, which prohibits “molesting” deer while “swimming” in streams, etc., should be amended to protect deer while in the water, whether swimming or not, and the word “molest” should be clarified by limiting the prohibition to taking or killing or attempting to do either.

The same section, in the paragraph permitting exceptions to closed seasons on rabbits and squirrels, allows a landowner and his wife and

child to kill such animals at any time for their own use. This provision should be broadened to include members of the landowners immediate family generally.

(m) § 29-140, which prescribes the types of guns that may be used to hunt non-migratory game birds and game should be amended to apply to all wild birds and wild animals. This conforms the terminology of this section to other changes made by our recommendations.

(n) § 29-142, which permits night hunting of foxes and certain other animals and birds, should be changed so that muskrats may not be hunted at night. Muskrat hunting has been frequently used as a pretext to cover illegal hunting in marshes at night.

(o) § 29-143 prohibits hunting, trapping, etc., except as provided by law, including regulations of the Commission; paragraph (a) prohibits hunting or killing of wild birds or animals with a gun or other firearm on Sunday; this latter should be changed so as to apply to any type of weapon; without the change, it is permissible to hunt on Sunday with a bow and arrow, for instance.

(p) § 29-148, which regulates the taking of fish, makes it lawful to use fish traps and haul seines, "except in Grassy Creek in Mecklenburg County"; we recommend the deletion of the quoted language as there is now no such creek in Mecklenburg County, it having been covered by Buggs Island Lake.

(q) § 29-163, which imposes a penalty for taking game or fish during the closed season or exceeding the bag limit, should be amended to use the terms "wild birds" and "wild animals" in lieu of "game," to refer to creel or bag limits, to cover attempts to take as well as taking, and to make unlawful possession of more than the bag or creel limit while in the forests, fields, and waters.

(r) §§ 29-163.1, 29-175 and 29-176, which relate to the trial of violators of the game, fish and dog laws of the State, refer to trial justices; the term should be changed to refer to county or municipal courts or judges thereof in order to conform the language to Title 16.1 of the Code.

(s) § 29-166 now requires written consent of the landowner or his agent to go on posted property to hunt, fish or trap without penalty. The section apparently would apply even though a guest were on such property with oral consent and in the presence of the owner. We feel that this situation should be corrected.

(t) § 29-176 relating to appeals from lower courts to courts of record in cases involving the hunting, trapping, inland fish and dog laws, sets forth specifically the time within which such appeals must be taken. This provision is unnecessary and might result in a variation in event of amendment of the general law and we recommend its elimination.

CONCLUSION

We are hopeful that the adoption of the foregoing recommendations will lead to a better supply of game and fish, improved recreational opportunities, the protection of the law-abiding sportsmen and the punishment of the violator, and the continuation of a supply of game and fish for our posterity. If these objectives can be achieved, we will be satisfied. To do less will mean to rob the youth of this and the next generation of the healthful sports of field and stream, a legacy we received from our

forebears which has given us many hours of healthful recreation and great personal satisfaction.

We wish to thank the members of the Committee for the time and effort which they gave to this study. We also express our appreciation to all who afforded the Committee the benefit of their knowledge and views, both at the public hearings and in conferences, and especially to the members, staff and field personnel of the Commission of Game and Inland Fisheries.

Respectfully submitted,

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A BILL to amend the Code of Virginia by adding sections numbered 29-144.2, 29-144.3 and 29-144.4, prohibiting the taking of deer or elk by use of certain lights, providing that certain acts shall raise a presumption of attempt to so take, prescribing forfeiture of certain vehicles, boats and weapons used for such taking or attempt, and prohibiting the employment of lights under certain circumstances upon places used by deer or elk, and to repeal §§ 29-144.1 and 29-145 of the Code, relating to the same subjects.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding sections numbered 29-144.2, 29-144.3 and 29-144.4, as follows:

§ 29-144.2. Any person who takes or attempts to take any deer or elk between a half hour after sunset on any day and a half hour before sunrise the following day by use of a light attached to any vehicle or boat or a spotlight or flashlight shall be guilty of a misdemeanor and shall be punished by a fine of two hundred and fifty dollars or by confinement in jail for not less than thirty days nor more than sixty days, either or both. The flashing of a light attached to any vehicle or boat or a spotlight or flashlight from any vehicle or boat between a half hour after sunset on any day and a half hour before sunrise the following day by any person or persons, then in possession of a rifle, shotgun, crossbow, or bow and arrow or speargun, without good cause, shall raise a presumption of an attempt to take deer or elk in violation of this section. Every person in or on any such vehicle or boat shall be deemed a principal in the second degree and subject to the same punishment as a principal in the first degree.

