

1 **Senate Bill No. 40**

2 (By Senators Beach and D. Hall)

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4 [Introduced January 14, 2015; referred to the Committee on Natural Resources; and then to the
5 Committee on the Judiciary.]

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

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

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

16 **ARTICLE 2. WILDLIFE RESOURCES.**

17 **§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

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

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

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

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

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

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

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

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

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

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

10 (9) Have in his or her possession a crossbow with a nocked bolt, a loaded firearm or a firearm
11 ~~from the magazine of which all shells and cartridges have not been removed~~ which the magazine and
12 cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the
13 state, except as may otherwise be provided by law or regulation. Except as hereinafter provided,
14 between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time
15 of the day following, any unloaded firearm or crossbow, being lawfully carried in accordance with
16 the foregoing provisions, may be so carried only when in a case or taken apart and securely wrapped.
17 During the period from July 1 to September 30, inclusive, of each year, the foregoing requirements
18 relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock
19 postmeridian to five o'clock antemeridian, eastern standard time: *Provided*, That the time periods
20 for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times
21 and one hour before the antemeridian times established above if a hunter is preparing to or in the
22 process of transporting or transferring the firearms to or from a hunting site, campsite, home or other

1 place of abode;

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

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

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

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

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

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

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

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

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

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

22 (20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is

1 equipped with a point having at least two sharp cutting edges measuring in excess of three fourths
2 of an inch wide;

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

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

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

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

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

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

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

18 On the local option election ballot shall be printed the 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 proposed authorization of Sunday

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

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

20 **§20-2-6a. Carrying a defensive handgun.**

21 (a) Notwithstanding any provision of this code to the contrary, a person ~~licensed to carry a~~
22 ~~concealed weapon pursuant to the provisions of section four, article seven, chapter sixty-one of this~~

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

5 (b) The provisions of this section shall not exempt any person from obtaining any hunting
6 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 engaging in outdoor recreational activities.

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