

bill to clarify the applicability of certain hunting statutes

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[Effective from passage]

A BILL to repeal §20-2-19a of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-1-2, §20-2-5, §20-2-5c, §20-2-6, §20-2-6a, §20-2-37, §20-2-42l, §20-2-42p, §20-2-46e and §20-7-9 of said code, all relating to the regulation of carrying firearms; clarifying that hunting statutes generally do not prohibit the otherwise lawful carrying of pistols and revolvers for self-defense purposes; clarifying that persons who are licensed or otherwise authorized to lawfully carry concealed pistols or revolvers are not subject to limitations on how firearms may be carried or transported in wooded areas or in vehicles; consolidating and clarifying certain penalty provisions; and defining terms relating to firearms.

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

2 That §20-2-19a of the Code of West Virginia, 1931, as
3 amended, be repealed; and that §20-1-2, §20-2-5, §20-2-5c, §20-
4 2-6, §20-2-6a, §20-2-37, §20-2-42l, §20-2-42p, §20-2-46e and
5 §20-7-9 of said code be amended and reenacted, all to read as
6 follows:

7 **CHAPTER 20. NATURAL RESOURCES.**

8 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

9 **§20-1-2. Definitions.**

10 As used in this chapter, unless the context clearly
11 requires a different meaning:

12 (1) "Agency" means any branch, department or unit of the
13 state government, however designated or constituted.

14 (2) "Alien" means any person not a citizen of the United
15 States.

16 (3) "Ammunition" means ammunition or cartridge cases,
17 primers, bullets, or propellant powder designed for use in any
18 firearm.

19 (4) "Bag limit" or "creel limit" means the maximum number
20 of wildlife which may be taken, caught, killed or possessed by
21 any person.

22 (5) "Big game" means elk, deer, black bears, wild boars and
23 wild turkeys.

1 (6) "Bona fide resident, tenant or lessee" means a person
2 who permanently resides on the land.

3 (7) "Citizen" means any native-born citizen of the United
4 States and foreign-born persons who have procured their final
5 naturalization papers.

6 (8) "Closed season" means the time or period during which
7 it shall be unlawful to take any wildlife as specified and
8 limited by the provisions of this chapter.

9 (9) "Commission" means the Natural Resources Commission.

10 (10) "Commissioner" means a member of the advisory
11 commission of the Natural Resources Commission.

12 (11) "Director" means the Director of the Division of
13 Natural Resources.

14 (12) "Firearm" means any weapon, including a starter
15 pistol, which will, is designed to or may readily be converted
16 to expel a projectile by action of an explosion.

17 (13) "Fishing" or "to fish" means the taking, by any means,
18 of fish, minnows, frogs or other amphibians, aquatic turtles and
19 other forms of aquatic life used as fish bait.

20 (14) "Fur-bearing animals" include: (a) The mink; (b) the
21 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f)
22 the skunk and civet cat, commonly called polecat; (g) the otter;
23 (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or
24 bay lynx; (k) the raccoon; and (l) the fisher.

1 (15) "Game" means game animals, game birds and game fish as
2 herein defined.

3 (16) "Game animals" include: (a) The elk; (b) the deer; (c)
4 the cottontail rabbits and hares; (d) the fox squirrels,
5 commonly called red squirrels, and gray squirrels and all their
6 color phases - red, gray, black or albino; (e) the raccoon; (f)
7 the black bear; and (g) the wild boar.

8 (17) "Game birds" include: (a) The anatidae, commonly known
9 as swan, geese, brants and river and sea ducks; (b) the
10 rallidae, commonly known as rails, sora, coots, mudhens and
11 gallinule; (c) the limicolae, commonly known as shorebirds,
12 plover, snipe, woodcock, sandpipers, yellow legs and curlews;
13 (d) the galliformes, commonly known as wild turkey, grouse,
14 pheasants, quails and partridges (both native and foreign
15 species); (e) the columbidae, commonly known as doves; (f) the
16 icteridae, commonly known as blackbirds, redwings and grackle;
17 and (g) the corvidae, commonly known as crows.

18 (18) "Game fish" include: (a) Brook trout; (b) brown trout;
19 (c) rainbow trout; (d) golden rainbow trout; (e) largemouth
20 bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass;
21 (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern
22 pike; (m) rock bass; (n) white bass; (o) white crappie; (p)
23 black crappie; (q) all sunfish species; (r) channel catfish; (s)

1 flathead catfish; (t) blue catfish, (u) sauger; and (v) all game
2 fish hybrids.

3 (19) "Handgun" means any firearm which has a short stock
4 and is designed to be held and fired by the use of a single hand
5 and includes any pistol or revolver.

6 (20) "Hunt" means to pursue, chase, catch or take any wild
7 birds or wild animals: *Provided*, That the definition of "hunt"
8 does not include an officially sanctioned and properly licensed
9 field trial, water race or wild hunt as long as that field trial
10 is not a shoot-to-retrieve field trial.

11 (21) "Lands" means land, waters and all other appurtenances
12 connected therewith.

