

bill to strengthen the state preemption law

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[Effective from passage]

A BILL to repeal §8-12-5a of the code of West Virginia, 1931, as amended; to amend and reenact §7-1-3, §8-12-5, §61-7-2, §61-7-11a and §61-7-14 of said code; and to further amend said code by adding thereto two new sections, designated §61-7-13 and §61-7-16, all relating to limitations upon the keeping and bearing of arms; defining terms; repealing language concerning county and municipal ordinances restricting firearms or ammunition; creating additional exceptions to certain restrictions on where deadly weapons may be possessed; declaring the provisions of the code to be the sole means by which the keeping and bearing of arms may be regulated; preempting any ordinance, rule, policy or administrative action inconsistent therewith; exceptions; authorizing public property owners to prohibit or restrict

1 the possession of deadly weapons in secure restricted
2 access areas; requiring all property owners that have
3 legally restricted or prohibited the possession or carrying
4 of weapons on their premises to give notice of such
5 prohibitions or restrictions by posting specified signs;
6 format of signs; effect of failure to properly post signs
7 indicating such prohibition or restriction.

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

9 That §8-12-5a of the code of West Virginia, 1931, as
10 amended, be repealed; that §7-1-3, §8-12-5, §61-7-2, §61-7-11a
11 and §61-7-14 of said code be amended and reenacted; and that
12 said code be further amended by adding thereto two new sections,
13 designated §61-7-13 and §61-7-16, all to read as follows:

14 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

15 **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

16 **§7-1-3. Jurisdiction, powers and duties.**

17 The county commissions, through their clerks, shall have
18 the custody of all deeds and other papers presented for record
19 in their counties and the same shall be preserved therein, or
20 otherwise disposed of as now is, or may be prescribed by law.
21 They shall have jurisdiction in all matters of probate, the
22 appointment and qualification of personal representatives,
23 guardians, committees, curators and the settlement of their
24 accounts and in all matters relating to apprentices. They shall

1 also, under the rules as now are or may be prescribed by law,
2 have the superintendence and administration of the internal
3 police and fiscal affairs of their counties, including the
4 establishment and regulation of roads, ways, streets, avenues,
5 drives and the like, and the naming or renaming thereof, in
6 cooperation with local postal authorities, the division of
7 highways and the directors of county emergency communications
8 centers, to assure uniform, nonduplicative conversion of all
9 rural routes to city-type addressing on a permanent basis,
10 bridges, public landings, ferries and mills, with authority to
11 lay and disburse the county levies. They shall, in all cases of
12 contest, judge of the election, qualification and returns of
13 their own members, and of all county and district officers,
14 subject to appeal as prescribed by law. The tribunals as have
15 been heretofore established by the Legislature under and by
16 virtue of section thirty-four, article VIII of the constitution
17 of one thousand eight hundred seventy-two, for police and fiscal
18 purposes, shall, until otherwise provided by law, remain and
19 continue as at present constituted in the counties in which they
20 have been respectively established, and shall be and act as to
21 police and fiscal matters in lieu of the county commission
22 herein mentioned, until otherwise provided by law. And until
23 otherwise provided by law, the clerk as is mentioned in section
24 twenty-six of said article, as amended, shall exercise any

1 powers and discharge any duties heretofore conferred on, or
2 required of, any court or tribunal established for judicial
3 purposes under said section, or the clerk of the court or
4 tribunal, respectively, respecting the recording and
5 preservation of deeds and other papers presented for record,
6 matters of probate, the appointment and qualification of
7 personal representatives, guardians, committees, curators and
8 the settlement of their accounts and in all matters relating to
9 apprentices. ~~The county commission may not limit the right of~~
10 ~~any person to purchase, possess, transfer, own, carry,~~
11 ~~transport, sell or store any revolver, pistol, rifle or shotgun~~
12 ~~or any ammunition or ammunition components to be used therewith~~
13 ~~nor to so regulate the keeping of gunpowder so as to, directly~~
14 ~~or indirectly, prohibit the ownership of the ammunition:~~
15 *Provided,* ~~That no provision in this section may be construed to~~
16 ~~limit the authority of a county to restrict the commercial use~~
17 ~~of real estate in designated areas through planning or zoning~~
18 ~~ordinances.~~

