

1 **H. B. 3019**

2
3 (By Delegates Young, Barrett, Eldridge,
4 R. Phillips, Sponaugle, Stowers, Lynch, Tomblin,
5 Stephens, Miley and Marcum)

6
7 [Introduced March 21, 2013; referred to the
8 Committee on Natural Resources then 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; defining loaded firearm.

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~~ sections six and six-a of
20 this article, carry an uncased or loaded gun in any of the woods of
21 this state except during the open firearms hunting season for wild
22 animals and nonmigratory wild birds within any county of the state
23 unless he or she has in his or her possession a permit in writing
24 issued to him or her by the director: *Provided*, That this section

1 does not prohibit hunting or taking of unprotected species of wild
2 animals and wild birds and migratory wild birds, during the open
3 season, in the open fields, open water and open marshes of the
4 state;

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

1 established above if a hunter is preparing to or in the process of
2 transporting or transferring the firearms to or from a hunting
3 site, campsite, home or other place of abode;

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

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

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

23 (13) Catch, take, kill or attempt to catch, take or kill any
24 fish at any time by any means other than by rod, line and hooks

1 with natural or artificial lures unless otherwise authorized by law
2 or rules issued by the Director: *Provided*, That snaring of any
3 species of suckers, carp, fallfish and creek chubs ~~shall~~ is at all
4 times ~~be~~ lawful;

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

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

21 (16) Kill, take, catch or have in his or her possession,
22 living or dead, any wild bird other than a game bird; or expose for
23 sale or transport within or without the state any bird except as
24 aforesaid. No part of the plumage, skin or body of any protected

1 bird may be sold or had in possession for sale except mounted or
2 stuffed plumage, skin, bodies or heads of the birds legally taken
3 and stuffed or mounted, irrespective of whether the bird was
4 captured within or without this state, except the English or
5 European sparrow (*passer domesticus*), starling (*sturnus vulgaris*)
6 and cowbird (*molothrus ater*), which ~~may~~ is not ~~be~~ protected and ~~the~~
7 its killing ~~thereof~~ at any time is lawful;

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

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

16 (19) Have a crossbow in the woods or fields or use a crossbow
17 to hunt for, take or attempt to take any wildlife except as
18 otherwise provided in section forty-two-w of this article;

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

23 (21) Take or attempt to take any wildlife with an arrow having
24 an explosive head or shaft, a poisoned arrow or an arrow which

1 would affect wildlife by any chemical action;

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

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

20 (24) Conduct or participate in a field trial,
21 shoot-to-retrieve field trial, water race or wild hunt hereafter
22 referred to as trial: *Provided*, That any person, group of persons,
23 club or organization may hold the trial at any time of the year
24 upon obtaining a permit as is provided in section fifty-six of this

1 article. The person responsible for obtaining the permit shall
2 prepare and keep an accurate record of the names and addresses of
3 all persons participating in said trial and make same readily
4 available for inspection by any natural resources police officer
5 upon request;

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

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

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

1 by publication of the notice as a Class II-0 legal advertisement in
2 compliance with the provisions of article three, chapter fifty-nine
3 of this code and the publication area for the publication is the
4 county in which the election is to be held. The date of the last
5 publication of the notice shall fall on a date within the period of
6 the fourteen consecutive days next preceding the election.

7 On the local option election ballot shall be printed the
8 following:

9 Shall hunting on Sunday be authorized in _____ County?

10 [] Yes [] No

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

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

19 If a majority votes against allowing Sunday hunting, no
20 election on the issue may be held for a period of one hundred four
21 weeks. If a majority votes "yes," no election reconsidering the
22 action may be held for a period of five years. A local option
23 election may thereafter be held if a written petition of qualified
24 voters residing within the county equal to at least five percent of

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

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

17 **§20-2-6a. Carrying a concealed handgun.**

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

1 while afield hunting, hiking, camping or in or on a motor vehicle.

2 (b) Notwithstanding any provision of this chapter to the
3 contrary, a person who is not prohibited at the time from
4 possessing a firearm pursuant to the provisions of section seven,
5 article seven, chapter sixty-one of this code or by any applicable
6 federal law may openly carry a handgun for self defense purposes
7 while afield hunting, hiking, camping or in or on a motor vehicle:
8 Provided, That a handgun may not be carried while training dogs, as
9 prohibited by subdivision twenty-three of section five of this
10 article, or while hunting with a bow, as prohibited by subdivision
11 (18), of section five of this article.

12 ~~(b)~~ (c) The provisions of this section ~~shall~~ do not exempt any
13 person from obtaining any hunting or fishing license or stamp
14 required by the Division of Natural Resources.

NOTE: The purpose of this bill is to clarify the 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.