13 (22) "Loaded," with respect to a firearm, means that the
14 firearm:

15 (A) Has live, unexpended ammunition is in the firing
16 position or a position whereby the manual operation of any
17 mechanism once would cause live, unexpended ammunition to be
18 fired;

19 (B) Has live, unexpended ammunition in a clip or magazine
20 that is locked in place in the firearm;

21 (C) Has live, unexpended ammunition anywhere in the
22 cylinder, if the firearm is a revolver; or

1 (D) Is capped or primed and has a powder charge and ball or
2 shot in the barrel or cylinders, if the firearm is a muzzle-
3 loader.

4 A firearm is not loaded solely because a loaded clip,
5 magazine or speed-loader is readily accessible for immediate use
6 or loading in an otherwise unloaded firearm.

7 (23) "Migratory birds" means any migratory game or nongame
8 birds included in the terms of conventions between the United
9 States and Great Britain and between the United States and
10 United Mexican States, known as the Migratory Bird Treaty Act,
11 for the protection of migratory birds and game mammals
12 concluded, respectively, the sixteenth day of August, one
13 thousand nine hundred sixteen, and the seventh day of February,
14 one thousand nine hundred thirty-six.

15 (24) "Nonresident" means any person who is a citizen of the
16 United States and who has not been a domiciled resident of the
17 State of West Virginia for a period of thirty consecutive days
18 immediately prior to the date of his or her application for a
19 license or permit except any full-time student of any college or
20 university of this state, even though he or she is paying a
21 nonresident tuition.

22 (25) "Open season" means the time during which the various
23 species of wildlife may be legally caught, taken, killed or
24 chased in a specified manner and shall include both the first

1 and the last day of the season or period designated by the
2 director.

3 (26) "Person", except as otherwise defined elsewhere in
4 this chapter, means the plural "persons" and shall include
5 individuals, partnerships, corporations or other legal entities.

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

9 (28) "Preserve" means all duly licensed private game
10 farmlands, or private plants, ponds or areas, where hunting or
11 fishing is permitted under special licenses or seasons other
12 than the regular public hunting or fishing seasons.

13 (29) "Protected birds" means all wild birds not included
14 within the definition of "game birds" and "unprotected birds".

15 (30) "Readily accessible for immediate use" means that a
16 firearm, ammunition or other deadly weapon is carried on or
17 about the person or within such close proximity and in such a
18 manner that it can be retrieved and used as easily and quickly
19 as if carried on the person.

20 (31) "Resident" means any person who is a citizen of the
21 United States and who has been a domiciled resident of the State
22 of West Virginia for a period of thirty consecutive days or more
23 immediately prior to the date of his or her application for
24 license or permit: *Provided*, That a member of the armed forces

1 of the United States who is stationed beyond the territorial
2 limits of this state, but who was a resident of this state at
3 the time of his or her entry into such service and any full-time
4 student of any college or university of this state, even though
5 he or she is paying a nonresident tuition, shall be considered a
6 resident under the provisions of this chapter.

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

11 (33) "Rifle" means a firearm designed or redesigned, made
12 or remade, and intended to be fired from the shoulder and
13 designed or redesigned and made or remade to use the energy of
14 an explosive to fire only a single projectile through a rifled
15 bore for each single pull of the trigger.

16 (34) "Roadside menagerie" means any place of business,
17 other than a commercial game farm, commercial fish preserve,
18 place or pond, where any wild bird, game bird, unprotected bird,
19 game animal or fur-bearing animal is kept in confinement for the
20 attraction and amusement of the people for commercial purposes.

21 (35) "Small game" includes all game animals, furbearing
22 animals and game birds except elk, deer, black bears, wild boars
23 and wild turkeys.

1 (36) "Shotgun" means a firearm designed or redesigned, made
2 or remade, and intended to be fired from the shoulder and
3 designed or redesigned and made or remade to use the energy of
4 an explosive to fire through a smooth bore either a number of
5 ball shot or a single projectile for each single pull of the
6 trigger.

7 (37) "Take" means to hunt, shoot, pursue, lure, kill,
8 destroy, catch, capture, keep in captivity, gig, spear, trap,
9 ensnare, wound or injure any wildlife, or attempt to do so:
10 *Provided*, That the definition of "take" does not include an
11 officially sanctioned and properly licensed field trial, water
12 race or wild hunt as long as that field trial is not a shoot-to-
13 retrieve field trial.

14 (38) "Unloaded":

15 (A) A with respect to a firearm, means the state of a
16 firearm not being loaded; and

17 (B) With respect to a firearm employing a percussion cap,
18 flintlock, or other obsolete ignition system, in addition to the
19 circumstances described in paragraph (A) of this subdivision,
20 the firearm is "unloaded" when the weapon is uncapped or when
21 the priming charge is removed from the pan.

22 (39) "Unprotected birds" shall include: (a) The English
23 sparrow; (b) the European starling; and (c) the cowbird.

1 (40) "Wild animals" means all mammals native to the State
2 of West Virginia occurring either in a natural state or in
3 captivity, except house mice or rats.

4 (41) "Wild birds" shall include all birds other than: (a)
5 Domestic poultry - chickens, ducks, geese, guinea fowl, peafowls
6 and turkeys; (b) psittacidae, commonly called parrots and
7 parakeets; and (c) other foreign cage birds such as the common
8 canary, exotic finches and ring dove. All wild birds, either:
9 (i) Those occurring in a natural state in West Virginia; or (ii)
10 those imported foreign game birds, such as waterfowl, pheasants,
11 partridges, quail and grouse, regardless of how long raised or
12 held in captivity, shall remain wild birds under the meaning of
13 this chapter.