1 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

2 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
3 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
4 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
5 **MUNICIPALITIES.**

6 **§8-12-5. General powers of every municipality and the governing**
7 **body thereof.**

8 In addition to the powers and authority granted by: (i) The
9 constitution of this state; (ii) other provisions of this
10 chapter; (iii) other general law; and (iv) any charter, and to
11 the extent not inconsistent or in conflict with any of the
12 foregoing except special legislative charters, every
13 municipality and the governing body thereof shall have plenary
14 power and authority therein by ordinance or resolution, as the
15 case may require, and by appropriate action based thereon:

16 (1) To lay off, establish, construct, open, alter, curb,
17 recurve, pave or repave and keep in good repair, or vacate,
18 discontinue and close, streets, avenues, roads, alleys, ways,
19 sidewalks, drains and gutters, for the use of the public, and to
20 improve and light the same, and have them kept free from
21 obstructions on or over them which have not been authorized
22 pursuant to the succeeding provisions of this subdivision; and,
23 subject to such terms and conditions as the governing body shall
24 prescribe, to permit, without in any way limiting the power and

1 authority granted by the provisions of article sixteen of this
2 chapter, any person to construct and maintain a passageway,
3 building or other structure overhanging or crossing the airspace
4 above a public street, avenue, road, alley, way, sidewalk or
5 crosswalk, but before any permission for any person to construct
6 and maintain a passageway, building or other structure
7 overhanging or crossing any airspace is granted, a public
8 hearing thereon shall be held by the governing body after
9 publication of a notice of the date, time, place and purpose of
10 the public hearing has been published as a Class I legal
11 advertisement in compliance with the provisions of article
12 three, chapter fifty-nine of this code and the publication area
13 for the publication shall be the municipality: *Provided*, That
14 any permit so granted shall automatically cease and terminate in
15 the event of abandonment and nonuse thereof for the purposes
16 intended for a period of ninety days, and all rights therein or
17 thereto shall revert to the municipality for its use and
18 benefit;

19 (2) To provide for the opening and excavation of streets,
20 avenues, roads, alleys, ways, sidewalks, crosswalks and public
21 places belonging to the municipality and regulate the conditions
22 under which any such opening may be made;

23 (3) To prevent by proper penalties the throwing, depositing
24 or permitting to remain on any street, avenue, road, alley, way,

1 sidewalk, square or other public place any glass, scrap iron,
2 nails, tacks, wire, other litter or any offensive matter or
3 anything likely to injure the feet of individuals or animals or
4 the tires of vehicles;

5 (4) To regulate the use of streets, avenues, roads, alleys,
6 ways, sidewalks, crosswalks and public places belonging to the
7 municipality, including the naming or renaming thereof, and to
8 consult with local postal authorities, the division of highways
9 and the directors of county emergency communications centers to
10 assure uniform, nonduplicative addressing on a permanent basis;

11 (5) To regulate the width of streets, avenues and roads,
12 and, subject to the provisions of article eighteen of this
13 chapter, to order the sidewalks, footways and crosswalks to be
14 paved, repaved, curbed or recurbed and kept in good order, free
15 and clean, by the owners or occupants thereof or of the real
16 property next adjacent thereto;

17 (6) To establish, construct, alter, operate and maintain,
18 or discontinue, bridges, tunnels and ferries and approaches
19 thereto;

20 (7) To provide for the construction and maintenance of
21 water

22 drains, the drainage of swamps or marshlands and drainage
23 systems;

1 (8) To provide for the construction, maintenance and
2 covering over of watercourses;

3 (9) To control and administer the waterfront and waterways
4 of the municipality and to acquire, establish, construct,
5 operate and maintain and regulate flood control works, wharves
6 and public landings, warehouses and all adjuncts and facilities
7 for navigation and commerce and the utilization of the
8 waterfront and waterways and adjacent property;

