

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H. B. 4271

(By Delegates R. Phillips, Sponaugle,
Caputo, L. Phillips, Marcum, A. Evans,
Ashley, Hamilton, White, Walker and Tomlin)

[Introduced January 23, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §20-2-5 of the Code of West Virginia,
1931, as amended; and to amend and reenact §61-7-2 and §61-7-6
of said code, all relating to firearms and concealed firearms
licenses; permitting persons to possess firearms, other than
shotguns and rifles, in a vehicle or conveyance without a
concealed deadly weapons permit; changing certain provisions
covering all firearms to be limited to shotguns and rifles;
removing the provision that a firearm located in a storage
area in or on a motor vehicle is deemed to be carried on or
about a person who has a concealed handgun license; and
permitting a person to transport concealed firearms in a
private motor vehicle or a private water-borne conveyance
without the necessity of having concealed deadly weapons
permit.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; and that §61-7-2 and §61-7-6 of said code
2 be amended and reenacted, all to read as follows:

3 **CHAPTER 20. NATURAL RESOURCES.**

4 **ARTICLE 2. WILDLIFE RESOURCES.**

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

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

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

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

15 (3) Make use of, or take advantage of, any artificial light in
16 hunting, locating, attracting, taking, trapping or killing any wild
17 bird or wild animal, or to attempt to do so, while having in his or
18 her possession or subject to his or her control, or for any person
19 accompanying him or her to have in his or her possession or subject
20 to his or her control, any firearm, whether cased or uncased, bow,
21 arrow, or both, or other implement or device suitable for taking,
22 killing or trapping a wild bird or animal: *Provided*, That it is
23 lawful to hunt or take coyote, fox, raccoon, opossum or skunk by

1 the use of artificial light subject to the restrictions set forth
2 in this subdivision. No person is guilty of a violation of this
3 subdivision merely because he or she looks for, looks at, attracts
4 or makes motionless a wild bird or wild animal with or by the use
5 of an artificial light, unless at the time he or she has in his or
6 her possession a firearm, whether cased or uncased, bow, arrow, or
7 both, or other implement or device suitable for taking, killing or
8 trapping a wild bird or wild animal, or unless the artificial light
9 (other than the head lamps of an automobile or other land
10 conveyance) is attached to, a part of or used from within or upon
11 an automobile or other land conveyance.

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

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

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

24 (6) Catch, capture, take or kill by seine, net, bait, trap or

1 snare or like device of any kind any wild turkey, ruffed grouse,
2 pheasant or quail;

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

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

16 (9) Have in his or her possession a crossbow with a nocked
17 bolt, a loaded ~~firearm or a firearm~~ shotgun or rifle or a shotgun
18 or rifle from the magazine of which all shells and cartridges have
19 not been removed, in or on any vehicle or conveyance, or its
20 attachments, within the state, except as may otherwise be provided
21 by law or regulation. Except as hereinafter provided, between five
22 o'clock postmeridian of one day and seven o'clock antemeridian,
23 eastern standard time of the day following, any unloaded ~~firearm~~
24 shotgun or rifle or crossbow, being lawfully carried in accordance

1 with the foregoing provisions, may be so carried only when in a
2 case or taken apart and securely wrapped. During the period from
3 July 1 to September 30, inclusive, of each year, the foregoing
4 requirements relative to carrying certain unloaded ~~firearms~~
5 shotguns or rifles are permissible only from eight-thirty o'clock
6 postmeridian to five o'clock antemeridian, eastern standard time:
7 ~~firearms~~ Provided, That the time periods for carrying unloaded and
8 uncased shotguns or rifles are extended for one hour after the
9 postmeridian times and one hour before the antemeridian times
10 established above if a hunter is preparing to or in the process of
11 transporting or transferring the ~~firearms~~ shotgun or rifles to or
12 from a hunting site, campsite, home or other place of abode;

13 (10) Hunt, catch, take, kill, trap, injure or pursue with
14 firearms or other implement by which wildlife may be taken after
15 the hour of five o'clock antemeridian on Sunday on private land
16 without the written consent of the landowner any wild animals or
17 wild birds except when a big game season opens on a Monday, the
18 Sunday prior to that opening day will be closed for any taking of
19 wild animals or birds after five o'clock antemeridian on that
20 Sunday: Provided, That traps previously and legally set may be
21 tended after the hour of five o'clock antemeridian on Sunday and
22 the person so doing may carry only a twenty-two caliber firearm for
23 the purpose of humanely dispatching trapped animals. Any person
24 violating ~~the provisions of~~ this subdivision is guilty of a