14 (42) "Wildlife" means wild birds, wild animals, game and
15 fur-bearing animals, fish (including minnows,) reptiles,
16 amphibians, mollusks, crustaceans and all forms of aquatic life
17 used as fish bait, whether dead or alive.

18 (43) "Wildlife refuge" means any land set aside by action
19 of the director as an inviolate refuge or sanctuary for the
20 protection of designated forms of wildlife.

1 **ARTICLE 2. WILDLIFE RESOURCES.**

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

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

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

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

12 (3) (A) Except as provided in paragraphs (B) through (D) of
13 this subdivision, make use of, or take advantage of, any
14 artificial light in hunting, locating, attracting, taking,
15 trapping or killing any wild bird or wild animal, or to attempt
16 to do so, while having in his or her possession or subject to
17 his or her control, or ~~for~~ while any person accompanying him or
18 her ~~to have~~ has in his or her possession or subject to his or
19 her control, any firearm, whether cased or uncased, bow, arrow,
20 or both, or other implement or device suitable for taking,
21 killing or trapping a wild bird or animal. ~~Provided, That it is~~
22 ~~lawful to~~

23 (B) Notwithstanding paragraph (A) of this subdivision, a
24 person may hunt or take raccoon, opossum or skunk by the use of

1 artificial light subject to the restrictions set forth in this
2 subdivision. ~~Provided, however, That it is lawful to~~

3 (C) Notwithstanding paragraph (A) of this subdivision, a
4 person may hunt or take coyotes by the use of amber- or red-
5 colored artificial light subject to the restrictions set forth
6 in this subdivision.

7 (D) Notwithstanding paragraph (A) of this subdivision, no
8 person is guilty of a violation of this subdivision merely
9 because he or she looks for, looks at, attracts or makes
10 motionless a wild bird or wild animal with or by the use of an
11 artificial light, unless:

12 (i) At the time he or she has in his or her possession a
13 ~~firearm~~ rifle or shotgun, whether cased or uncased, bow, arrow,
14 or both, or other implement or device, other than handguns,
15 suitable for taking, killing or trapping a wild bird or wild
16 animal;

17 (ii) At the time he or she is carrying on or about his or
18 her person a loaded handgun and actually uses or attempts to
19 actually use the handgun to take, kill or trap any wild bird or
20 wild animal; or unless

21 (iii) The artificial light (other than the head lamps of an
22 automobile or other land conveyance) is attached to, a part of,
23 or used from within or upon an automobile or other land
24 conveyance.

1 ~~Any person violating the provisions of this subdivision~~
2 ~~shall be guilty of a misdemeanor and, upon conviction thereof,~~
3 ~~shall for each offense be fined not less than one hundred~~
4 ~~dollars nor more than five hundred dollars and shall be~~
5 ~~imprisoned in the county jail for not less than ten days nor~~
6 ~~more than one hundred days;~~

7 (4) Hunt for, take, kill, wound or shoot at wild animals or
8 wild birds from an airplane, or other airborne conveyance, an
9 automobile, or other land conveyance, or from a motor-driven
10 water conveyance, except as authorized by section forty-six-e of
11 this article or rules promulgated by the Director;

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

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

17 (7) Destroy or attempt to destroy needlessly or willfully
18 the nest or eggs of any wild bird or have in his or her
19 possession the nest or eggs unless authorized to do so under
20 rules promulgated by or under a permit issued by the Director;

21 (8) ~~Except as provided in section six of this article,~~
22 Carry an uncased or loaded ~~gun~~ rifle or an uncased or loaded
23 shotgun in any of the woods of this state except during the open
24 firearms hunting season for wild animals and nonmigratory wild

1 birds within any county of the state, unless he or she has in
2 his or her possession a permit in writing issued to him or her
3 by the director, is licensed to carry concealed pistols and
4 revolvers under section four, article seven, chapter sixty-one
5 of this code, is authorized by the laws of this state to carry
6 concealed pistols or revolvers without a license or is carrying
7 in accordance with section six of this article: *Provided, That*
8 this section may not prohibit hunting or taking of unprotected
9 species of wild animals and wild birds and migratory wild birds,
10 during the open season, in the open fields, open water and open
11 marshes of the state;

12 (9) Have in his or her possession a crossbow with a nocked
13 bolt, a loaded ~~firearm or a firearm from the magazine of which~~
14 ~~all shells and cartridges have not been removed~~ rifle or a
15 loaded shotgun, in or on any vehicle or conveyance, or its
16 attachments, within the state, except as may otherwise be
17 provided by law or regulation. Except as hereinafter provided,
18 between five o'clock postmeridian of one day and seven o'clock
19 antemeridian, eastern standard time of the day following, any
20 unloaded ~~firearm~~ rifle, unloaded shotgun or crossbow, being
21 lawfully carried in accordance with the foregoing provisions,
22 shall be so carried only when in a case or taken apart and
23 securely wrapped. During the period from the first day of July
24 to the thirtieth day of September, inclusive, of each year, the