§ 29-144.3 Every vehicle, boat or rifle, shotgun, crossbow, bow and arrow, or speargun used with the knowledge or consent of the owner thereof, in killing or attempting to kill deer or elk between a half hour after sunset on any day and a half hour before sunrise the following day, in violation of § 29-144.2, and every vehicle or boat used in the transportation of the carcass, or any part thereof, of a deer or elk so killed shall be forfeited to the Commonwealth, and upon being condemned as forfeited in proceedings under Chapter 15 of Title 19.1 the proceeds of sale shall be disposed of according to law.

§ 29-144.4. Any person in any vehicle or upon any boat and then in possession of any rifle, shotgun, crossbow, bow and arrow or speargun who, between a half hour after sunset on any day and a half hour before sunrise the following day, employs a light attached to such vehicle or boat or a spotlight or flashlight to cast a light beyond the water or surface of the roadway upon any place used by deer or elk shall be guilty of a misdemeanor. Every person in or on any such vehicle or boat shall be deemed prima facie a principal in the second degree and subject to the same punishment as a principal in the first degree. Any person who violates this section shall be punished by a fine of not less than fifty dollars nor more than one hundred fifty dollars or by confinement in jail for not more than thirty days or by both such fine and imprisonment.

2. That §§ 29-144.1 and 29-145 of the Code of Virginia are repealed.

3. That the repeal of §§ 29-144.1 and 29-145 shall be subject to the provisions of § 1-4 of the Code of Virginia.

A BILL to require special stamps to hunt bear and deer in certain counties; to provide for disposition of moneys received from the sale thereof; to provide for the sale of such stamps by the clerks of the circuit courts of such counties; and to repeal Chapters 462 and 472 of the Acts of Assembly of 1942, approved April 6, 1942, Chapter 357 of the Acts of Assembly of 1944, approved March 30, 1944, Chapter 294 of the Acts of Assembly of 1948, approved March 16, 1948, Chapter 208 of the Acts of Assembly of 1950, approved March 14, 1950, Chapter 484 of the Acts of Assembly of 1950, approved April 7, 1950, Chapter 86 of the Acts of Assembly of 1952, approved February 20, 1952, Chapter 600 of the Acts of Assembly of 1952, approved April 3, 1952, Chapter 121 of the Acts of Assembly of 1954, approved March 3, 1954, Chapter 50 of the Acts of Assembly of 1956, approved February 16, 1956, Chapter 291 of the Acts of Assembly of 1956, approved March 9, 1956, and Chapter 311, of the Acts of Assembly of 1958, approved March 13, 1958, and all amendments thereof, relating to the same matters.

Be it enacted by the General Assembly of Virginia :

1. § 1. It shall be unlawful for any person to hunt bear or deer in the Counties of Bath, Bland, Botetourt, Buchanan, Craig, Giles, Grayson, Highland, Rockbridge, Smyth, Tazewell, Warren, Washington, Wise and Wythe without first having obtained a special stamp the fee for which shall be one dollar annually, except that in the counties of Grayson, Smyth and Wythe, the fee for such special stamp for nonresidents of the Commonwealth shall be five dollars. The stamp shall be adhesively affixed to the back of the current season's hunting license issued such person who shall cancel the same with his initials in ink. The money received from the sale of such special stamps shall be paid into the county treasury to the credit of a special fund and the net amount thereof, or so much as is necessary, shall be used for the payment of damages to crops or livestock by deer or bear in the county whenever such damage amounts to ten dollars or more. Such payments shall be limited to the net amount accruing in the special fund from sales of such stamps for the county during the license year in which the damage occurred and any surplus remaining at the end of such year shall be transferred to the general fund of the county or earmarked for conservation, restoration and protection of wildlife within said county under the direction of the board of supervisors and in cooperation with the Commission of Game and Inland Fisheries. Any person suffering such damage shall report same to the game warden of the county, whose duty it shall be to investigate the same at once. The claim for damages shall be filed in duplicate under oath on form furnished by the clerk of the county. If the claimant and game warden agree as to the amount of damage the game warden shall approve the claim and forward it to the treasurer. If no such agreement is reached between them, the claim shall be submitted to the arbitration of three persons in the customary manner and the award of the arbitrators shall be final and binding. Provided, however, that in the county of Highland no such claim for damages shall be paid to any person who shall close his land to the general public by posting the same. Provided, further, that the local governing body of any such county may in its discretion use funds derived from the sale of such stamps for such purposes as may be necessary to control depredations by bear and deer.

§2. The special stamps herein provided for may be obtained from the clerks of the circuit courts of the counties listed in § 1 of this act who shall receive a fee of ten cents for each stamp issued.