1 misdemeanor and, upon conviction thereof, in addition to any fines
2 that may be imposed by this or other sections of this code, is
3 subject to a \$100 fine;

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

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

8 (13) Catch, take, kill or attempt to catch, take or kill any
9 fish at any time by any means other than by rod, line and hooks
10 with natural or artificial lures unless otherwise authorized by law
11 or rules issued by the Director: *Provided*, That snaring of any
12 species of suckers, carp, fallfish and creek chubs shall at all
13 times be lawful;

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

21 (15) Hunt, catch, take, kill, capture, pursue, transport,
22 possess or use any migratory game or nongame birds included in the
23 terms of conventions between the United States and Great Britain
24 and between the United States and United Mexican States for the

1 protection of migratory birds and wild mammals concluded,
2 respectively, August 16, 1916, and February 7, 1936, except during
3 the time and in the manner and numbers prescribed by the federal
4 Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations
5 made thereunder;

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

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

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

1 (19) Have a crossbow in the woods or fields or use a crossbow
2 to hunt for, take or attempt to take any wildlife except as
3 otherwise provided in section ~~42w~~ forty-two-w of this article;

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

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

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

14 (23) Permit any dog owned by him or her or under his or her
15 control to chase, pursue or follow upon the track of any wild
16 animal or wild bird, either day or night, between May 1 and the
17 August 15 next following: *Provided*, That dogs may be trained on
18 wild animals and wild birds, except deer and wild turkeys, and
19 field trials may be held or conducted on the grounds or lands of
20 the owner or by his or her bona fide tenant or tenants or upon the
21 grounds or lands of another person with his or her written
22 permission or on public lands at any time: *Provided, however*, That
23 nonresidents may not train dogs in this state at any time except
24 during the legal small game hunting season: *Provided further*, That

1 the person training said dogs does not have firearms or other
2 implements in his or her possession during the closed season on
3 wild animals and wild birds, whereby wild animals or wild birds
4 could be taken or killed;

5 (24) Conduct or participate in a field trial,
6 shoot-to-retrieve field trial, water race or wild hunt hereafter
7 referred to as trial: *Provided*, That any person, group of persons,
8 club or organization may hold the trial at any time of the year
9 upon obtaining a permit as is provided in section fifty-six of this
10 article. The person responsible for obtaining the permit shall
11 prepare and keep an accurate record of the names and addresses of
12 all persons participating in said trial and make same readily
13 available for inspection by any natural resources police officer
14 upon request;

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

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

22 (27) Hunt, catch, take, kill, trap, injure or pursue with
23 firearms or other implement which wildlife can be taken, on private
24 lands on Sunday after the hour of five o'clock antemeridian:

1 *Provided*, That ~~the provisions of~~ this subdivision ~~do~~ does not apply
 2 in any county until the county commission of the county holds an
 3 election on the question of whether ~~the provisions of~~ this
 4 subdivision ~~prohibiting~~ prohibits hunting on Sunday shall apply
 5 within the county and the voters approve the allowance of hunting
 6 on Sunday in the county. The election is determined by a vote of
 7 the resident voters of the county in which the hunting on Sunday is
 8 proposed to be authorized. The county commission of the county in
 9 which Sunday hunting is proposed shall give notice to the public of
 10 the election by publication of the notice as a Class II-0 legal
 11 advertisement in compliance with ~~the provisions of~~ article three,
 12 chapter fifty-nine of this code and the publication area for the
 13 publication is the county in which the election is to be held. The
 14 date of the last publication of the notice shall fall on a date
 15 within the period of the fourteen consecutive days next preceding
 16 the election.

17 On the local option election ballot shall be printed the
 18 following:

19 Shall hunting on Sunday be authorized in _____ County?

20 [] Yes [] No

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

22 Any local option election to approve or disapprove of the
 23 proposed authorization of Sunday hunting within a county shall be
 24 in accordance with procedures adopted by the commission. The local

1 option election may be held in conjunction with a primary or
2 general election or at a special election. Approval shall be by a
3 majority of the voters casting votes on the question of approval or
4 disapproval of Sunday hunting at the election.

