

bill to exempt concealed handgun licensees from the state gun-
free schools law

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[Effective from passage]

A BILL to amend and reenact §61-7-11a and §61-7-14 of the code of West Virginia, 1931, as amended, all relating to exempting individuals licensed to carry concealed weapons from the prohibition on possessing deadly weapons on premises of educational facilities.

WHEREAS, ; , therefore

Be it enacted by the Legislature of West Virginia:

That §61-7-11a and §61-7-14 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

1 **ARTICLE 7. DANGEROUS WEAPONS.**

2 **§61-7-11a. Possessing deadly weapons on premises of educational**
3 **facilities; reports by school principals; suspension**
4 **of driver license; possessing deadly weapons on**
5 **premises housing courts of law.**

6 (a) The Legislature hereby finds that the safety and
7 welfare of the citizens of this state are inextricably dependent
8 upon assurances of safety for children attending, and the
9 persons employed by, schools in this state and for those persons
10 employed with the judicial department of this state. It is for
11 the purpose of providing such assurances of safety, therefore,
12 that subsections (b), (g) and (h) of this section are enacted as
13 a reasonable regulation of the manner in which citizens may
14 exercise those rights accorded to them pursuant to section
15 twenty-two, article three of the Constitution of the state of
16 West Virginia.

17 (b) (1) It shall be unlawful for any person to possess any
18 firearm or any other deadly weapon on any school bus as defined
19 in section one, article one, chapter seventeen-a of this code,
20 or in or on any public or private primary or secondary education
21 building, structure, facility or grounds thereof, including any
22 vocational education building, structure, facility or grounds
23 thereof where secondary vocational education programs are
24 conducted or at any school-sponsored function.

1 (2) This subsection shall not apply to:

2 (A) A law-enforcement officer ~~acting in his or her official~~
3 ~~capacity~~ or law-enforcement official, as defined in §30-29-1;

4 (B) A person specifically authorized by the board of
5 education of the county or principal of the school where the
6 property is located to conduct programs with valid educational
7 purposes;

8 (C) A person who, as otherwise permitted by the provisions
9 of this article, possesses an unloaded firearm or deadly weapon
10 in a motor vehicle, or leaves an unloaded firearm or deadly
11 weapon in a locked motor vehicle;

12 (D) Programs or raffles conducted with the approval of the
13 county board of education or school which include the display of
14 unloaded firearms; ~~or~~

15 (E) The official mascot of West Virginia University,
16 commonly known as "The Mountaineer", acting in his or her
17 official capacity;

18 (F) Any person licensed under section four of this article
19 to carry concealed weapons or any person exempted from the
20 requirement to obtain a license to carry concealed weapons by
21 subsections (3) through (9), section six of this article; or

22 (G) Any qualified law enforcement officer under 18 U.S.C. §
23 926B or qualified retired law enforcement officer under 18
24 U.S.C. § 926C.

1 (3) Any person violating this subsection ~~shall be~~ is guilty
2 of a felony and, upon conviction thereof, shall be imprisoned ~~in~~
3 ~~the penitentiary of this state~~ for a definite term ~~of years~~ of
4 not less than two years nor more than ten years, ~~or~~ fined not
5 more than five thousand dollars, or both.

6 (c) It shall be the duty of the principal of each school
7 subject to the authority of the state board of education to
8 report any violation of subsection (b) of this section
9 discovered by such principal to the state superintendent of
10 schools within seventy-two hours after such violation occurs.
11 The state board of education shall keep and maintain such
12 reports and may prescribe rules establishing policy and
13 procedures for the making and delivery of the same as required
14 by this subsection. In addition, it shall be the duty of the
15 principal of each school subject to the authority of the state
16 board of education to report any violation of subsection (b) of
17 this section discovered by such principal to the appropriate
18 local office of the ~~division of public safety~~ state police
19 within seventy-two hours after such violation occurs.