§ 3. The clerk of the circuit court of each of the counties listed in § 1 of this act shall supply the clerk of the circuit court of each other such county, prior to July one of each year, with a supply of stamps for his county equal at least to ten percentum of the number sold in his county during the preceding year. Each such clerk shall annually after the close of the season for hunting deer or bear but not later than June thirty, return the unsold stamps to the clerks from whom received, and remit to each such clerk all moneys collected for sale of stamps for hunting in his county, less the fee of ten cents each for selling the same.

§ 4. Any person violating the provisions of this act shall be guilty of a misdemeanor and upon conviction punished accordingly.

2. Chapters 462 and 472 of the Acts of Assembly of 1942, approved April 6, 1942, Chapter 357 of the Acts of Assembly of 1944, approved March 30, 1944, Chapter 294 of the Acts of Assembly of 1948, approved March 16, 1948, Chapter 208 of the Acts of Assembly of 1950, approved March 14, 1950, Chapter 484 of the Acts of Assembly of 1950, approved April 7, 1950, Chapter 86 of the Acts of Assembly of 1952, approved February 20, 1952, Chapter 600 of the Acts of Assembly of 1952, approved April 3, 1952, Chapter 121 of the Acts of Assembly of 1954, approved March 3, 1954, Chapter 50 of the Acts of Assembly of 1956, approved February 16, 1956, Chapter 291 of the Acts of Assembly of 1956, approved March 9, 1956, and Chapter 311 of the Acts of Assembly of 1958 approved March 13, 1958, and all amendments thereof, are repealed.

A BILL to amend the Code of Virginia by adding a section numbered 15-20.3:1 authorizing governing bodies of counties to prohibit hunting in certain areas of such counties.

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding a section numbered 15-20.3:1, as follows:

§ 15-20.3:1. The governing body of any county may by ordinance prohibit all hunting with firearms or other weapons in, or within one-half mile of, any subdivision or other area of such county which, in the opinion of the governing body, is so heavily populated as to make such hunting dangerous to the inhabitants thereof. Any such ordinance shall clearly describe each area in which hunting is prohibited.

A BILL to amend the Code of Virginia by adding a section numbered 29-166.1 to allow a landowner or his agent or lessee to recover liquidated damages for violation of Code §§ 29-165, 29-165.1, 29-166 or 29-167 or any of them, to provide for the procedure in such cases, and the effect of the address on certain licenses.

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding a section numbered 29-166.1 as follows:

§ 29-166.1. The landowner or his agent or lessee when aggrieved by a violation of §§ 29-165, 29-165.1, 29-166, or 29-167, or any of them, shall, in lieu of proceeding against the violator for actual damages incurred as a result of such violation, have the right to recover liquidated damages therefor in the amount of fifty dollars. Proof of conviction of a violation of §§ 29-165, 29-165.1, 29-166, or 29-167 shall not be necessary to sustain recovery under this section. The address shown on the hunting or fishing license of the violator shall be conclusive as to the residence of the violator.

A BILL to amend and reenact § 33-287 of the Code of Virginia, relating to penalty for shooting in or along a road or in a street.

Be it enacted by the General Assembly of Virginia:

1. That § 33-287 of the Code of Virginia be amended and reenacted as follows:

§ 33-287. If any person* *discharge or have in his possession a loaded rifle or a shotgun, with a shell in the chamber or magazine or both*, in or along* or* *on the right-of-way of any public highway*, or in a street of any city or town, whether the town be incorporated or not, he shall, for each offense, be fined not less than five dollars. *This section shall be enforced by State police, game wardens, and all other law enforcement officers.*

A BILL to amend and reenact § 19.1-84 of the Code of Virginia, providing for issuance of search warrants in certain cases.

Be it enacted by the General Assembly of Virginia:

1. That § 19.1-84 of the Code of Virginia be amended and reenacted as follows:

§ 19.1-84. On like complaint, on oath, according to the nature of the case, supported by the affidavit required by § 19.1-85, such justice or judge to whom it is made, if satisfied that there is reasonable cause therefor, shall issue a warrant to search specified places for the following things:

(1) Counterfeit or spurious coin, forged bank notes, and other instruments or writings, or any tools, machines or materials for making them;

(2) Any obscene book, print, picture, figure, object or thing used or intended for use in violation of article 3 (§ 18.1-227 et seq.) of chapter 4 of Title 18.1;

(3) Lottery tickets, or materials unlawfully made, provided or procured for drawing a lottery;

(4) Any gaming apparatus or implements used, or kept and provided to be used, in lawful gaming or in any place resorted to for unlawful gaming;

(5) Weapons or other objects used in the commission of a crime;