1 foregoing requirements relative to carrying certain unloaded
2 ~~firearms~~ rifles, shotguns and crossbows shall be permissible
3 only from eight-thirty o'clock postmeridian to five o'clock
4 antemeridian, eastern standard time: *Provided*, That the time
5 periods for carrying unloaded and uncased ~~firearms~~ rifles,
6 shotguns and crossbows are extended for one hour after the
7 postmeridian times and one hour before the antemeridian times
8 established above if a hunter is preparing to or in the process
9 of transporting or transferring the ~~firearms~~ rifles, shotguns or
10 crossbows to or from a hunting site, campsite, home or other
11 place of abode. The provisions of this subdivision relating to
12 firearms do not apply to any person who is licensed to carry
13 concealed pistols and revolvers under section four, article
14 seven, chapter sixty-one of this code or otherwise authorized by
15 the laws of this state to carry concealed pistols or revolvers;

16 (10) Hunt, catch, take, kill, trap, injure or pursue with
17 firearms or other implement by which wildlife may be taken after
18 the hour of five o'clock antemeridian on Sunday on private land
19 without the written consent of the landowner any wild animals or
20 wild birds except:

21 (A) When a big game season opens on a Monday, the Sunday
22 prior to that opening day will shall be closed for any taking of
23 wild animals or birds after five o'clock antemeridian on that
24 Sunday; and

1 (B) ~~Provided, That~~ Traps previously and legally set may be
2 tended after the hour of five o'clock antemeridian on Sunday.
3 and the A person ~~so doing~~ tending traps as authorized under this
4 paragraph, who is not licensed to carry concealed pistols and
5 revolvers under section four, article seven, chapter sixty-one
6 of this code or otherwise authorized by the laws of this state
7 to carry a concealed pistol or revolver, may not carry ~~only on~~
8 or about his person any firearm other than a pistol or revolver
9 that is carried for self-defense purposes or a twenty-two
10 caliber firearm that is carried for the purpose of humanely
11 dispatching trapped animals.

12 ~~Any person violating the provisions of this subdivision is~~
13 ~~guilty of a misdemeanor and, upon conviction thereof, in~~
14 ~~addition to any fines that may be imposed by this or other~~
15 ~~sections of this code, shall be subject to a one hundred dollar~~
16 ~~fine;~~

17 (11) Hunt with firearms or long bow while under the
18 influence of intoxicating liquor;

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

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

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

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

5 (15) 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
8 those species on which there is no closed season, or to fish
9 for, catch, take or kill any fish, amphibian or aquatic life
10 which is protected by the provisions of this chapter or rules of
11 the Director or the sale of which is prohibited;

12 (16) Hunt, catch, take, kill, capture, pursue, transport,
13 possess or use any migratory ~~game or nongame~~ birds ~~included in~~
14 ~~the terms of conventions between the United States and Great~~
15 ~~Britain and between the United States and United Mexican States~~
16 ~~for the protection of migratory birds and wild mammals~~
17 ~~concluded, respectively, the sixteenth day of August, one~~
18 ~~thousand nine hundred sixteen, and the seventh day of February,~~
19 ~~one thousand nine hundred thirty-six,~~ except during the time and
20 in the manner and numbers prescribed by the Federal Migratory
21 Bird Treaty Act and regulations made thereunder;

22 (17) Kill, take, catch or have in his or her possession,
23 living or dead, any wild bird other than a game bird; or expose
24 for sale or transport within or without the state any bird

1 except as aforesaid. No part of the plumage, skin or body of any
2 protected bird shall be sold or had in possession for sale
3 except mounted or stuffed plumage, skin, bodies or heads of the
4 birds legally taken and stuffed or mounted, irrespective of
5 whether the bird was captured within or without this state,
6 except the English or European sparrow (*passer domesticus*),
7 starling (*sturnus vulgaris*) and cowbird (*molothrus ater*), which
8 may not be protected and the killing thereof at any time is
9 lawful;

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

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

19 (A) A bow and:

20 (i) A rifle; or

21 (ii) A shotgun; or

22 (B) Any arrow or arrows and:

23 (i) A rifle; or

24 (ii) A shotgun;

1 (20) Have a crossbow in the woods or fields or use a
2 crossbow to hunt for, take or attempt to take any wildlife,
3 unless the person possesses a Class Y permit;

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

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

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

14 (24) 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 the first day
17 of May and the fifteenth day of August next following:
18 *Provided*, That dogs may be trained on wild animals and wild
19 birds, except deer and wild turkeys, and field trials may be
20 held or conducted on the grounds or lands of the owner or by his
21 or her bona fide tenant or tenants or upon the grounds or lands
22 of another person with his or her written permission or on
23 public lands, at any time: *Provided, however*, That nonresidents
24 may not train dogs in this state at any time except during the

1 legal small game hunting season: *Provided further,* That the
2 person training said dogs does not have ~~firearms or other~~
3 ~~implements~~ in his or her possession during the closed season on
4 wild animals and wild birds, whereby wild animals or wild birds
5 could be taken or killed, any rifle or shotgun unless the person
6 is licensed to carry concealed pistols and revolvers under
7 section four, article seven, chapter sixty-one of this code or
8 is otherwise authorized by the laws of this state to carry
9 concealed pistols or revolvers, or any non-firearm implement of
10 hunting;