20 (d) In addition to the methods of disposition provided by
21 article five, chapter forty-nine of this code, any court which
22 adjudicates a person who is fourteen years of age or older as
23 delinquent for a violation of subsection (b) of this section
24 may, in its discretion, order the division of motor vehicles to

1 suspend any driver's license or instruction permit issued to
2 such person for such period of time as the court may deem
3 appropriate, such suspension, however, not to extend beyond such
4 person's nineteenth birthday; or, where such person has not been
5 issued a driver's license or instruction permit by this state,
6 order the division of motor vehicles to deny such person's
7 application for the same for such period of time as the court
8 may deem appropriate, such denial, however, not to extend beyond
9 such person's nineteenth birthday. Any suspension ordered by the
10 court pursuant to this subsection shall be effective upon the
11 date of entry of such order. Where the court orders the
12 suspension of a driver's license or instruction permit pursuant
13 to this subsection, the court shall confiscate any driver's
14 license or instruction permit in the adjudicated person's
15 possession and forward the same to the division of motor
16 vehicles.

17 (e) (1) If a person eighteen years of age or older is
18 convicted of violating subsection (b) of this section, and if
19 such person does not act to appeal such conviction within the
20 time periods described in subdivision (2) of this subsection,
21 such person's license or privilege to operate a motor vehicle in
22 this state shall be revoked in accordance with the provisions of
23 this section.

1 (2) The clerk of the court in which the person is convicted
2 as described in subdivision (1) of this subsection shall forward
3 to the commissioner a transcript of the judgment of conviction.
4 If the conviction is the judgment of a magistrate court, the
5 magistrate court clerk shall forward such transcript when the
6 person convicted has not requested an appeal within twenty days
7 of the sentencing for such conviction. If the conviction is the
8 judgment of a circuit court, the circuit clerk shall forward
9 such transcript when the person convicted has not filed a notice
10 of intent to file a petition for appeal or writ of error within
11 thirty days after the judgment was entered.

12 (3) If, upon examination of the transcript of the judgment
13 of conviction, the commissioner shall determine that the person
14 was convicted as described in subdivision (1) of this
15 subsection, the commissioner shall make and enter an order
16 revoking such person's license or privilege to operate a motor
17 vehicle in this state for a period of one year, or, in the event
18 the person is a student enrolled in a secondary school, for a
19 period of one year or until the person's twentieth birthday,
20 whichever is the greater period. The order shall contain the
21 reasons for the revocation and the revocation period. The order
22 of suspension shall advise the person that because of the
23 receipt of the court's transcript, a presumption exists that the
24 person named in the order of suspension is the same person named

1 in the transcript. The commissioner may grant an administrative
2 hearing which substantially complies with the requirements of
3 the provisions of section two, article five-a, chapter
4 seventeen-c of this code upon a preliminary showing that a
5 possibility exists that the person named in the notice of
6 conviction is not the same person whose license is being
7 suspended. Such request for hearing shall be made within ten
8 days after receipt of a copy of the order of suspension. The
9 sole purpose of this hearing shall be for the person requesting
10 the hearing to present evidence that he or she is not the person
11 named in the notice. ~~In the event~~ If the commissioner grants an
12 administrative hearing, the commissioner shall stay the license
13 suspension pending the commissioner's order resulting from the
14 hearing.

15 (4) For the purposes of this subsection, a person is
16 convicted when such person enters a plea of guilty or is found
17 guilty by a court or jury.

18 (f) (1) It shall be unlawful for any parent(s), guardian(s)
19 or custodian(s) of a person less than eighteen years of age who
20 knows that said person is in violation of subsection (b) of this
21 section, or who has reasonable cause to believe that said
22 person's violation of said subsection is imminent, to fail to
23 immediately report such knowledge or belief to the appropriate
24 school or law-enforcement officials.

1 (2) Any person violating this subsection ~~shall be~~ is guilty
2 of a misdemeanor, and, upon conviction thereof, shall be fined
3 not more than one thousand dollars, ~~or shall be~~ confined in jail
4 for not more than one year, or both.

