

1 **H. B. 2572**

2  
3 (By Delegates Overington, Nelson, J., Folk, Kump,  
4 Faircloth, Butler, Cadle, Householder, Phillips, R.,  
5 Barrett and Miller)  
6

7 [Introduced February 20, 2013; referred to the  
8 Committee on the Judiciary.]  
9

10 A BILL to amend and reenact §20-2-5 and §20-2-6a of the Code of  
11 West Virginia, 1931, as amended, all relating to clarifying  
12 circumstances under which a person may possess certain  
13 firearms while afield hunting or engaging in other outdoor  
14 recreational activities.

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

16 That §20-2-5 and §20-2-6a of the Code of West Virginia, 1931,  
17 as amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 2. WILDLIFE RESOURCES.**

19 **§20-2-5. Unlawful methods of hunting and fishing and other**  
20 **unlawful acts.**

21 Except as authorized by the director, it is unlawful at any  
22 time for any person to:

23 (1) Shoot at or to shoot any wild bird or animal unless it is  
24 plainly visible to him or her;

25 (2) Dig out, cut out or smoke out, or in any manner take or

1 attempt to take, any live wild animal or wild bird out of its den  
2 or place of refuge except as may be authorized by rules promulgated  
3 by the director or by law;

4       (3) Make use of, or take advantage of, any artificial light in  
5 hunting, locating, attracting, taking, trapping or killing any wild  
6 bird or wild animal, or to attempt to do so, while having in his or  
7 her possession or subject to his or her control, or for any person  
8 accompanying him or her to have in his or her possession or subject  
9 to his or her control, any firearm, whether cased or uncased, bow,  
10 arrow, or both, or other implement or device suitable for taking,  
11 killing or trapping a wild bird or animal: *Provided*, That it is  
12 lawful to hunt or take coyote, fox, raccoon, opossum or skunk by  
13 the use of artificial light subject to the restrictions set forth  
14 in this subdivision. No person is guilty of a violation of this  
15 subdivision merely because he or she looks for, looks at, attracts  
16 or makes motionless a wild bird or wild animal with or by the use  
17 of an artificial light, unless at the time he or she has in his or  
18 her possession a firearm, whether cased or uncased, bow, arrow, or  
19 both, or other implement or device suitable for taking, killing or  
20 trapping a wild bird or wild animal, or unless the artificial light  
21 (other than the head lamps of an automobile or other land  
22 conveyance) is attached to, a part of or used from within or upon  
23 an automobile or other land conveyance.

24       Any person violating the provisions of this subdivision is

1 guilty of a misdemeanor and, upon conviction thereof, shall for  
2 each offense be fined not less than \$100 nor more than \$500 and  
3 shall be confined in jail for not less than ten days nor more than  
4 one hundred days;

5 (4) Hunt for, take, kill, wound or shoot at wild animals or  
6 wild birds from an airplane, or other airborne conveyance, an  
7 automobile, or other land conveyance, or from a motor-driven water  
8 conveyance, except as authorized by rules promulgated by the  
9 director;

10 (5) Take any beaver or muskrat by any means other than by  
11 trap;

12 (6) Catch, capture, take or kill by seine, net, bait, trap or  
13 snare or like device of any kind any wild turkey, ruffed grouse,  
14 pheasant or quail;

15 (7) Destroy or attempt to destroy needlessly or willfully the  
16 nest or eggs of any wild bird or have in his or her possession the  
17 nest or eggs unless authorized to do so under rules promulgated by  
18 or under a permit issued by the director;

19 (8) Except as provided in section six of this article, carry  
20 an uncased or loaded gun in any of the woods of this state except  
21 during the open firearms hunting season for wild animals and  
22 nonmigratory wild birds within any county of the state unless he or  
23 she has in his or her possession a permit in writing issued to him  
24 or her by the director: *Provided*, That this section does not

1 prohibit hunting or taking of unprotected species of wild animals  
2 and wild birds and migratory wild birds, during the open season, in  
3 the open fields, open water and open marshes of the state;

4       (9) Have in his or her possession a crossbow with a nocked  
5 bolt, a loaded firearm or a firearm ~~from the magazine of which all~~  
6 ~~shells and cartridges have not been removed~~ from which the magazine  
7 and cartridges have not been removed, in or on any vehicle or  
8 conveyance, or its attachments, within the state, except as may  
9 otherwise be provided by law or regulation. Except as hereinafter  
10 provided, between five o'clock postmeridian of one day and seven  
11 o'clock antemeridian, eastern standard time of the day following,  
12 any unloaded firearm or crossbow, being lawfully carried in  
13 accordance with the foregoing provisions, may be so carried only  
14 when in a case or taken apart and securely wrapped. During the  
15 period from July 1 to September 30, inclusive, of each year, the  
16 foregoing requirements relative to carrying certain unloaded  
17 firearms are permissible only from eight-thirty o'clock  
18 postmeridian to five o'clock antemeridian, eastern standard time:  
19 *Provided*, That the time periods for carrying unloaded and uncased  
20 firearms are extended for one hour after the postmeridian times and  
21 one hour before the antemeridian times established above if a  
22 hunter is preparing to or in the process of transporting or  
23 transferring the firearms to or from a hunting site, campsite, home  
24 or other place of abode;