9 (10) To prohibit the accumulation and require the disposal
10 of garbage, refuse, debris, wastes, ashes, trash and other
11 similar accumulations whether on private or public property:
12 *Provided, That, in the event the municipality annexes an area*
13 *which has been receiving solid waste collection services from a*
14 *certificated solid waste motor carrier, the municipality and the*
15 *solid waste motor carrier may negotiate an agreement for*
16 *continuation of the private solid waste motor carrier services*
17 *for a period of time, not to exceed three years, during which*
18 *time the certificated solid waste motor carrier may continue to*
19 *provide exclusive solid waste collection services in the annexed*
20 *territory;*

21 (11) To construct, establish, acquire, equip, maintain and
22 operate incinerator plants and equipment and all other
23 facilities for the efficient removal and destruction of garbage,
24 refuse, wastes, ashes, trash and other similar matters;

1 (12) To regulate or prohibit the purchase or sale of
2 articles intended for human use or consumption which are unfit
3 for use or consumption, or which may be contaminated or
4 otherwise unsanitary;

5 (13) To prevent injury or annoyance to the public or
6 individuals from anything dangerous, offensive or unwholesome;

7 (14) To regulate the keeping of gunpowder and other
8 combustibles: Provided, That any regulation of the keeping of
9 gunpowder may not act, directly or indirectly, to prohibit the
10 otherwise lawful ownership of gunpowder or ammunition;

11 (15) To make regulations guarding against danger or damage
12 by fire;

13 ~~(16) To arrest, convict and punish any individual for~~
14 ~~carrying about his or her person any revolver or other pistol,~~
15 ~~dirk, bowie knife, razor, slingshot, billy, metallic or other~~
16 ~~false knuckles or any other dangerous or other deadly weapon of~~
17 ~~like kind or character;~~

18 ~~(17)~~ To arrest, convict and punish any person for
19 importing, printing, publishing, selling or distributing any
20 pornographic publications;

21 ~~(18)~~ (17) To arrest, convict and punish any person for
22 keeping a house of ill fame, or for letting to another person
23 any house or other building for the purpose of being used or
24 kept as a house of ill fame, or for knowingly permitting any

1 house owned by him or her or under his or her control to be kept
2 or used as a house of ill fame, or for loafing, boarding or
3 loitering in a house of ill fame, or frequenting same;

4 ~~(19)~~ (18) To prevent and suppress conduct and practices
5 which are immoral, disorderly, lewd, obscene and indecent;

6 ~~(20)~~ (19) To prevent the illegal sale of intoxicating
7 liquors, drinks, mixtures and preparations;

8 ~~(21)~~ (20) To arrest, convict and punish any individual for
9 driving or operating a motor vehicle while intoxicated or under
10 the influence of liquor, drugs or narcotics;

11 ~~(22)~~ (21) To arrest, convict and punish any person for
12 gambling or keeping any gaming tables, commonly called "A, B,
13 C," or "E, O," table or faro bank or keno table, or table of
14 like kind, under any denomination, whether the gaming table be
15 played with cards, dice or otherwise, or any person who shall be
16 a partner or concerned in interest, in keeping or exhibiting the
17 table or bank, or keeping or maintaining any gaming house or
18 place, or betting or gambling for money or anything of value;

19 ~~(23)~~ (22) To provide for the elimination of hazards to
20 public health and safety and to abate or cause to be abated
21 anything which in the opinion of a majority of the governing
22 body is a public nuisance;

23 ~~(24)~~ (23) To license, or for good cause to refuse to
24 license in a particular case, or in its discretion to prohibit

1 in all cases, the operation of pool and billiard rooms and the
2 maintaining for hire of pool and billiard tables notwithstanding
3 the general law as to state licenses for any such business and
4 the provisions of section four, article thirteen of this
5 chapter; and when the municipality, in the exercise of its
6 discretion, refuses to grant a license to operate a pool or
7 billiard room, mandamus may not lie to compel the municipality
8 to grant the license unless it shall clearly appear that the
9 refusal of the municipality to grant a license is discriminatory
10 or arbitrary; and in the event that the municipality determines
11 to license any business, the municipality has plenary power and
12 authority and it shall be the duty of its governing body to make
13 and enforce reasonable ordinances regulating the licensing and
14 operation of the businesses;