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

21 (26) Except as provided in section four of this article,
22 hunt, catch, take, kill or attempt to hunt, catch, take or kill
23 any wild animal, wild bird or wild fowl except during the open

1 season established by rule of the director as authorized by
2 subdivision (6), section seven, article one of this chapter;

3 (27) Hunt on public lands on Sunday after five o'clock
4 antemeridian, ~~is prohibited~~ except that traps previously and
5 legally set may be tended after the hour of five o'clock
6 antemeridian on Sunday. A person tending traps as authorized
7 under this subdivision, who is not licensed to carry concealed
8 pistols and revolvers under section four, article seven, chapter
9 sixty-one of this code or otherwise authorized by the laws of
10 this state to carry a concealed pistol or revolver, may not
11 carry on or about his person any firearm other than a pistol or
12 revolver that is carried for self-defense purposes or a twenty-
13 two caliber firearm that is carried for the purpose of humanely
14 dispatching trapped animals; and

15 (28)(A) Hunt, catch, take, kill, trap, injure or pursue
16 with firearms or other implement which wildlife can be taken, on
17 private lands on Sunday after the hour of five o'clock
18 antemeridian: *Provided*, That traps previously and legally set
19 may be tended after the hour of five o'clock antemeridian on
20 Sunday. A person tending traps as authorized under this
21 paragraph who is not licensed to carry concealed pistols and
22 revolvers under section four, article seven, chapter sixty-one
23 of this code or otherwise authorized by the laws of this state
24 to carry a concealed pistol or revolver may not carry on or

1 about his person any firearm other than a pistol or revolver
2 that is carried for self-defense purposes or a twenty-two
3 caliber firearm that is carried for the purpose of humanely
4 dispatching trapped animals.

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

21 (ii) On the local option election ballot shall be printed
22 the following:

23 Shall hunting on Sunday be authorized in _____ County?

24 [] Yes [] No

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

2 (iii) Any local option election to approve or disapprove of
3 the proposed authorization of Sunday hunting within a county
4 shall be in accordance with procedures adopted by the
5 commission. The local option election may be held in
6 conjunction with a primary or general election, or at a special
7 election. Approval shall be by a majority of the voters casting
8 votes on the question of approval or disapproval of Sunday
9 hunting at the election.

10 (iv) If a majority votes against allowing Sunday hunting,
11 no election on the issue may be held for a period of one hundred
12 four weeks. If a majority votes "yes" no election reconsidering
13 the action may be held for a period of five years. A local
14 option election may thereafter be held if a written petition of
15 qualified voters residing within the county equal to at least
16 five percent of the number of persons who were registered to
17 vote in the next preceding general election is received by the
18 county commission of the county in which Sunday hunting is
19 authorized. The petition may be in any number of counterparts.
20 The election shall take place at the next primary or general
21 election scheduled more than ninety days following receipt by
22 the county commission of the petition required by this
23 subsection: *Provided*, That the issue may not be placed on the
24 ballot until all statutory notice requirements have been met. No

1 local law or regulation providing any penalty, disability,
2 restriction, regulation or prohibition of Sunday hunting may be
3 enacted, and the provisions of this article preempt all
4 regulations, rules, ordinances and laws of any county or
5 municipality in conflict with this subdivision; or

6 (29) Hunt or conduct hunts for a fee where the hunter is
7 not physically present in the same location as the wildlife
8 being hunted within West Virginia.

9 **§20-2-5c. Protection of bald eagles and golden eagles; unlawful**
10 **acts; criminal penalties; forfeitures; license**
11 **revocation.**

12 (a) It is unlawful at any time for any person to take,
13 possess, transport, import, export or process, sell or offer for
14 sale, buy, barter or trade or offer to buy, barter or trade at
15 any time or in any manner, any bald eagle, also commonly known
16 as the American eagle, or any golden eagle, alive or dead, or
17 any part, nest or egg thereof of the foregoing eagles, or to
18 attempt to do any of these acts.

19 (b) Anyone who violates the provisions of this section is
20 guilty of a misdemeanor and, upon conviction thereof, shall be
21 fined not less than five hundred dollars nor more than five
22 thousand dollars, ~~or imprisoned~~ confined in ~~the county~~ jail for
23 not less than sixty days nor more than one year, or both ~~fined~~
24 ~~and imprisoned~~. One half of any fine imposed shall be paid to

1 any person or persons providing information that leads to the
2 arrest and conviction of anyone violating the provisions of this
3 section.

4 (c) For a second or subsequent conviction for a violation
5 of this section, a person is guilty of a felony and, upon
6 conviction thereof, shall be fined not less than five thousand
7 dollars nor more than ten thousand dollars and imprisoned ~~in the~~
8 ~~penitentiary~~ for not less than one year nor more than two years.
9 An amount equal to one half of the fine imposed, not exceeding
10 two thousand five hundred dollars, shall be paid to the person
11 or persons providing information that leads to the arrest and
12 conviction of anyone for a second or subsequent violation of the
13 provisions of this section.

14 (d) "Take" is defined as including any means to pursue,
15 hunt, wound, kill, capture, collect, poison, or molest any bald
16 eagle or golden eagle, or any part, nest or egg thereof, or to
17 knowingly and willfully destroy the nest or eggs of any such
18 eagles.

