

1 **Senate Bill No. 498**

2 (By Senators Unger, Carmichael, Cookman, Beach, Fitzsimmons, D.  
3 Hall, Tucker, Williams, Green, Cole, Stollings, Plymale, Jenkins,  
4 Kessler (Mr. President), Blair, Laird, Nohe and Prezioso)

5

6 [Introduced February 6, 2014; referred to the Committee on the  
7 Judiciary.]

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9

10 A BILL to amend and reenact §20-2-5 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §61-7-2 and §61-7-6  
12 of said code, all relating to firearms and concealed firearms  
13 licenses; permitting persons to possess firearms, other than  
14 shotguns and rifles, in a vehicle or conveyance without a  
15 concealed deadly weapons permit; changing certain provisions  
16 covering all firearms to be limited to shotguns and rifles;  
17 removing the provision that a firearm located in a storage  
18 area in or on a motor vehicle is deemed to be carried on or  
19 about a person who has a concealed handgun license; and  
20 permitting a person to transport concealed firearms in a  
21 private motor vehicle or a private water-borne conveyance  
22 without the necessity of having concealed deadly weapons  
23 permit.

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

2       That §20-2-5 of the Code of West Virginia, 1931, as amended,  
3 be amended and reenacted; and that §61-7-2 and §61-7-6 of said code  
4 be amended and reenacted, all to read as follows:

5                           **CHAPTER 20. NATURAL RESOURCES.**

6 **ARTICLE 2. WILDLIFE RESOURCES.**

7 **§20-2-5. Unlawful methods of hunting and fishing and other**  
8                           **unlawful acts.**

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

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

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

17       (3) Make use of, or take advantage of, any artificial light in  
18 hunting, locating, attracting, taking, trapping or killing any wild  
19 bird or wild animal, or to attempt to do so, while having in his or  
20 her possession or subject to his or her control, or for any person  
21 accompanying him or her to have in his or her possession or subject  
22 to his or her control, any firearm, whether cased or uncased, bow,  
23 arrow, or both, or other implement or device suitable for taking,

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

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

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

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

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

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

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

19 (9) Have in his or her possession a crossbow with a nocked  
20 bolt, a loaded ~~firearm or a firearm~~ shotgun or rifle or a shotgun  
21 or rifle from the magazine of which all shells and cartridges have  
22 not been removed, in or on any vehicle or conveyance, or its  
23 attachments, within the state, except as may otherwise be provided

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

17 (10) Hunt, catch, take, kill, trap, injure or pursue with  
18 firearms or other implement by which wildlife may be taken after  
19 the hour of five o'clock antemeridian on Sunday on private land  
20 without the written consent of the landowner any wild animals or  
21 wild birds except when a big game season opens on a Monday, the  
22 Sunday prior to that opening day will be closed for any taking of  
23 wild animals or birds after five o'clock antemeridian on that

1 Sunday: *Provided*, That traps previously and legally set may be  
2 tended after the hour of five o'clock antemeridian on Sunday and  
3 the person so doing may carry only a twenty-two caliber firearm for  
4 the purpose of humanely dispatching trapped animals. Any person  
5 violating ~~the provisions of~~ this subdivision is guilty of a  
6 misdemeanor and, upon conviction thereof, in addition to any fines  
7 that may be imposed by this or other sections of this code, is  
8 subject to a \$100 fine;

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

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

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

19 (14) Employ or hire, or induce or persuade, by the use of  
20 money or other things of value, or by any means, any person to  
21 hunt, take, catch or kill any wild animal or wild bird except those  
22 species on which there is no closed season, or to fish for, catch,  
23 take or kill any fish, amphibian or aquatic life which is protected

1 by ~~the provisions of~~ this chapter or rules of the director or the  
2 sale of which is prohibited;

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

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

23       (17) Use dynamite or any like explosive or poisonous mixture

1 placed in any waters of the state for the purpose of killing or  
2 taking fish. Any person violating ~~the provisions of~~ this  
3 subdivision is guilty of a felony and, upon conviction thereof,  
4 shall be fined not more than \$500 or imprisoned for not less than  
5 six months nor more than three years, or both fined and imprisoned;

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

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

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

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

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

21 (23) Permit any dog owned by him or her or under his or her  
22 control to chase, pursue or follow upon the track of any wild  
23 animal or wild bird, either day or night, between May 1 and the



1 August 15 next following: *Provided*, That dogs may be trained on  
2 wild animals and wild birds, except deer and wild turkeys, and  
3 field trials may be held or conducted on the grounds or lands of  
4 the owner or by his or her bona fide tenant or tenants or upon the  
5 grounds or lands of another person with his or her written  
6 permission or on public lands at any time: *Provided, however*, That  
7 nonresidents may not train dogs in this state at any time except  
8 during the legal small game hunting season: *Provided further*, That  
9 the person training said dogs does not have firearms or other  
10 implements in his or her possession during the closed season on  
11 wild animals and wild birds, whereby wild animals or wild birds  
12 could be taken or killed;

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

23       (25) Except as provided in section four of this article, hunt,

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

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

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

1 within the period of the fourteen consecutive days next preceding  
2 the election.

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

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

6 [ ] Yes [ ] No

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

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

15 If a majority votes against allowing Sunday hunting, no  
16 election on the issue may be held for a period of one hundred four  
17 weeks. If a majority votes "yes," no election reconsidering the  
18 action may be held for a period of five years. A local option  
19 election may thereafter be held if a written petition of qualified  
20 voters residing within the county equal to at least five percent of  
21 the number of persons who were registered to vote in the next  
22 preceding general election is received by the county commission of  
23 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 preempts all regulations, rules, ordinances and laws of any county  
 10 or 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 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

15 **ARTICLE 7. DANGEROUS WEAPONS.**

16 **§61-7-2. Definitions.**

17 As used in this article, unless the context otherwise  
 18 requires:

19 (1) "Blackjack" means a short bludgeon consisting, at the  
 20 striking end, of an encased piece of lead or some other heavy  
 21 substance and, at the handle end, a strap or springy shaft which  
 22 increases the force of impact when a person or object is struck.  
 23 The term "blackjack" shall include, but not be limited to, a billy,

1 billy club, sand club, sandbag or slapjack.