15 ~~(25)~~ (24) To protect places of divine worship and to
16 preserve peace and order in and about the premises where held;

17 ~~(26)~~ (25) To regulate or prohibit the keeping of animals or
18 fowls and to provide for the impounding, sale or destruction of
19 animals or fowls kept contrary to law or found running at large;

20 ~~(27)~~ (26) To arrest, convict and punish any person for
21 cruelly, unnecessarily or needlessly beating, torturing,
22 mutilating, killing, or overloading or overdriving or willfully
23 depriving of necessary sustenance any domestic animal;

1 ~~(28)~~ (27) To provide for the regular building of houses or
2 other structures, for the making of division fences by the
3 owners of adjacent premises and for the drainage of lots by
4 proper drains and ditches;

5 ~~(29)~~ (28) To provide for the protection and conservation of
6 shade or ornamental trees, whether on public or private
7 property, and for the removal of trees or limbs of trees in a
8 dangerous condition;

9 ~~(30)~~ (29) To prohibit with or without zoning the location
10 of occupied house trailers or mobile homes in certain
11 residential areas;

12 ~~(31)~~ (30) To regulate the location and placing of signs,
13 billboards, posters and similar advertising;

14 ~~(32)~~ (31) To erect, establish, construct, acquire, improve,
15 maintain and operate a gas system, a waterworks system, an
16 electric system or sewer system and sewage treatment and
17 disposal system, or any combination of the foregoing (subject to
18 all of the pertinent provisions of articles nineteen and twenty
19 of this chapter and particularly to the limitations or
20 qualifications on the right of eminent domain set forth in
21 articles nineteen and twenty), within or without the corporate
22 limits of the municipality, except that the municipality may not
23 erect any system partly without the corporate limits of the
24 municipality to serve persons already obtaining service from an

1 existing system of the character proposed and where the system
2 is by the municipality erected, or has heretofore been so
3 erected, partly within and partly without the corporate limits
4 of the municipality, the municipality has the right to lay and
5 collect charges for service rendered to those served within and
6 those served without the corporate limits of the municipality
7 and to prevent injury to the system or the pollution of the
8 water thereof and its maintenance in a healthful condition for
9 public use within the corporate limits of the municipality;

10 ~~(33)~~ (32) To acquire watersheds, water and riparian rights,
11 plant sites, rights-of-way and any and all other property and
12 appurtenances necessary, appropriate, useful, convenient or
13 incidental to any system, waterworks or sewage treatment and
14 disposal works, as aforesaid, subject to all of the pertinent
15 provisions of articles nineteen and twenty of this chapter;

16 ~~(34)~~ (33) To establish, construct, acquire, maintain and
17 operate and regulate markets and prescribe the time of holding
18 the same;

19 ~~(35)~~ (34) To regulate and provide for the weighing of
20 articles sold or for sale;

21 ~~(36)~~ (35) To establish, construct, acquire, maintain and
22 operate public buildings, municipal buildings or city halls,
23 auditoriums, arenas, jails, juvenile detention centers or homes,
24 motor vehicle parking lots or any other public works;

1 ~~(37)~~ (36) To establish, construct, acquire, provide, equip,
2 maintain and operate recreational parks, playgrounds and other
3 recreational facilities for public use and in this connection
4 also to proceed in accordance with the provisions of article
5 two, chapter ten of this code;

6 ~~(38)~~ (37) To establish, construct, acquire, maintain and
7 operate a public library or museum or both for public use;

8 ~~(39)~~ (38) To provide for the appointment and financial
9 support of a library board in accordance with the provisions of
10 article one, chapter ten of this code;

11 ~~(40)~~ (39) To establish and maintain a public health unit in
12 accordance with the provisions of section two, article two,
13 chapter sixteen of this code, which unit shall exercise its
14 powers and perform its duties subject to the supervision and
15 control of the West Virginia board of health and state bureau
16 for public health;

17 ~~(41)~~ (40) To establish, construct, acquire, maintain and
18 operate hospitals, sanitarium and dispensaries;