19 (e) Nothing in this section may be construed to prohibit
20 the taking, possession or transportation of bald or golden
21 eagles legally under the current federal Eagle Protection Act,
22 16 USC § 668a, and the current federal regulations, 50 CFR 22.1
23 *et seq.*

1 (f) All wildlife, merchandise, ~~guns~~ firearms, traps, nets
2 and other equipment, vessels, vehicles, aircraft and other means
3 of transportation used in taking, possessing, transporting,
4 importing, exporting, selling or offering for sale, purchasing
5 or bartering or offering to purchase or barter any bald or
6 golden eagle or part, nest, or egg thereof, or in attempting to
7 do any of these acts in violation of this section shall be
8 forfeited, at the time of conviction, to the state.

9 (g) Upon conviction of taking, possessing, transporting,
10 importing, exporting or processing, selling or offering for
11 sale, buying, bartering or trading or offering to buy, barter or
12 trade any bald or golden eagle, alive or dead, or any part, nest
13 or egg thereof of the foregoing eagles, or of attempting to do
14 any of these acts, the hunting licenses of such person or
15 persons may be revoked and such person or persons shall not be
16 issued any new hunting licenses for a period of ten years from
17 the date of conviction.

18 **§20-2-6. Carrying firearm on landowner's land.**

19 Notwithstanding any ~~other provisions~~ provision of this
20 chapter to the contrary, it shall be lawful for a bona fide
21 resident landowner of this state, any member of said landowner's
22 family and any bona fide tenant of said landowner, to carry an
23 uncased ~~gun~~ firearm at any time, whether accompanied by or
24 without a dog, in their regular pursuits in caring for and

1 looking after such landowner's livestock or poultry on his land
2 and on any lands leased or rented by him for livestock or
3 poultry husbandry purposes, if that person is not prohibited by
4 federal law or section seven, article seven, chapter sixty-one
5 of this code from possessing firearms and is not carrying the
6 firearm in violation of any other provision of article seven,
7 chapter sixty-one of this code.

8 **§20-2-6a. Carrying pistols and revolvers by concealed weapons**
9 **licensees not prohibited; exceptions.**

10 (a) Notwithstanding any provision of this ~~code~~ chapter to
11 the contrary, a person licensed to carry a concealed ~~weapon~~
12 ~~pursuant to the provisions of~~ pistols and revolvers under
13 section four, article seven, chapter sixty-one of this code or
14 otherwise authorized to carry concealed pistols or revolvers
15 without a license pursuant to federal law or the laws of this
16 state, who is not prohibited at the time from possessing a
17 ~~firearm pursuant to the provisions of section seven, article~~
18 ~~seven, chapter sixty one of this code or~~ pistols or revolvers by
19 ~~any applicable federal law~~ or section seven, article seven,
20 chapter sixty-one of this code, may possess, carry a handgun in
21 ~~a concealed manner~~ or transport loaded or unloaded pistols and
22 revolvers or ammunition therefor for self defense purposes while
23 afield hunting, fishing, hiking, camping, or in or on a motor
24 vehicle, all-terrain vehicle, vessel, motorboat, personal

1 watercraft or other means of transportation or conveyance, or
2 engaging in any other activity regulated by this chapter.

3 (b) This section shall supersede any prohibition on the
4 possession, carrying or transportation of pistols or revolvers
5 or ammunition therefor contained in any other provision of this
6 chapter.

7 (c) The provisions of this section shall not exempt any
8 person actually engaged in hunting or fishing from obtaining any
9 hunting or fishing license or stamp required by the division of
10 natural resources.

11 **§20-2-37. Display of license, etc., by persons in possession of**
12 **hunting, fishing, etc., paraphernalia.**

13 (a) Any person having in his or her possession in or near
14 the fields or woods, or about the streams of this state, any
15 dog, ~~gun~~ rifle, shotgun, fishing rod or other hunting, fishing
16 or trapping paraphernalia, shall, upon demand of any officer
17 authorized to enforce the provisions of this chapter, state his
18 or her correct name and address, and shall exhibit for
19 inspection:

20 ~~(a)~~ (1) All applicable licenses and documents set forth in
21 section thirty-six of this article; and

22 ~~(b)~~ (2) All ~~firearms~~ and rifles, shotguns, wildlife and
23 non-firearm implements of hunting which he or she may have in
24 his or her possession.

1 (b) For the purposes of subsection (a) of this section,
2 there shall be a presumption that a person who carries a
3 handgun, unless he or she actually uses the handgun for hunting
4 purposes, is carrying the handgun for lawful self-defense or
5 another lawful purposes other than hunting or fishing, subject
6 to rebuttal by the state by proof beyond a reasonable doubt.

7 (c) Nothing in this section may be construed as authorizing
8 searches that violate article three, section six of the West
9 Virginia Constitution or the Fourth Amendment to the
10 Constitution of the United States, nor may anything in this
11 section be construed as effecting a waiver of these
12 constitutional provisions.