(6) Any cannabis, coca leaves, heroin, cocaine, opium, morphine, or laudanum, or any compound, manufacture, mixture, salt, derivative or preparation thereof, or any synthetic substitute for cannabis, cocoa leaves, heroin, cocaine, opium, morphine, or laudanum, or any compound, manufacture, mixture, salt, derivative or preparation thereof, used or possessed in violation of § 18.1-346 or §§ 54-487 to 54-519, inclusive, of the Code of Virginia, or any dangerous drug as defined in § 54-440 of the Code of Virginia, the sale or possession of which is prohibited by § 54-441 or § 54-442;

(7) Fireworks or firecrackers on the premises of a merchant or vendor where a business is conducted and where possession or sale of same is unlawful;

(8) *Game and fish illegally taken, and illegal devices used in taking game and fish.*

A BILL to amend and reenact §§ 29-2.1, 29-14, 29-34, 29-55, 29-57, 29-77, 29-116, 29-131, 29-132, 29-138, 29-140, 29-140.1, 29-142, 29-143, 29-148, 29-149, 29-153, 29-161, 29-162, 29-163, 29-163.1, 29-164, 29-165, 29-165.1, 29-166, 29-167, 29-172, 29-175 and 29-176, as severally amended, of the Code of Virginia, relating generally to regulation of hunting, fishing and trapping, enforcement thereof and penalties for violations.

Be it enacted by the General Assembly of Virginia :

1. That §§ 29-2.1, 29-14, 29-34, 29-55, 29-57, 29-77, 29-116, 29-131, 29-132, 29-138, 29-140, 29-140.1, 29-142, 29-143, 29-148, 29-149, 29-153, 29-161, 29-162, 29-163, 29-163.1, 29-164, 29-165, 29-165.1, 29-166, 29-167, 29-172, 29-175 and 29-176, as severally amended, of the Code of Virginia, be amended and reenacted as follows:

§ 29-2.1. Whenever and wherever the following words and phrases are used in the Game, Inland Fish and Dog Laws of Virginia, or in any of the regulations of the Commission, the same shall be, unless the context clearly indicates otherwise, construed to mean as follows:

The phrase "by law" or the word "lawful" means the statutes of this State which the Commission is empowered to enforce or a regulation which the Commission is empowered to adopt and enforce.

(a) The Commission means the Commission of Game and Inland Fisheries.

(b) Director means the Executive Director of the Commission.

(c) Game warden means and includes supervising wardens, regular and special game wardens and conservation officers.

(d) Regulation means a regulation of the Commission duly adopted.

(e) A properly licensed person means a person who, while engaged in hunting, fishing or trapping, or in any other activity permitted under this title, in and upon the lands and inland waters of this State, has upon his person all the licenses, permits and stamps required by law.

(f) Wildlife means all species of wild animals, wild birds and fresh water fish in the public waters of this State.

(g) Game means **wild* animals and **wild* birds that are commonly hunted for sport or food.

(h) Nonmigratory game means all resident species of **wild* animals and **wild* birds.

(i) Migratory games means all species named in the regulation published by the U. S. Fish and Wildlife Service.

(j) Game fish means and includes brook, rainbow and brown trout, all of the sunfish family, including largemouth bass, smallmouth bass and spotted bass, rock bass, bream, bluegill, crappie, walleyed pike or pike perch, white bass, wherever such fish are found in the waters of this State.

(K) Game animals include deer, elk, bear, rabbit, fox, *and* squirrel.*

(1) Furbearing animals includes beaver, mink, muskrat, opossum, otter, *and* raccoon.*

(m) Predatory birds and animals includes blackbird, buzzard, crow, eagle, English sparrow, hawk, jaybird, owl and starling, weasel, wildcat and all other wild animals not otherwise classed as game or furbearing animals.

(n) Hunting and trapping includes *taking*, hunting, trapping, shooting, snaring *and/or* netting such birds or animals, and includes attempting to *take*, hunt, trap, shoot, snare *and/or* net wild birds or wild animals, and assisting any person who is hunting or trapping or attempting to do so whether the same results in taking or not; provided that whenever hunting or trapping is permitted reference is made to so doing by lawful means and in a lawful manner.

(o) Fishing means taking, capturing, killing, **or attempting to take, capture or kill* any fish in and upon the inland waters of this State.

(p) Closed season means that period of time fixed by the Commission during which wild animals, birds or fish may not be taken, captured, killed, pursued, hunted, trapped or possessed.

(q) Open season means that period of time fixed by the Commission during which wild animals, wild birds and fish may be taken, captured, killed, pursued, trapped or possessed.

(r) Bag or creel limit means the quantity of game or fish or furbearing animals that may be taken, caught, or possessed during a period fixed by the Commission.

(s) Possession means the exercise of control, either physical or constructive, of any **wild* animal, **wild* bird, fish or furbearing animal, or any part of the carcass thereof.