19 ~~(42)~~ (41) To acquire, by purchase, condemnation or
20 otherwise, land within or near the corporate limits of the
21 municipality for providing and maintaining proper places for the
22 burial of the dead and to maintain and operate the same and
23 regulate interments therein upon terms and conditions as to
24 price and otherwise as may be determined by the governing body

1 and, in order to carry into effect the authority, the governing
2 body may acquire any cemetery or cemeteries already established;

3 ~~(43)~~ (42) To exercise general police jurisdiction over any
4 territory without the corporate limits owned by the municipality
5 or over which it has a right-of-way;

6 ~~(44)~~ (43) To protect and promote the public morals, safety,
7 health, welfare and good order;

8 ~~(45)~~ (44) To adopt rules for the transaction of business
9 and the government and regulation of its governing body;

10 ~~(46)~~ (45) Except as otherwise provided, to require and take
11 bonds from any officers, when considered necessary, payable to
12 the municipality, in its corporate name, with such sureties and
13 in a penalty as the governing body may see fit, conditioned upon
14 the faithful discharge of their duties;

15 ~~(47)~~ (46) To require and take from the employees and
16 contractors such bonds in a penalty, with such sureties and with
17 such conditions, as the governing body may see fit;

18 ~~(48)~~ (47) To investigate and inquire into all matters of
19 concern to the municipality or its inhabitants;

20 ~~(49)~~ (48) To establish, construct, require, maintain and
21 operate such instrumentalities, other than free public schools,
22 for the instruction, enlightenment, improvement, entertainment,
23 recreation and welfare of the municipality's inhabitants as the

1 governing body may consider necessary or appropriate for the
2 public interest;

3 ~~(50)~~ (49) To create, maintain and operate a system for the
4 enumeration, identification and registration, or either, of the
5 inhabitants of the municipality and visitors thereto, or the
6 classes thereof as may be considered advisable;

7 ~~(51)~~ (50) To require owners, residents or occupants of
8 factory-built homes situated in a factory-built rental home
9 community with at least ten factory-built homes, to visibly post
10 the specific numeric portion of the address of each factory-
11 built home on the immediate premises of the factory-built home
12 of sufficient size to be visible from the adjoining street:
13 *Provided*, That in the event no numeric or other specific
14 designation of an address exists for a factory-built home
15 subject to the authorization granted by this subdivision, the
16 municipality has the authority to provide a numeric or other
17 specific designation of an address for the factory-built home
18 and require that it be posted in accordance with the authority
19 otherwise granted by this section.

20 ~~(52)~~ (51) To appropriate and expend not exceeding twenty-
21 five cents per capita per annum for advertising the municipality
22 and the entertainment of visitors;

1 ~~(53)~~ (52) To conduct programs to improve community
2 relations and public relations generally and to expend municipal
3 revenue for such purposes;

4 ~~(54)~~ (53) To reimburse applicants for employment by the
5 municipality for travel and other reasonable and necessary
6 expenses actually incurred by the applicants in traveling to and
7 from the municipality to be interviewed;

8 ~~(55)~~ (54) To provide revenue for the municipality and
9 appropriate the same to its expenses;

10 ~~(56)~~ (55) To create and maintain an employee benefits fund
11 which may not exceed one tenth of one percent of the annual
12 payroll budget for general employee benefits and which is set up
13 for the purpose of stimulating and encouraging employees to
14 develop and implement cost-saving ideas and programs and to
15 expend moneys from the fund for these purposes;

16 ~~(57)~~ (56) To enter into reciprocal agreements with
17 governmental subdivisions or agencies of any state sharing a
18 common border for the protection of people and property from
19 fire and for emergency medical services and for the reciprocal
20 use of equipment and personnel for these purposes; and

21 ~~(58)~~ (57) To provide penalties for the offenses and
22 violations of law mentioned in this section, subject to the
23 provisions of section one, article eleven of this chapter, and
24 such penalties may not exceed any penalties provided in this

1 chapter and chapter sixty-one of this code for like offenses and
2 violations.