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

6       (3) "Knife" means an instrument, intended to be used or  
7 readily adaptable to be used as a weapon, consisting of a  
8 sharp-edged or sharp-pointed blade, usually made of steel, attached  
9 to a handle which is capable of inflicting cutting, stabbing or  
10 tearing wounds. The term "knife" shall include, but not be limited  
11 to, any dagger, dirk, poniard or stiletto, with a blade over three  
12 and one-half inches in length, any switchblade knife or gravity  
13 knife and any other instrument capable of inflicting cutting,  
14 stabbing or tearing wounds. A pocket knife with a blade three and  
15 one-half inches or less in length, a hunting or fishing knife  
16 carried for hunting, fishing, sports or other recreational uses or  
17 a knife designed for use as a tool or household implement shall not  
18 be included within the term "knife" as defined herein unless such  
19 knife is knowingly used or intended to be used to produce serious  
20 bodily injury or death.

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

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

7           (6) "Metallic or false knuckles" means a set of finger rings  
8 attached to a transverse piece to be worn over the front of the  
9 hand for use as a weapon and constructed in such a manner that,  
10 when striking another person with the fist or closed hand,  
11 considerable physical damage may be inflicted upon the person  
12 struck. The terms "metallic or false knuckles" shall include any  
13 such instrument without reference to the metal or other substance  
14 or substances from which the metallic or false knuckles are made.

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

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

22           (9) "Deadly weapon" means an instrument which is designed to  
23 be used to produce serious bodily injury or death or is readily

1 adaptable to such use. The term "deadly weapon" shall include, but  
2 not be limited to, the instruments defined in subdivisions (1)  
3 through (8), inclusive, of this section or other deadly weapons of  
4 like kind or character which may be easily concealed on or about  
5 the person. For the purposes of section one-a, article five,  
6 chapter eighteen-a of this code and section eleven-a, article seven  
7 of this chapter, in addition to the definition of "knife" set forth  
8 in subdivision (3) of this section, the term "deadly weapon" also  
9 includes any instrument included within the definition of "knife"  
10 with a blade of three and one-half inches or less in length.  
11 Additionally, for the purposes of section one-a, article five,  
12 chapter eighteen-a of this code and section eleven-a, article seven  
13 of this chapter, the term "deadly weapon" includes explosive,  
14 chemical, biological and radiological materials. Notwithstanding  
15 any other provision of this section, the term "deadly weapon" does  
16 not include any item or material owned by the school or county  
17 board, intended for curricular use, and used by the student at the  
18 time of the alleged offense solely for curricular purposes.

19 (10) "Concealed" means hidden from ordinary observation so as  
20 to prevent disclosure or recognition. A deadly weapon is concealed  
21 when it is carried on or about the person in such a manner that  
22 another person in the ordinary course of events would not be placed  
23 on notice that the deadly weapon was being carried. ~~For purposes~~

1 ~~of concealed handgun licensees, a licensee shall be deemed to be~~  
2 ~~carrying on or about his or her person while in or on a motor~~  
3 ~~vehicle if the firearm is located in a storage area in or on the~~  
4 ~~motor vehicle.~~

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

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

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

13 **§61-7-6. Exceptions as to prohibitions against carrying concealed**  
14 **handguns; exemptions from licensing fees.**

15 (a) The licensure provisions set forth in this article do not  
16 apply to:

17 (1) Any person:

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

19 (B) Carrying a firearm, unloaded, from the place of purchase  
20 to his or her home, residence or place of business or to a place of  
21 repair and back to his or her home, residence or place of business;  
22 or

23 (C) Possessing a firearm while hunting in a lawful manner or



1 while traveling from his or her home, residence or place of  
2 business to a hunting site and returning to his or her home,  
3 residence or place of business;

4 (2) Any person who is a member of a properly organized  
5 target-shooting club authorized by law to obtain firearms by  
6 purchase or requisition from this state or from the United States  
7 for the purpose of target practice from carrying any pistol, as  
8 defined in this article, unloaded, from his or her home, residence  
9 or place of business to a place of target practice and from any  
10 place of target practice back to his or her home, residence or  
11 place of business, for using any such weapon at a place of target  
12 practice in training and improving his or her skill in the use of  
13 the weapons;

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

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

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

23 (6) Any resident of another state who holds a valid permit or

1 license to possess or carry a handgun issued by a state or a  
2 political subdivision subject to the provisions and limitations set  
3 forth in section six-a of this article;

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

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

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

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

14 (b) On and after July 1, 2013, the following judicial officers  
15 and prosecutors and staff shall be exempted from paying any  
16 application fees or licensure fees required under this article.  
17 However, on and after that same date, they shall be required to  
18 make application and satisfy all licensure and handgun safety and  
19 training requirements set forth in section four of this article  
20 before carrying a concealed handgun in this state:

21 (1) Any justice of the Supreme Court of Appeals of West  
22 Virginia;

23 (2) Any circuit judge;

- 1           (3) Any retired justice or retired circuit judge designated  
2 senior status by the Supreme Court of Appeals of West Virginia;  
3           (4) Any family court judge;  
4           (5) Any magistrate;  
5           (6) Any prosecuting attorney;  
6           (7) Any assistant prosecuting attorney; or  
7           (8) Any duly appointed investigator employed by a prosecuting  
8 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.