1           (10) Hunt, catch, take, kill, trap, injure or pursue with  
2 firearms or other implement by which wildlife may be taken after  
3 the hour of five o'clock antemeridian on Sunday on private land  
4 without the written consent of the landowner any wild animals or  
5 wild birds except when a big game season opens on a Monday, the  
6 Sunday prior to that opening day will be closed for any taking of  
7 wild animals or birds after five o'clock antemeridian on that  
8 Sunday: *Provided*, That traps previously and legally set may be  
9 tended after the hour of five o'clock antemeridian on Sunday and  
10 the person so doing may carry only a twenty-two caliber firearm for  
11 the purpose of humanely dispatching trapped animals. Any person  
12 violating the provisions of this subdivision is guilty of a  
13 misdemeanor and, upon conviction thereof, in addition to any fines  
14 that may be imposed by this or other sections of this code, is  
15 subject to a \$100 fine;

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

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

20           (13) Catch, take, kill or attempt to catch, take or kill any  
21 fish at any time by any means other than by rod, line and hooks  
22 with natural or artificial lures unless otherwise authorized by law  
23 or rules issued by the director: *Provided*, That snaring of any  
24 species of suckers, carp, fallfish and creek chubs shall at all

1 times be lawful;

2       (14) Employ or hire, or induce or persuade, by the use of  
3 money or other things of value, or by any means, any person to  
4 hunt, take, catch or kill any wild animal or wild bird except those  
5 species on which there is no closed season, or to fish for, catch,  
6 take or kill any fish, amphibian or aquatic life which is protected  
7 by the provisions of this chapter or rules of the director or the  
8 sale of which is prohibited;

9       (15) Hunt, catch, take, kill, capture, pursue, transport,  
10 possess or use any migratory game or nongame birds included in the  
11 terms of conventions between the United States and Great Britain  
12 and between the United States and United Mexican States for the  
13 protection of migratory birds and wild mammals concluded,  
14 respectively, August 16, 1916, and February 7, 1936, except during  
15 the time and in the manner and numbers prescribed by the federal  
16 Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations  
17 made thereunder;

18       (16) Kill, take, catch or have in his or her possession,  
19 living or dead, any wild bird other than a game bird; or expose for  
20 sale or transport within or without the state any bird except as  
21 aforesaid. No part of the plumage, skin or body of any protected  
22 bird may be sold or had in possession for sale except mounted or  
23 stuffed plumage, skin, bodies or heads of the birds legally taken  
24 and stuffed or mounted, irrespective of whether the bird was

1 captured within or without this state, except the English or  
2 European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)  
3 and cowbird (*molothrus ater*), which may not be protected and the  
4 killing thereof at any time is lawful;

5       (17) Use dynamite or any like explosive or poisonous mixture  
6 placed in any waters of the state for the purpose of killing or  
7 taking fish. Any person violating the provisions of this  
8 subdivision is guilty of a felony and, upon conviction thereof,  
9 shall be fined not more than \$500 or imprisoned for not less than  
10 six months nor more than three years, or both fined and imprisoned;

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

13       (19) Have a crossbow in the woods or fields or use a crossbow  
14 to hunt for, take or attempt to take any wildlife except as  
15 otherwise provided in section 42w of this article;

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

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

23       (22) Shoot an arrow across any public highway or from  
24 aircraft, motor-driven watercraft, motor vehicle or other land

1 conveyance;

2       (23) Permit any dog owned by him or her or under his or her  
3 control to chase, pursue or follow upon the track of any wild  
4 animal or wild bird, either day or night, between May 1 and the  
5 August 15 next following: *Provided*, That dogs may be trained on  
6 wild animals and wild birds, except deer and wild turkeys, and  
7 field trials may be held or conducted on the grounds or lands of  
8 the owner or by his or her bona fide tenant or tenants or upon the  
9 grounds or lands of another person with his or her written  
10 permission or on public lands at any time: *Provided, however*, That  
11 nonresidents may not train dogs in this state at any time except  
12 during the legal small game hunting season: *Provided further*, That  
13 the person training said dogs does not have firearms or other  
14 implements in his or her possession during the closed season on  
15 wild animals and wild birds, whereby wild animals or wild birds  
16 could be taken or killed;