(t) Transportation means the transportation, either upon the person or by any other means, of any wild animal or wild bird or fish.

§ 29-14. The Commission shall prosecute all persons who violate such laws and shall seize and confiscate any and all **wild* birds, **wild* animals and fish that have been illegally killed, caught, transported or shipped.

§ 29-34. In order to see that bag *and/or* creel limits are being observed, game wardens shall also have the power to inspect game, *fur-bearing animals* and fish taken by any person found hunting, *trapping and/or* fishing without arresting such person.

§ 29-55. (a) The license fees to fish only, which licenses shall not permit fishing for trout in waters stocked by the Commission or other public body, shall be as follows:

(1) State resident season license to fish only, within the regulations and restrictions provided by law, in any and all counties of the State, three dollars and fifty cents; provided that no such license shall be required of resident persons seventy years of age or older.

(2) State nonresident season license to fish only, by any method, within the regulations and restrictions provided by law, in all inland waters of the State, ten dollars.

(b) The license fees to fish **in designated* waters stocked with trout by the Commission, or other public body, by any method, within the regulations and restrictions provided by law, in addition to the regular fishing license, shall be as follows:

(1) State resident season license to fish **in* designated waters stocked*

with trout shall be one dollar; provided that no such license shall be required of resident persons seventy years of age or older.

(2) State nonresident season license to fish * in * *designated waters stocked with trout shall be* five dollars.

§ 29-57. The following persons shall be entitled to a county license to hunt, trap or fish in the county * *in which they * have physically resided six consecutive months before making application for license*, or of which they are legal voters, or in which they are stationed or located, or to a State resident license:

(a) Any person born in the United States or who has been naturalized and who has been a bona fide resident of the county for six months next preceding the date of application for license in such county.

(b) Any legal voter of the county wherein the license is applied for;

(c) Any unnaturalized person who owns real estate in the county and who has actually resided therein not less than five years next preceding the date of the application for the license in such county;

(d) Any member of the armed forces of the United States, on active duty, while stationed or located in the county wherein the license is applied for;

(d-1) Any member of the armed forces of the United States, on active duty, when authorized by the commanding officer of a military reservation, the privileges of which license shall be limited to hunting, trapping or fishing only within the boundaries of that military reservaton;

(e) Any student regularly enrolled in any bona fide preparatory school college or university in this State who presents a certificate of enrollment for the current year to the clerk of the county wherein such school, college or university is located;

(f) Residents of cities the limits of which are wholly within the county wherein the license is applied for.

§ 29-77. If any person be found guilty of violating any of the provisions of the hunting, trapping* *and/or* inland fish laws, *and/or* § 33-287 of the Code of Virginia *and /or regulations adopted by the Commission pursuant thereto*, a second time *within two years of a previous conviction of violating any such law or regulation*, the license issued to such person shall be revoked by the court trying the case and he shall not apply for a new license until twelve months succeeding date of conviction. If found hunting, trapping or fishing during such prohibited period, such person shall pay a fine of not less than fifty dollars nor more than one hundred dollars. Licenses revoked shall be sent to the Commission.

§ 29-116. Any person or firm convicted of violating this article shall pay a fine of not *less than ten nor* more than one hundred dollars and the permit shall be revoked.

§ 29-131. Hunting and trapping wild birds and wild animals includes *taking*, hunting, trapping, * pursuing, chasing, shooting, snaring *and/or* netting such birds or animals, and lesser acts, such as attempting to *take*, hunt, trap, * pursue, chase, shoot, snare *and/or* net wild birds or wild animals, and any act of assistance to any person who is hunting or trapping or attempting to do so whether the same results in taking or not provided that whenever hunting or trapping is permitted reference is made to so doing by lawful means and in a lawful manner. For the purpose of the

license required by Article 1 of Chapter 5 of this Title, the hunting or pursuit of foxes shall mean the actual following of the dogs while in pursuit of a fox or foxes, or managing the dog or dogs while the fox or foxes are being hunted, pursued or chased.

§ 29-132. For the purpose of the hunting and trapping laws of this State, big game shall include bear, deer and elk and small game shall include all other game birds and game animals.

Wild birds and wild animals shall be classed as follows:

(a) Nonmigratory game birds.—Birds introduced by the Commission, grouse, ringnecked pheasant, bobwhite, quail and turkey.

(b) Migratory game birds.—Doves, ducks, brant, geese, swan, coot, gallinules, sora, other rails, including Virginia, King and Clapper rails, plovers, snipe, woodcock and yellowlegs.

(c) Game animals.—Bear, deer, elk, fox, rabbit, and squirrel.

(d) Furbearing animals.—Beaver, mink, muskrat, opossum, otter and raccoon.

