

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2178

2015 Carryover

(BY DELEGATES OVERINGTON, CADLE, BUTLER,
HOUSEHOLDER, FAIRCLOTH, MOFFATT, KELLY, FRICH, R.
PHILLIPS, ROHRBACH AND HOWELL

Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

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

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

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

3 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild
 4 animal or wild bird out of its den or place of refuge except as may be authorized by rules
 5 promulgated by the director or by law;

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

17 the artificial light (other than the head lamps of an automobile or other land conveyance) is
18 attached to, a part of or used from within or upon an automobile or other land conveyance.

19 Any person violating the provisions of this subdivision is guilty of a misdemeanor and,
20 upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500
21 and shall be confined in jail for not less than ten days nor more than one hundred days;

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

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

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

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

31 (8) Except as provided in section six of this article, carry an uncased or loaded gun in any
32 of the woods of this state except during the open firearms hunting season for wild animals and
33 nonmigratory wild birds within any county of the state unless he or she has in his or her possession
34 a permit in writing issued to him or her by the director: *Provided*, That this section does not
35 prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild
36 birds, during the open season, in the open fields, open water and open marshes of the state;

37 (9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a
38 firearm ~~from the magazine of which all shells and cartridges have not been removed~~ from which
39 the magazine and cartridges have not been removed, in or on any vehicle or conveyance, or its
40 attachments, within the state, except as may otherwise be provided by law or regulation. Except

41 as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock
42 antemeridian, eastern standard time of the day following, any unloaded firearm or crossbow,
43 being lawfully carried in accordance with the foregoing provisions, may be so carried only when
44 in a case or taken apart and securely wrapped. During the period from July 1 to September 30,
45 inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms
46 are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern
47 standard time: *Provided*, That the time periods for carrying unloaded and uncased firearms are
48 extended for one hour after the postmeridian times and one hour before the antemeridian times
49 established above if a hunter is preparing to or in the process of transporting or transferring the
50 firearms to or from a hunting site, campsite, home or other place of abode;

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

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

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

63 (13) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means
64 other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law

65 or rules issued by the director: *Provided*, That snaring of any species of suckers, carp, fallfish
66 and creek chubs shall at all times be lawful;

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

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

78 (16) Kill, take, catch or have in his or her possession, living or dead, any wild bird other
79 than a game bird; or expose for sale or transport within or without the state any bird except as
80 aforesaid. No part of the plumage, skin or body of any protected bird may be sold or had in
81 possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally
82 taken and stuffed or mounted, irrespective of whether the bird was captured within or without this
83 state, except the English or European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)
84 and cowbird (*molothrus ater*), which may not be protected and the killing thereof at any time is
85 lawful;

86 (17) Use dynamite or any like explosive or poisonous mixture placed in any waters of the
87 state for the purpose of killing or taking fish. Any person violating the provisions of this
88 subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or

89 imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

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

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

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

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

99 (22) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft,
100 motor vehicle or other land conveyance;

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

111 (24) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild
112 hunt hereafter referred to as trial: *Provided*, That any person, group of persons, club or

113 organization may hold the trial at any time of the year upon obtaining a permit as is provided in
114 section fifty-six of this article. The person responsible for obtaining the permit shall prepare and
115 keep an accurate record of the names and addresses of all persons participating in said trial and
116 make same readily available for inspection by any natural resources police officer upon request;

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

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

122 (27) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which
123 wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian:
124 *Provided*, That the provisions of this subdivision do not apply in any county until the county
125 commission of the county holds an election on the question of whether the provisions of this
126 subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve
127 the allowance of hunting on Sunday in the county. The election is determined by a vote of the
128 resident voters of the county in which the hunting on Sunday is proposed to be authorized. The
129 county commission of the county in which Sunday hunting is proposed shall give notice to the
130 public of the election by publication of the notice as a Class II-0 legal advertisement in compliance
131 with the provisions of article three, chapter fifty-nine of this code and the publication area for the
132 publication is the county in which the election is to be held. The date of the last publication of
133 the notice shall fall on a date within the period of the fourteen consecutive days next preceding
134 the election.

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

136 Shall hunting on Sunday be authorized in _____ County?

137 Yes No

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

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

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

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

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

1 (a) Notwithstanding any provision of this code to the contrary, a person ~~licensed to carry~~

2 ~~a concealed weapon pursuant to the provisions of section four, article seven, chapter sixty-one of~~
3 ~~this code~~ who is not prohibited at the time from possessing a firearm pursuant to the provisions
4 of section seven, article seven, chapter sixty-one of this code or by any applicable federal law
5 may carry a handgun ~~in a concealed manner~~ for self defense purposes while afield hunting, hiking,
6 camping or in or on a motor vehicle.

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