17       (24) Conduct or participate in a field trial, shoot-to-  
18 retrieve field trial, water race or wild hunt hereafter referred to  
19 as trial: *Provided*, That any person, group of persons, club or  
20 organization may hold the trial at any time of the year upon  
21 obtaining a permit as is provided in section fifty-six of this  
22 article. The person responsible for obtaining the permit shall  
23 prepare and keep an accurate record of the names and addresses of  
24 all persons participating in said trial and make same readily



1 available for inspection by any natural resources police officer  
2 upon request;

3       (25) Except as provided in section four of this article, hunt,  
4 catch, take, kill or attempt to hunt, catch, take or kill any wild  
5 animal, wild bird or wild fowl except during the open season  
6 established by rule of the director as authorized by subdivision  
7 (6), section seven, article one of this chapter;

8       (26) Hunting on public lands on Sunday after five o'clock  
9 antemeridian is prohibited;

10       (27) Hunt, catch, take, kill, trap, injure or pursue with  
11 firearms or other implement which wildlife can be taken, on private  
12 lands on Sunday after the hour of five o'clock antemeridian:  
13 *Provided*, That the provisions of this subdivision do not apply in  
14 any county until the county commission of the county holds an  
15 election on the question of whether the provisions of this  
16 subdivision prohibiting hunting on Sunday shall apply within the  
17 county and the voters approve the allowance of hunting on Sunday in  
18 the county. The election is determined by a vote of the resident  
19 voters of the county in which the hunting on Sunday is proposed to  
20 be authorized. The county commission of the county in which Sunday  
21 hunting is proposed shall give notice to the public of the election  
22 by publication of the notice as a Class II-0 legal advertisement in  
23 compliance with the provisions of article three, chapter fifty-nine  
24 of this code and the publication area for the publication is the

1 county in which the election is to be held. The date of the last  
2 publication of the notice shall fall on a date within the period of  
3 the fourteen consecutive days next preceding the election.

4 On the local option election ballot shall be printed the  
5 following:

6 Shall hunting on Sunday be authorized in \_\_\_\_\_ County?

7 [ ] Yes [ ] No

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

9 Any local option election to approve or disapprove of the  
10 proposed authorization of Sunday hunting within a county shall be  
11 in accordance with procedures adopted by the commission. The local  
12 option election may be held in conjunction with a primary or  
13 general election or at a special election. Approval shall be by a  
14 majority of the voters casting votes on the question of approval or  
15 disapproval of Sunday hunting at the election.

16 If a majority votes against allowing Sunday hunting, no  
17 election on the issue may be held for a period of one hundred four  
18 weeks. If a majority votes "yes," no election reconsidering the  
19 action may be held for a period of five years. A local option  
20 election may thereafter be held if a written petition of qualified  
21 voters residing within the county equal to at least five percent of  
22 the number of persons who were registered to vote in the next  
23 preceding general election is received by the county commission of  
24 the county in which Sunday hunting is authorized. The petition may

1 be in any number of counterparts. The election shall take place at  
2 the next primary or general election scheduled more than ninety  
3 days following receipt by the county commission of the petition  
4 required by this subsection: *Provided*, That the issue may not be  
5 placed on the ballot until all statutory notice requirements have  
6 been met. No local law or regulation providing any penalty,  
7 disability, restriction, regulation or prohibition of Sunday  
8 hunting may be enacted and the provisions of this article preempt  
9 all regulations, rules, ordinances and laws of any county or  
10 municipality in conflict with this subdivision; and

11 (28) Hunt or conduct hunts for a fee where the hunter is not  
12 physically present in the same location as the wildlife being  
13 hunted within West Virginia.

14 **§20-2-6a. Carrying a concealed handgun.**

15 (a) Notwithstanding any provision of this code to the  
16 contrary, a person licensed to carry a concealed weapon pursuant to  
17 ~~the provisions of section four, article seven, chapter sixty-one of~~  
18 ~~this code~~ who is not prohibited at the time from possessing a  
19 firearm pursuant to the provisions of section seven, article seven,  
20 chapter sixty-one of this code or by any applicable federal law may  
21 carry a handgun ~~in a concealed manner~~ for self defense purposes  
22 while afield hunting, hiking, camping or in or on a motor vehicle.

23 (b) The provisions of this section shall not exempt any person  
24 from obtaining any hunting or fishing license or stamp required by

1 the Division of Natural Resources.

NOTE: The purpose of this bill is to clarify circumstances under which a person may possess certain firearms while afield hunting or engaging in other outdoor recreational activities.

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