5 (g) (1) It shall be unlawful for any person to possess any
6 firearm or any other deadly weapon on any premises which houses
7 a court of law ~~or in the offices of a family law master~~.

8 (2) This subsection shall not apply to:

9 (A) A law-enforcement officer acting in his or her official
10 capacity; and

11 (B) A person exempted from the provisions of this
12 subsection by order of record entered by a court with
13 jurisdiction over such premises or offices.

14 (3) Any person violating this subsection ~~shall be~~ is guilty
15 of a misdemeanor, and, upon conviction thereof, shall be fined
16 not more than one thousand dollars, ~~or~~ shall be confined in jail
17 for not more than one year, or both.

18 (h) (1) It shall be unlawful for any person to possess any
19 firearm or any other deadly weapon on any premises which houses
20 a court of law ~~or in the offices of a family law master~~ with the
21 intent to commit a crime.

22 (2) Any person violating this subsection ~~shall be~~ is guilty
23 of a felony, and, upon conviction thereof, shall be imprisoned
24 ~~in the penitentiary of this state~~ for a definite term ~~of years~~

1 of not less than two years nor more than ten years, ~~or~~ fined not
2 more than five thousand dollars, or both.

3 ~~(i) Nothing in this section may be construed to be in~~
4 ~~conflict with the provisions of federal law.~~

5 **§61-7-14. Right of certain persons to limit possession of**
6 **firearms on premises.**

7 Notwithstanding the provisions of this article, any owner,
8 lessee or other person charged with the care, custody and
9 control of real property may prohibit the carrying openly or
10 concealed of any firearm or deadly weapon on property under his
11 or her domain: *Provided*, That for purposes of this section
12 "person" means an individual or any entity which may acquire
13 title to real property.

14 Any person carrying or possessing a firearm or other deadly
15 weapon on the property of another who refuses to temporarily
16 relinquish possession of such firearm or other deadly weapon,
17 upon being requested to do so, or to leave such premises, while
18 in possession of such firearm or other deadly weapon, ~~shall be~~
19 is guilty of a misdemeanor and, upon conviction thereof, shall
20 be fined not more than one thousand dollars, ~~or~~ confined in ~~the~~
21 ~~county~~ jail for not more than six months, or both: *Provided*,
22 That the provisions of this section shall not apply to those
23 persons set forth in subsections (3) through (6) of section six
24 of this ~~code~~ article while such persons are acting in an

1 official capacity: ~~Provided, however, That under no~~
2 ~~circumstances may any person possess or carry or cause the~~
3 ~~possession or carrying of any firearm or other deadly weapon on~~
4 ~~the premises of any primary or secondary educational facility in~~
5 ~~this state unless such person is a law enforcement officer or he~~
6 ~~or she has the express written permission of the county school~~
7 ~~superintendent.~~

NOTE: The purpose of this bill is to exempt persons licensed to carry concealed weapons from the prohibition on possessing deadly weapons on premises of primary and secondary educational facilities. This bill also repeals obsolete statutory language in §61-7-14 that provided for the prohibition of deadly weapons on school property prior to the enactment of §61-7-11a(b).

Individuals licensed to carry concealed weapons are completely exempted from the federal Gun-Free School Zones Act, 18 U.S.C. § 922(q)(2)(B)(ii), and from state gun-free school laws in Alabama (Ala. Code §13A-11-72(e)), California (Cal. Penal Code § 626.9(1)), Delaware (Del. Code Title 11, § 1457), New Hampshire (no state gun-free schools law), Oregon (Ore. Rev. Stat. § 166.370(3)(d)), Rhode Island (R.I. Gen. Law § 11-47-60), and Utah (Utah Code §§ 76-10-505.5(3)(a) and 523(2)); many other states provide partial exemptions to their state laws (e.g., allowing licensed individuals to carry and store loaded handguns in vehicles driven or parked on school grounds) or reduce the penalty for violating their state laws from a felony to a misdemeanor if the person is licensed to carry concealed weapons.

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>