(e) Predatory or undesirable species of birds and animals.—Black-bird, buzzard, crow, English sparrow, hawk, jaybird, owl and starling, weasel, wildcat, skunk and all other wild animals not otherwise classed as game or furbearing animals, provided, however, that hawks and owls shall be so classed only when a landowner or his agent considers it necessary to kill these species to protect from destruction his poultry or the game birds on his property, or when the board of supervisors of a county considers it necessary to permit the killing of these species to protect poultry or game birds in such county.

§ 29-138. Black Bear.—Black bear may be killed by any person when it is inflicting or attempting to inflict injury to the person or property of anyone, or in a pursuit commenced within twenty-four hours after the commission of such offense. Any person killing a bear under this provision shall forthwith report the same to the game warden of the county.

Deer.—*It shall be unlawful for a person to *take or kill or attempt to take or kill a deer in the water of any stream, lake or pond. *It shall be unlawful to hunt deer with dogs in the counties west of the Blue Ridge Mountains.*

Elk.—Unlawful to hunt with dogs.

Fox.—Continuous open season for hunting with dogs only. Foxes may be killed at any time by the owner or tenant of any land when such animals are doing damage to domestic stock or fowl.

Rabbits and squirrels.—It shall be unlawful to kill rabbits and squirrels during the closed season thereon, except that a landowner* and members of his immediate family, resident members of hunt clubs who own the land in fee, either jointly or through a holding corporation, and tenants residing upon the premises, with the written permission of the landowner, may kill rabbits or squirrels for their own use during the closed season. Further, when such animals are committing substantial damage to fruit trees, gardens, crops, or other property, the owner of the premises may kill or have the same killed under permit obtained from the game warden of the county authorizing same; provided that nothing in this section shall affect the operation of any local acts heretofore or hereafter enacted.

§ 29-140. **All wild birds and *wild animals may be hunted with shotgun *not larger than ten gauge, and with an automatic-loading or hand-operated repeating shotgun capable of holding not more than three shells*, the magazine of which has been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of the gun to not more than three shells at one time in the magazine and chamber combined, or rifle or bow and arrow, unless shooting is expressly prohibited.*

§ 29-140.1. It shall be unlawful for any person to hunt with firearms in the State of Virginia while under the influence of alcohol, brandy, rum, whiskey, gin, wine, beer, lager beer, ale, porter, stout or other liquid beverage or article containing alcohol or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction punished by a fine of not less than *twenty-five* nor more than *two hundred fifty* dollars. Game wardens and sheriffs shall enforce the provisions of this section.

§ 29-142. Foxes and furbearing animals and predatory and undesirable species of birds and animals may be hunted by day or by night, *except that muskrats may be hunted by day only.*

§ 29-143. Unless and until otherwise provided by a regulation of the Commission, in accordance with the provisions of law, the following shall be unlawful:

(a) To hunt or kill any wild bird or wild animal, including any predatory or undesirable species, with a gun, firearm *and/or* other *weapon* on Sunday, which is hereby declared a rest day for all species of wild bird and wild animal life.

(b) To destroy or molest the nest, eggs, dens or young of any wild bird or wild animal, except predatory or undesirable species, at any time without a permit as required by law, provided that wild animals may be dug out of dens in accordance with regulations of the Commission.

(c) To hunt or attempt to kill or trap any species of **wild bird and/or wild animal* after having obtained the daily bag or season limit during such day or season.

(d) To occupy any baited blind or other baited place for the purpose of taking or attempting to take any wild bird or wild animal or to put out bait or salt for any wild bird or wild animal for the purpose of taking or killing the same unless permitted by a regulation of the Commission, except that this shall not apply to baiting predatory or undesirable species of animals and birds, or to baiting traps for the purpose of taking furbearing animals that may be lawfully trapped.

(e) To kill or capture any wild bird or wild animal adjacent to any area while a field or forest fire is in progress.

(f) To shoot *and/or attempt to take* any **wild bird or *wild animal* from an automobile or other vehicle.

(g) To hunt or track woodcock or nonmigratory game birds or game animals in the snow, either on or off one's own lands, except as permitted by regulations of the Commission; provided that landowners may kill rabbits in the snow on their lands for their own personal use.

(h) To set a trap of any kind on the lands or waters of another without attaching the name and address of the trapper thereto.

(i) To set a trap where it would be likely to injure persons, dogs, stock or fowl.

(j) To fail to visit all traps once each day and remove all animals caught therein, and forthwith report to the landowner as to stock, dogs or fowl caught therein and the date.

(k) To hunt, trap, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried, by any means whatever, receive for shipment, transportation or carriage, or export, or import, at any time or in any manner, any wild bird or wild animal or the carcass or any part thereof, except as specifically permitted by law and only by the manner or means and within the numbers stated.

