

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2679

BY DELEGATES SUMMERS, FRICH, OVERINGTON,
PAYNTER, HARSHBARGER, MOORE, DEAN, FOSTER,
HIGGINBOTHAM, BUTLER AND FAST

[Introduced February 23, 2017; Referred
to the Committee on Agriculture and Natural
Resources then the Judiciary.]

1 A BILL to amend and reenact §7-11-5 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, all relating
 3 to the possession of firearms in parks and park facilities generally; prohibiting county parks
 4 and recreation commissions from promulgating or enforcing rules which prohibit
 5 possession of firearms; providing magistrate courts with concurrent jurisdiction; carrying
 6 a firearm for self-defense in state parks and state forests; providing exceptions; and
 7 clarifying that nothing in the section authorizes counties or municipalities to limit a person's
 8 ability to possess, transfer over, carry or transport a firearm or ammunition in a state park,
 9 state forest, or recreational areas in state wildlife management areas under the Division
 10 of Natural Resources, provided that such person is not otherwise prohibited from
 11 possessing firearms.

Be it enacted by the Legislature of West Virginia:

1 That §7-11-5 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §20-2-5 of said code be amended and reenacted, all to read as follows.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-5. General powers of commission; rules ~~and regulations~~; misdemeanor offenses; park police authorized.

1 The commission shall have the necessary powers and authority to manage and control all
 2 public parks and recreational properties and facilities owned by the county or commission and
 3 used as a part of such public parks and recreation system, including the right to promulgate rules
 4 and regulations concerning the management and control of such parks and recreational
 5 properties and facilities and to enforce any such rules ~~and regulations~~ so promulgated: Provided,
 6 That a commission shall not promulgate or enforce rules which prohibit the possession of
 7 firearms.

8 The commission shall also have plenary power and authority to prepare and submit to the
9 county ~~court~~ commission for adoption rules ~~and regulations~~ regulating the use of any parks and
10 recreational properties and facilities under the control of the commission and prohibiting any type
11 of use of or activities in connection with any such properties or facilities, and any such rules, ~~and~~
12 ~~regulations~~ if so adopted, shall be duly entered of record in the order book of the county
13 commission. The violation of any such rule and regulation so adopted by the county commission
14 shall constitute a misdemeanor and, any person convicted of any such violation shall be punished
15 by a fine of not less than \$5 nor more than \$100, or by imprisonment in jail for a period not
16 exceeding thirty days, or by both such fine and imprisonment. ~~Justices of the peace~~ The
17 magistrate court of the county shall have concurrent jurisdiction with the circuit court and other
18 courts of record (having criminal jurisdiction) of any misdemeanor offenses arising under this
19 article. The violation of any such rule ~~and regulation~~ which also constitutes the violation of any
20 state law or municipal ordinance may be prosecuted and punished as a violation of such state
21 law or municipal ordinance rather than under the provisions of this section. To enforce any such
22 rules ~~and regulations~~, to protect and preserve all properties and facilities under the control of the
23 commission and to preserve law and order in connection therewith, the commission shall have
24 plenary power and authority to provide in its bylaws procedures for the appointment, supervision
25 and discharge of one or more park police officers. Whenever any such appointment is made, a
26 copy of the order of appointment shall be filed by the commission with the county ~~court~~
27 commission.

28 In any area under the jurisdiction and control of the commission, or in connection with any
29 properties or facilities under the jurisdiction and control of the commission, or in pursuit of one or
30 more individuals therefrom, any park police officer so appointed shall have all of the power and
31 authority which a regularly appointed deputy sheriff of such county has in enforcing the criminal
32 laws of the state. Notwithstanding any provisions of this code to the contrary, park police officers
33 appointed as aforesaid shall not be required to obtain a state license to carry a weapon, as

34 required by the provisions of section two, article seven, chapter sixty-one of this code. When any
35 such commission has purchased one or more policies of public liability insurance providing the
36 commission and its officers, agents and employees insurance coverage for legal liability of said
37 commission and its officers, agents and employees for bodily injury, personal injury or damage
38 (including, but not limited to, false arrest and false imprisonment) and property damage, and
39 affording said commission and its officers, agents and employees insurance coverage against
40 any and all legal liability arising from, growing out of, by reason of or in any way connected with,
41 any acts or omissions of said commission, or its officers, agents or employees in the performance
42 of their official duties, and so long as the coverage aforesaid remains in full force and effect as to
43 such park police officers, then the bond specified in section five, article seven of said chapter
44 sixty-one shall not be required as to such park police officers.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

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

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

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

3 (2) Dig out, cut out, 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;

5 (3) Use or attempt to use any artificial light or any night vision technology, including image
6 intensification, thermal imaging or active illumination while hunting, locating, attracting, taking,
7 trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote,
8 fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person
9 violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each
10 offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less
11 than ten days nor more than one hundred days;

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

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

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

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

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

23 (9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state
 24 forests, state wildlife management areas or state rail trails with the following permissible
 25 exceptions: Provided, That nothing in this subsection shall be construed as authorizing any county
 26 or municipality to limit the right of any person to possess, transfer, own, carry or transport any
 27 firearm or ammunition:

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

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

33 (C) A person carrying a firearm pursuant to sections six and six-a of this article; ~~or~~

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

36 (E) A person carrying a rifle or shotgun for self-defense who is not prohibited from
 37 possessing firearms under state or federal law: Provided, That this exception does not apply to

38 an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities
39 and marked trails within state park and/or state forest borders or on state rail trails: *Provided,*
40 *however,* That nothing in this subdivision shall be construed as authorizing any county or
41 municipality to limit the right of any person to possess, transfer, own, carry or transport any firearm
42 or ammunition.

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

56 (11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which
57 wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without
58 the written consent of the landowner any wild animals or wild birds except when a big game
59 season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of
60 wild animals or birds after five o'clock ante meridian on that Sunday: *Provided,* That traps
61 previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday
62 and the person tending the traps may carry firearms for the purpose of humanely dispatching
63 trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon

64 conviction thereof, in addition to any fines that may be imposed by this or other sections of this
65 code, is subject to a \$100 fine;

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

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

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

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

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

79 (17) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any
80 wild bird other than a game bird including the plumage, skin or body of any protected bird,
81 irrespective of whether the bird was captured in or out of this state, except the English or European
82 sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may
83 be killed at any time;

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

88 (19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same
89 time;

90 (20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt
91 to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

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

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

97 (23) Shoot an arrow across any public highway;

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

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

112 (26) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird
113 or wild fowl except during open seasons;

114 (27) Hunting on public lands on Sunday after five o'clock ante meridian is prohibited;

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

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

129 Shall hunting on Sunday be authorized on private lands only with the consent of the land
130 owner in _____ County?

131 Yes

132 No

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

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

139 If a majority votes against allowing Sunday hunting, an election on the issue may not be
140 held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering

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

152 Amendments to this subdivision promulgated during the 2015 regular session of the
153 Legislature shall have no effect upon the results of elections held prior to their enactment; and

154 (29) Hunt or conduct hunts for a fee when the person is not physically present in the same
155 location as the wildlife being hunted within West Virginia.

NOTE: The purpose of this bill is to prohibit county park commissions from prohibiting firearms in their facilities and to clarify that a firearm may be carried by a person for self defense in state parks, state forests and state recreational areas managed by the Department of Natural Resources, provided that such person is not otherwise prohibited from possessing firearms.

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