13 **§20-2-421. Class A-1 small arms hunting stamp.**

14 (a) ~~Notwithstanding the provisions of section two, article~~
15 ~~seven, chapter sixty-one of this code,~~ A Class A-1 stamp is a
16 small arms hunting stamp. To be eligible to get a Class A-1
17 stamp, a person must be legally able to possess a ~~firearm~~ pistol
18 or revolver under federal law and the laws of this state. If a
19 person is otherwise qualified, a Class A-1 stamp may be issued
20 to a person who is at least twenty-one years of age ~~or older~~ who
21 holds a valid resident or nonresident hunting license, or to a
22 person who is a resident sixty-five years of age or older, but a
23 Class A-1 stamp shall never be issued to a person who has been
24 convicted of a misdemeanor associated with the use of firearms

1 or dangerous weapons or who ~~has been convicted of a felony~~ is
2 prohibited by federal law or section seven, article seven,
3 chapter sixty-one of this code from possessing a pistol or
4 revolver.

5 (b) A Class A-1 stamp entitles the licensee to hunt, as
6 otherwise permitted by the provisions of this chapter, but only
7 during small game and big game seasons as established annually
8 by the Director, with either a revolver or pistol which has a
9 barrel at least four inches in length. Unless otherwise
10 permitted by ~~the Code of West Virginia~~ this code, or unless the
11 licensee is also licensed to carry concealed pistols and
12 revolvers under section four, article seven, chapter sixty-one
13 of this code or otherwise authorized by the laws of this state
14 to carry a concealed pistol or revolver, a Class A-1 stamp
15 entitles the licensee to carry or have in his or her possession
16 only one revolver or pistol when going to and from his or her
17 home or residence and a place of hunting and while hunting:
18 *Provided,* That the Class A-1 stamp may not be valid unless the
19 licensee has in his or her possession a valid resident or
20 nonresident hunting license or is a resident sixty-five years of
21 age or older: ~~*Provided, however,* That at all times, when not~~
22 ~~actually hunting, the revolver or pistol shall be unloaded.~~
23 While hunting, the licensee shall carry the revolver or pistol
24 with which the licensee is hunting in an unconcealed and easily

1 ~~visible place~~ a manner that is not concealed, as defined in
2 section two, article seven, chapter sixty-one of this code,
3 unless the licensee is also licensed to carry concealed pistols
4 and revolvers under section four, article seven, chapter sixty-
5 one of this code or otherwise authorized by the laws of this
6 state to carry a concealed pistol or revolver, or as otherwise
7 provided by this code. The fee for the stamp is eight dollars.

8 (c) A lifetime Class A-1 stamp may be issued to anyone
9 otherwise qualified and holding a valid Class A-L or AB-L
10 license or to a resident sixty-five years of age or older. The
11 lifetime Class A-1 stamp will be issued in a form prescribed by
12 the Director. The fee for a lifetime Class A-I stamp is seventy-
13 five dollars.

14 (d) All fees collected for the issuance of the Class A-1
15 and lifetime Class A-1 stamps shall be deposited in the State
16 Treasury and credited to the law-enforcement section of the
17 Division of Natural Resources. The fees collected shall be paid
18 out of the State Treasury on order of the Director and used
19 solely for law-enforcement purposes.

20 (e) Any person convicted of a misdemeanor associated with
21 the use of firearms or dangerous weapons ~~or convicted of a~~
22 ~~felony,~~ or any person who becomes ~~legally unable to possess a~~
23 ~~firearm~~ prohibited by federal law or section seven, article
24 seven, chapter sixty-one of this code from possessing a pistol

1 or revolver shall immediately surrender the stamp to the
2 Division of Natural Resources. A holder of a Class A-1 or
3 lifetime Class A-1 stamp is required to purchase the appropriate
4 base license before participating in the activities specified in
5 this section, except as noted.

6 **§20-2-42p. Class RG resident and Class RRG nonresident firearm**
7 **deer hunting stamp for an additional deer.**

8 The Director has the authority to issue a Class RG resident
9 and a Class RRG nonresident ~~gun~~ firearm deer hunting stamp when
10 deemed essential for the proper management of the wildlife
11 resources. These stamps allow the licensee to hunt and take an
12 additional deer as designated by the Director. The fee for a
13 Class RG stamp is twenty dollars and the fee for a Class RRG
14 stamp is forty dollars. The Director may promulgate rules in
15 accordance with article three, chapter twenty-nine-a of this
16 code governing the issuance and use of these stamps. These
17 stamps require that the licensee purchase the appropriate base
18 license before participating in the activities specified in this
19 section, except as noted.

20 **§20-2-46e. Class Q special hunting permit for disabled persons.**

21 (a) A Class Q permit is a special statewide hunting permit
22 entitling the permittee to hunt all legal species of game during
23 the designated hunting seasons from a motor vehicle in
24 accordance with the provisions of this section.

1 (b) A permit form shall be furnished by the director to an
2 applicant who meets the following requirements:

3 (1) He or she is permanently disabled in the lower
4 extremities; and

5 (2) He or she holds a valid resident or nonresident
6 statewide hunting license, a senior citizens license or is
7 otherwise exempt from the license requirement.

8 (c) A licensed physician must certify the applicant's
9 permanent disability by completing the permit form. When
10 completed, the permit form constitutes a Class Q permit. The
11 Class Q permit and a completed license application shall be
12 submitted to the division, which will issue a wallet sized card
13 to the permittee. The card and all other documents and
14 identification required to be carried by this article shall be
15 in the permittee's possession when hunting.