5 If a majority votes against allowing Sunday hunting, no
6 election on the issue may be held for a period of one hundred four
7 weeks. If a majority votes "yes," no election reconsidering the
8 action may be held for a period of five years. A local option
9 election may thereafter be held if a written petition of qualified
10 voters residing within the county equal to at least five percent of
11 the number of persons who were registered to vote in the next
12 preceding general election is received by the county commission of
13 the county in which Sunday hunting is authorized. The petition may
14 be in any number of counterparts. The election shall take place at
15 the next primary or general election scheduled more than ninety
16 days following receipt by the county commission of the petition
17 required by this subsection: *Provided*, That the issue may not be
18 placed on the ballot until all statutory notice requirements have
19 been met. No local law or regulation providing any penalty,
20 disability, restriction, regulation or prohibition of Sunday
21 hunting may be enacted and ~~the provisions of~~ this article preempt
22 all regulations, rules, ordinances and laws of any county or
23 municipality in conflict with this subdivision; and

24 (28) Hunt or conduct hunts for a fee where the hunter is not

1 physically present in the same location as the wildlife being
2 hunted within West Virginia.

3 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

4 **ARTICLE 7. DANGEROUS WEAPONS.**

5 **§61-7-2. Definitions.**

6 As used in this article, unless the context otherwise
7 requires:

8 (1) "Blackjack" means a short bludgeon consisting, at the
9 striking end, of an encased piece of lead or some other heavy
10 substance and, at the handle end, a strap or springy shaft which
11 increases the force of impact when a person or object is struck.
12 The term "blackjack" shall include, but not be limited to, a billy,
13 billy club, sand club, sandbag or slapjack.

14 (2) "Gravity knife" means any knife that has a blade released
15 from the handle by the force of gravity or the application of
16 centrifugal force and when so released is locked in place by means
17 of a button, spring, lever or other locking or catching device.

18 (3) "Knife" means an instrument, intended to be used or
19 readily adaptable to be used as a weapon, consisting of a
20 sharp-edged or sharp-pointed blade, usually made of steel, attached
21 to a handle which is capable of inflicting cutting, stabbing or
22 tearing wounds. The term "knife" shall include, but not be limited
23 to, any dagger, dirk, poniard or stiletto, with a blade over three
24 and one-half inches in length, any switchblade knife or gravity

1 knife and any other instrument capable of inflicting cutting,
2 stabbing or tearing wounds. A pocket knife with a blade three and
3 one-half inches or less in length, a hunting or fishing knife
4 carried for hunting, fishing, sports or other recreational uses or
5 a knife designed for use as a tool or household implement shall not
6 be included within the term "knife" as defined herein unless such
7 knife is knowingly used or intended to be used to produce serious
8 bodily injury or death.

9 (4) "Switchblade knife" means any knife having a
10 spring-operated blade which opens automatically upon pressure being
11 applied to a button, catch or other releasing device in its handle.

12 (5) "Nunchuka" means a flailing instrument consisting of two
13 or more rigid parts, connected by a chain, cable, rope or other
14 nonrigid, flexible or springy material, constructed in such a
15 manner as to allow the rigid parts to swing freely so that one
16 rigid part may be used as a handle and the other rigid part may be
17 used as the striking end.

18 (6) "Metallic or false knuckles" means a set of finger rings
19 attached to a transverse piece to be worn over the front of the
20 hand for use as a weapon and constructed in such a manner that,
21 when striking another person with the fist or closed hand,
22 considerable physical damage may be inflicted upon the person
23 struck. The terms "metallic or false knuckles" shall include any
24 such instrument without reference to the metal or other substance

1 or substances from which the metallic or false knuckles are made.

2 (7) "Pistol" means a short firearm having a chamber which is
3 integral with the barrel, designed to be aimed and fired by the use
4 of a single hand.

5 (8) "Revolver" means a short firearm having a cylinder of
6 several chambers that are brought successively into line with the
7 barrel to be discharged, designed to be aimed and fired by the use
8 of a single hand.

9 (9) "Deadly weapon" means an instrument which is designed to
10 be used to produce serious bodily injury or death or is readily
11 adaptable to such use. The term "deadly weapon" shall include, but
12 not be limited to, the instruments defined in subdivisions (1)
13 through (8), inclusive, of this section or other deadly weapons of
14 like kind or character which may be easily concealed on or about
15 the person. For the purposes of section one-a, article five,
16 chapter eighteen-a of this code and section eleven-a, article seven
17 of this chapter, in addition to the definition of "knife" set forth
18 in subdivision (3) of this section, the term "deadly weapon" also
19 includes any instrument included within the definition of "knife"
20 with a blade of three and one-half inches or less in length.
21 Additionally, for the purposes of section one-a, article five,
22 chapter eighteen-a of this code and section eleven-a, article seven
23 of this chapter, the term "deadly weapon" includes explosive,
24 chemical, biological and radiological materials. Notwithstanding

1 any other provision of this section, the term "deadly weapon" does
2 not include any item or material owned by the school or county
3 board, intended for curricular use, and used by the student at the
4 time of the alleged offense solely for curricular purposes.