§ 29-148. Unless and until otherwise provided by a regulation of the Commission, after a public hearing, in accordance with the provisions of this title, it shall be unlawful for any person to take or attempt to take any fish in inland waters other than shad, herring or mullet, except by fishing with a hook and line or rod and reel, held in the hand, or to catch, trap, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried, by any means whatever, receive for shipment, transport or carriage, or export, or import at any time or in any manner any species of bass or trout, or the carcass or any part thereof, except as specifically permitted by this article and only by the manner or means and within the numbers stated; except that in the counties of Mecklenburg, Pittsylvania, city of Danville, Charlotte, Campbell, Halifax, Amelia (except between Vaughn's pond and Meadsville dam), Caroline and King George and in the Meherrin River in Lunenburg County it shall be lawful to fish with "fish traps" or "fish pots" and haul seines in any and all streams and waters*, provided that no person shall catch fish with "fish traps" or "fish pots" and haul seines to be sold; and provided further that it shall be unlawful in any and all of such counties to remove from the waters thereof any bass, perch and trout caught with fish pots or fish traps or haul seines, and any person so catching bass, perch and trout shall immediately return the same to the waters. The Commission shall have the authority to close any streams or rivers or parts of streams or rivers in such counties when same shall be stocked with fish by the Commission. Any provisions of this title to the contrary notwithstanding, it shall be lawful to sell or offer to sell for human consumption trout which have been lawfully acquired provided such trout have been propagated and raised in a hatchery or by other artificial means.

The Commission of Game and Inland Fisheries shall by appropriate regulation establish a practical system of identification of trout so offered for sale for table use.

A violation of the provisions of this section or regulations based thereunder shall be declared a misdemeanor punishable by a penalty as provided by law.

§ 29-149.—Any person violating the provisions of the preceding section by not returning bass, perch and trout to the waters from which caught, shall be fined not *less than ten nor more than *one hundred* dollars for each offense.

§ 29-153. It shall be unlawful to use fish berries, lime, giant powder, dynamite, or any other substance for the destruction of fish, or knowingly cast any noxious substance or matter into any watercourse of this State by which fish therein or fish spawn may be destroyed, or to place or to allow to pass into the watercourses of the State any sawdust, ashes, lime, gas, tar, or refuse of gas works, injurious to fish; provided, however, that Giles, Bland and Franklin counties are exempt from the prohibition of permitting sawdust to be put in their watercourses when a saw mill is run in connection with a grain mill, and permanently located in a stream of water used as power toward the operation of the mill, and provided, further, that the sawdust pollution from such operation is not sufficient to destroy fish or fish spawn, and provided, however, in the waters of Piney river and its tributaries in the counties of Amherst and Nelson, it shall not be unlawful to run sawdust in those portions of the stream not inhabited by trout. Any person violating any of the provisions of this section shall, on conviction thereof, be fined for each offense not less than twenty-five nor more than two hundred and fifty dollars, and be imprisoned in jail until the fine is paid, but not exceeding thirty days, except that any person convicted of destroying fish by means of dynamite or other explosives shall be punished by a fine of not less than **two* hundred dollars nor more than five hundred dollars, or, in the discretion of the court or jury, by confinement in jail not to exceed ninety days, or by both such fine and imprisonment.

The owner or lessee of any property on which fish are destroyed by means of dynamite or other explosives shall be entitled to recover liquidated damages in the amount of one hundred dollars from any person convicted of destroying fish by such means.

§ 29-161. Any person convicted of violating any of the provisions of the hunting, trapping or inland fish laws shall, unless otherwise specified, be deemed guilty of a misdemeanor and upon conviction, shall, unless specific penalty is otherwise provided, pay a fine of not less than ten nor more than *two hundred* fifty dollars and may be imprisoned in jail not exceeding thirty days, either or both. The attorney for the Commonwealth of each county and city shall prosecute all violations of any provisions of Chapters 1 through 8 of this Title.

§ 29-162. Any person killing an elk which does not have antlers visible above the hair, or who exceeds the bag limit for elk, or who kills an elk during the closed season, and any person killing a deer which does not have antlers visible above the hair, or who exceeds the bag limit for deer, or who kills a deer during the closed season shall upon conviction be fined not less than twenty-five dollars nor more than two hundred and fifty dollars. Provided, that the fine for killing an elk which does not have antlers visible above the hair, or an illegal deer during the open season shall be **one hundred* dollars for such elk and **twenty-five* dollars for such deer if such person immediately delivers the complete carcass in good condition to the game warden of the county in which killed, whereupon it shall be confiscated and disposed of by the game warden as otherwise provided, and that such person so delivering such carcass to the game warden shall be exempt from the replacement cost as provided in § 29-163.1.