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

4 **ARTICLE 7. DANGEROUS WEAPONS.**

5 **§61-7-2. Definitions.**

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

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

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

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

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

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

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

20 (6) "Metallic or false knuckles" means a set of finger
21 rings attached to a transverse piece to be worn over the front
22 of the hand for use as a weapon and constructed in such a manner
23 that, when striking another person with the fist or closed hand,
24 considerable physical damage may be inflicted upon the person

1 struck. The terms "metallic or false knuckles" shall include any
2 such instrument without reference to the metal or other
3 substance or substances from which the metallic or false
4 knuckles are made.

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

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

12 (9) "Deadly weapon" means an instrument which is designed
13 to be used to produce serious bodily injury or death or is
14 readily adaptable to such use. The term "deadly weapon" shall
15 include, but not be limited to, ~~the instruments defined in~~
16 ~~subdivisions (1) through (8), inclusive, of this section a~~
17 firearm, antique firearm, blackjack, nunchucka, metallic or
18 false knuckles, knife or other deadly weapons of like kind or
19 character which may be easily concealed on or about the person.
20 For the purposes of ~~section one a, article five, chapter~~
21 ~~eighteen-a of this code~~ §18A-5-1a and ~~section eleven-a, article~~
22 ~~seven of this chapter~~ §61-7-11a, in addition to the definition
23 of "knife" set forth in subdivision (3) of this section, the
24 term "deadly weapon" also includes any instrument included

1 within the definition of "knife" with a blade of three and one-
2 half inches or less in length. Additionally, for the purposes of
3 ~~§61-6-19, section one a, article five, chapter eighteen a of~~
4 ~~this code §18A-5-1a and section eleven a, article seven of this~~
5 ~~chapter §61-7-11a~~, the term "deadly weapon" includes explosive,
6 chemical, biological and radiological materials. Notwithstanding
7 any other provision of this section, the term "deadly weapon"
8 does not include any item or material owned by the school or
9 county board, intended for curricular use, and used by the
10 student at the time of the alleged offense solely for curricular
11 purposes.

12 (10) "Concealed" means hidden from ordinary observation so
13 as to prevent disclosure or recognition. A deadly weapon is
14 concealed when it is carried on or about the person in such a
15 manner that another person in the ordinary course of events
16 would not be placed on notice that the deadly weapon was being
17 carried.

18 (11) "Firearm" means:

19 (A) Any weapon (including a starter pistol) which will or
20 is designed to expel a projectile by action of an explosion;

21 (B) The frame or receiver of any such weapon; or

22 (C) Any firearm silencer.

1 (12) "Controlled substance" has the same meaning as ~~is~~
2 ~~ascribed to that term in subsection (d), section one hundred~~
3 ~~one, article one, chapter sixty-a of this code~~ §60A-1-101.

4 (13) "Drug" has the same meaning as ~~is ascribed to that~~
5 ~~term in subsection (1), section one hundred one, article one,~~
6 ~~chapter sixty-a of this code~~ §60A-1-101.

7 (14) "Alien" means any person not a citizen or national of
8 the United States.

9 (15) "Ammunition" means ammunition or cartridge cases,
10 primers, bullets, or propellant powder designed for use in any
11 firearm.

12 (16) "Antique firearm" means:

13 (A) Any firearm (including any firearm with a matchlock,
14 flintlock, percussion cap, or similar type of ignition system)
15 manufactured in or before 1898; or

16 (B) Any replica of any firearm described in paragraph (A)
17 if such replica:

18 (i) Is not designed or redesigned for using rimfire or
19 conventional centerfire fixed ammunition, or

20 (ii) Uses rimfire or conventional centerfire fixed
21 ammunition which is no longer manufactured in the United States
22 and which is not readily available in the ordinary channels of
23 commercial trade; or

1 (C) Any muzzle loading rifle, muzzle loading shotgun, or
2 muzzle loading pistol, which is designed to use black powder, or
3 a black powder substitute, and which cannot use fixed
4 ammunition. For purposes of this paragraph, the term "antique
5 firearm" shall not include any weapon which incorporates a
6 firearm frame or receiver, any firearm which is converted into a
7 muzzle loading weapon, or any muzzle loading weapon which can be
8 readily converted to fire fixed ammunition by replacing the
9 barrel, bolt, breechblock, or any combination thereof.