16 (d) A Class Q permit entitles the holder to hunt from a
17 motor vehicle and, notwithstanding the provisions of subdivision
18 (9), section five of this article, to possess a loaded ~~firearm~~
19 rifle or shotgun in a motor vehicle, but only under the
20 following circumstances:

21 (1) The motor vehicle is stationary;

22 (2) The engine of the motor vehicle is not operating;

1 (3) The permittee and one individual, who is at least
2 sixteen years of age, to assist the permittee are the only
3 occupants of the vehicle;

4 (4) The individual assisting the permittee may not hunt
5 with a firearm, bow or cross-bow while assisting the permittee;

6 (5) The vehicle is not parked on the right-of-way of any
7 public road or highway; and

8 (6) The permittee observes all other pertinent laws and
9 regulations.

10 (e) The director may propose rules for legislative approval
11 in accordance with the provisions of article three, chapter
12 twenty-nine-a of this code setting forth the qualifications of
13 applicants and the permitting process.

14 **ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

15 **§20-7-9. Violations of chapter generally; penalties.**

16 (a) Any person ~~violating~~ who violates any ~~of the provisions~~
17 provision of this chapter or rules promulgated under the
18 provisions of this chapter, ~~the punishment~~ for which another
19 punishment is not prescribed by law, ~~shall be~~ is guilty of a
20 misdemeanor and, upon conviction thereof, shall for each offense
21 be fined not less than twenty dollars nor more than three
22 hundred dollars, ~~or~~ confined in jail for not less than ten days
23 or more than one hundred days, or ~~be both, fined and imprisoned~~
24 ~~within the limitations aforesaid~~ and, in the case of a violation

1 by a corporation, every officer or agent thereof directing or
2 engaging in such violation ~~shall be~~ is guilty of a misdemeanor
3 and, upon conviction thereof, shall be subject to the same
4 penalties and punishment as herein provided. ~~Provided, That~~

5 (b) Any person violating who violates subdivision (3),
6 section five, article two of this chapter ~~shall be~~ is guilty of
7 a misdemeanor and, upon conviction thereof, shall be fined not
8 less than one hundred dollars nor more than five hundred dollars
9 and shall be ~~imprisoned~~ confined in jail for not less than ten
10 days nor more than one hundred days. ~~Provided, however, That~~

11 (c) Any person who violates subdivision (10), section five,
12 article two of this chapter is guilty of a misdemeanor and, upon
13 conviction thereof, shall be fined not less than twenty dollars
14 nor more than four hundred dollars, confined in jail for not
15 less than ten days or more than one hundred days, or both.

16 (d) Any person who violates subdivision (18), section five,
17 article two of this chapter is guilty of a felony and, upon
18 conviction thereof, shall be fined not more than five hundred
19 dollars, imprisoned for not less than six months nor more than
20 three years, or both.

21 (e) Any person who is in violation of violates section
22 twenty-seven, article two of this chapter ~~as a result of their~~
23 ~~failure~~ by failing to have a valid Class E nonresident hunting
24 and trapping license, as defined by section forty-two-d of this

1 article, or a valid Class EE nonresident bear hunting license,
2 as defined by section forty-two-e of this article, ~~shall be~~ is
3 guilty of a misdemeanor and, upon conviction thereof, shall be
4 fined not less than two hundred fifty dollars nor more than five
5 hundred dollars, ~~or~~ confined in jail for not less than ten days
6 nor more than one hundred days, or both. ~~fined and imprisoned:~~
7 ~~Provided further, That~~

8 (f) Any person who ~~is in violation of~~ violates section
9 twenty-seven, article two of this chapter ~~as a result of their~~
10 ~~failure by failing~~ to have a Class F nonresident fishing
11 license, as defined by section forty-two-f of this article,
12 ~~shall be~~ is guilty of a misdemeanor and, upon conviction
13 thereof, shall be fined not less than one hundred dollars nor
14 more than three hundred dollars, ~~or~~ confined in jail for not
15 less than ten days nor more than one hundred days, or both.
16 ~~fined and imprisoned: And provided further, That~~

17 (g) Any person ~~violating~~ who violates any parking or
18 speeding regulations as promulgated by the director on any state
19 parks, state forests, public hunting and fishing areas and all
20 other lands and waters owned, leased or under the control of the
21 Division of Natural Resources ~~shall be~~ is guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined not
23 less than two dollars nor more than one hundred dollars, ~~or~~

- 1 ~~imprisoned~~ confined in jail for not more than ten days, or both
2 ~~fined and imprisoned.~~

NOTE: The purpose of this bill is to clarify the applicability of certain hunting regulations to the carrying of firearms. This bill repeals limitations on how handguns may be carried in vehicles or in wooded areas or while bowhunting and clarifies miscellaneous other firearm regulations to only apply to rifles and shotguns. This bill also exempts individuals licensed or otherwise authorized to carry concealed handguns from certain regulations on the manner in which other firearms may be carried or transported in wooded areas or vehicles.

Strike-throughs indicate language which would be eliminated; underscoring indicates new language which would be added.

This bill was proposed by Jim Mullins <jmullins@wvcdl.org>