§ 29-163. (a) *It shall be unlawful for any person *to take, or attempt to take, and *wild bird, wild animal and/or fish during the closed season.*

**(b) It shall be unlawful for any person to exceed the bag and/or creel limit for *any wild bird, wild animal and/or fish.*

(c) *It shall be unlawful for any person to possess over the daily bag and/or creel limit for any wild bird, wild animals and/or fish, while in the forests, fields and/or waters of this State.*

(d) *Any person convicted of violating the provisions of this section shall be fined not less than twenty-five nor more than two hundred fifty dollars.*

§ 29-163.1. The **judge*, or court, upon convicting any person of a violation of § 29-162 or § 29-163 involving the unlawful killing of any animal, or bird, or the exceeding of a bag limit as to animals, or birds or fish, or the taking of the same during the closed season, shall, in addition to the imposition of the punishment hereinbefore prescribed, ascertain the approximate replacement value of such animals, birds or fish and shall assess such value against the person so convicted, which assessment shall be paid by the person so convicted within the time prescribed in the judgement of the **judge* or court, not exceeding sixty days, and the collecting officer shall pay such moneys representing the approximate replacement values aforesaid into the State treasury whereupon the same shall be placed to the credit of the game protection fund.

§ 29-164. Any person who shall offer for sale, sell, offer to purchase, or purchase any wild bird or wild animal, or any part thereof, or any fish, except as provided by law, shall pay a fine of not less than *twenty-five* dollars nor more than **two hundred fifty* dollars, and may be imprisoned in jail thirty days, either, or both; provided that for the second conviction of unlawfully buying or selling game or fish the jail sentence shall be mandatory. *This section shall not affect prosecutions under § 29-161.1.*

§ 29-165. Any person who goes on the lands, waters, ponds, boats or blinds of another to hunt, fish or trap without the consent of the landowner or his agent shall be deemed guilty of a misdemeanor, and shall be punished by a fine or not *less than ten* nor more than two hundred fifty dollars or by confinement in jail for not more than thirty days, or by both, in the discretion of the court or jury trying the case.

§ 29-165.1. Any person who goes on the lands, waters, ponds, boats or blinds of another to hunt, fish or trap and willfully refuses to identify himself when requested by the landowner or his agent so to do shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not *less than ten* nor more than one hundred dollars or by confinement in jail for not more than thirty days, or both, in the discretion of the court or jury trying the case.

§ 29-166. Any person who goes on the lands, waters, ponds, boats or blinds of another upon which signs or posters prohibiting hunting, fishing, or trapping, have been placed to hunt, fish or trap **except with* the written consent of *or in the presence of* the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not *less than ten* nor more than two hundred fifty dollars or by confinement in jail for not more than thirty days or by both such fine and imprisonment in the discretion of the court or jury trying the case.

§ 29-167. Any person who shall mutilate, destroy or take down any "posted", "no hunting" or similar sign or poster on the lands or waters of another, or who shall post such sign or poster on the lands or waters of another, without the consent of the landowner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not *less than twenty-five* nor more than **two hundred fifty* dollars.

§ 29-172. Any gun, trap, net, or other device of any kind or nature for taking wild birds, wild animals, or fish, except as specifically permitted in this title, or by a regulation of the Commission, shall be considered unlawful and, upon satisfactory evidence of the guilt of the owner or user and of the unlawful nature of the article seized, the trial court shall fine the owner or user not less than twenty-five nor more than **two hundred fifty* dollars and forfeit such device to the Commonwealth, whereupon it shall be destroyed by the game warden. If the owner or user of such article cannot be located within thirty days, the game warden shall destroy the same. The possession of any gun, trap, net or other device not permitted by law to be used, under circumstances which may be deemed suspicious, shall be prima facie evidence of the guilt of the person in whose possession the same is found. Unlawful fixed devices may be destroyed by the game warden at the place where the same are found.

The owner or user of any automatic-loading or hand-operated repeating shotgun possessed or used in violation of the provisions of this Code or regulations of the Commission shall be subject to **a fine *of not less than ten nor more than one hundred dollars*, but such gun shall not be destroyed; before any such gun shall be returned to the owner or used the game warden shall make such gun conform to this Code and regulations of the Commission applicable thereto, at the expense of the owner.

§ 29-175. **County and municipal courts* and circuit courts shall have concurrent jurisdiction for the trial of offenses against the game, inland fish and dog laws of the State.

§ 29-176. An appeal for the accused from the judgement of a **county or municipal court* shall lie **as in other criminal cases*; and if the case relates to State revenue* and the accused is acquitted, an appeal shall lie for the Commonwealth.