5 (10) "Concealed" means hidden from ordinary observation so as
6 to prevent disclosure or recognition. A deadly weapon is concealed
7 when it is carried on or about the person in such a manner that
8 another person in the ordinary course of events would not be placed
9 on notice that the deadly weapon was being carried. ~~For purposes~~
10 ~~of concealed handgun licensees, a licensee shall be deemed to be~~
11 ~~carrying on or about his or her person while in or on a motor~~
12 ~~vehicle if the firearm is located in a storage area in or on the~~
13 ~~motor vehicle.~~

14 (11) "Firearm" means any weapon which will expel a projectile
15 by action of an explosion.

16 (12) "Controlled substance" has the same meaning as is
17 ascribed to that term in ~~subsection (d),~~ section one hundred one,
18 article one, chapter sixty-a of this code.

19 (13) "Drug" has the same meaning as is ascribed to that term
20 in ~~subsection (1),~~ section one hundred one, article one, chapter
21 sixty-a of this code.

22 **§61-7-6. Exceptions as to prohibitions against carrying concealed**
23 **handguns; exemptions from licensing fees.**

24 (a) The licensure provisions set forth in this article do not

1 apply to:

2 (1) Any person:

3 (A) Carrying a deadly weapon upon his or her own premises;

4 (B) Carrying a firearm, unloaded, from the place of purchase
5 to his or her home, residence or place of business or to a place of
6 repair and back to his or her home, residence or place of business;
7 or

8 (C) Possessing a firearm while hunting in a lawful manner or
9 while traveling from his or her home, residence or place of
10 business to a hunting site and returning to his or her home,
11 residence or place of business;

12 (2) Any person who is a member of a properly organized
13 target-shooting club authorized by law to obtain firearms by
14 purchase or requisition from this state or from the United States
15 for the purpose of target practice from carrying any pistol, as
16 defined in this article, unloaded, from his or her home, residence
17 or place of business to a place of target practice and from any
18 place of target practice back to his or her home, residence or
19 place of business, for using any such weapon at a place of target
20 practice in training and improving his or her skill in the use of
21 the weapons;

22 (3) Any law-enforcement officer or law-enforcement official as
23 defined in section one, article twenty-nine, chapter thirty of this
24 code;

1 (4) Any employee of the West Virginia Division of Corrections
2 duly appointed pursuant to ~~the provisions of~~ section eleven-c,
3 article one, chapter twenty-five of this code while the employee is
4 on duty;

5 (5) Any member of the armed forces of the United States or the
6 militia of this state while the member is on duty;

7 (6) Any resident of another state who holds a valid permit or
8 license to possess or carry a handgun issued by a state or a
9 political subdivision subject to the provisions and limitations set
10 forth in section six-a of this article;

11 (7) Any federal law-enforcement officer or federal police
12 officer authorized to carry a weapon in the performance of the
13 officer's duty;

14 (8) Any Hatfield-McCoy Regional Recreation Authority Ranger
15 while the ranger is on duty; ~~and~~

16 (9) Any parole officer appointed pursuant to section fourteen,
17 article twelve, chapter sixty-two of this code in the performance
18 of their duties; and

19 (10) Any person transporting a firearm concealed in or on a
20 private motor vehicle or a private water-borne conveyance.

21 (b) On and after July 1, 2013, the following judicial officers
22 and prosecutors and staff shall be exempted from paying any
23 application fees or licensure fees required under this article.
24 However, on and after that same date, they shall be required to

1 make application and satisfy all licensure and handgun safety and
2 training requirements set forth in section four of this article
3 before carrying a concealed handgun in this state:

4 (1) Any justice of the Supreme Court of Appeals of West
5 Virginia;

6 (2) Any circuit judge;

7 (3) Any retired justice or retired circuit judge designated
8 senior status by the Supreme Court of Appeals of West Virginia;

9 (4) Any family court judge;

10 (5) Any magistrate;

11 (6) Any prosecuting attorney;

12 (7) Any assistant prosecuting attorney; or

13 (8) Any duly appointed investigator employed by a prosecuting
14 attorney.

NOTE: The purpose of this bill is to permit a person to possess firearms, other than shotguns and rifles, in a vehicle or conveyance without a concealed deadly weapons permit. The bill changes certain provisions covering all firearms to be limited to shotguns and rifles. The bill removes the provision that a firearm located in a storage area in or on a motor vehicle is deemed to be carried on or about a person who has a concealed handgun license. The bill permits a person to transport concealed firearms in a private motor vehicle or a private water-borne conveyance without the necessity of having a concealed deadly weapons permit.

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