10 (17) "Conviction" or "convicted," for the purposes of
11 determining whether a person is disqualified under this article
12 from shipping, transporting, possessing or receiving any firearm
13 or other deadly weapon or obtaining a concealed weapon license,
14 does not include any conviction which has been expunged, or set
15 aside or for which a person has been pardoned or has had civil
16 rights restored, unless such pardon, expungement or restoration
17 of civil rights expressly provides that the person may not ship,
18 transport, possess or receive firearms. What constitutes a
19 conviction of a crime shall be determined in accordance with the
20 law of the jurisdiction in which the proceedings were held.

21 (18) "Court facility" means the courtroom of the supreme
22 court of appeals, a circuit court, a family court, a magistrate
23 court or a municipal court; judges', justices' or magistrates'
24 chambers; those portions of a courthouse designated as witness

1 rooms, jury deliberation rooms, attorney conference rooms,
2 prisoner holding cells or law library; offices of the court
3 clerks or other employees of the judicial department of this
4 state; but does not include any common area of ingress or egress
5 to a courthouse that provides access to the non-court facility
6 areas of a courthouse.

7 (19) "Courthouse" means:

8 (A) Any building owned by this state or a political
9 subdivision thereof that houses a court facility, exclusive of
10 any parking lot, parking garage or other area set aside for
11 vehicular travel or parking; or

12 (B) The portion of any other building that is leased by
13 this state or a political subdivision thereof, if a court
14 facility is housed within any portion of the leased premises,
15 exclusive of any parking lot, parking garage or other area set
16 aside for vehicular travel or parking or any portion of the
17 building not leased by this state or a political subdivision
18 thereof.

19 (20) "Crime punishable by imprisonment for a term exceeding
20 one year" does not include:

21 (A) Any Federal or State offenses pertaining to antitrust
22 violations, unfair trade practices, restraints of trade, or
23 other similar offenses relating to the regulation of business
24 practices; or

1 (B) Any State offense classified by the laws of the State
2 as a misdemeanor and punishable by a term of imprisonment of two
3 years or less.

4 (21) "Family or household member" has the same meaning as
5 in §48-27-204.

6 (22) "Firearm silencer" means any device for silencing,
7 muffling, or diminishing the report of a portable firearm,
8 including any combination of parts, designed or redesigned, and
9 intended for use in assembling or fabricating a firearm
10 silencer, and any part intended only for use in such assembly or
11 fabrication.

12 (23) "Fugitive from justice" means any person who has fled
13 from any State to avoid prosecution for a crime or to avoid
14 giving testimony in any criminal proceeding.

15 (24) "Handgun" means any firearm which has a short stock
16 and is designed to be held and fired by the use of a single hand
17 and includes any pistol or revolver.

18 (25) "Intimate partner" means, with respect to a person,
19 the spouse of the person, a former spouse of the person, an
20 individual who is a parent of a child of the person, and an
21 individual who cohabitates or has cohabited with the person.

22 (26) "Intoxicated":

23 (A) Means:

1 (i) Not having the normal use of mental or physical
2 faculties by reason of being under the influence of alcohol, a
3 controlled substance, a drug, or any combination thereof; or

4 (ii) Having a blood alcohol concentration of eight
5 hundredths of one percent or more, by weight; and

6 (B) §17C-5-8 and §17C-5-9 shall apply to this article
7 mutatis mutandis for determining whether a person is intoxicated
8 and protecting the right of a person to an independent chemical
9 test within a timely manner.

10 (27) "Law-enforcement officer" has the same meaning as in
11 §30-29-1.

12 (28) "Law-enforcement official" has the same meaning as in
13 §30-29-1.

14 (29) "Loaded," with respect to a firearm, means that the
15 firearm:

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

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

22 (C) Has live, unexpended ammunition in the cylinder, if the
23 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 of an otherwise unloaded firearm.

7 (30)(A) Except as otherwise provided in this subdivision,
8 "misdemeanor crime of domestic violence" means an offense that:

9 (i) Is a misdemeanor under Federal or State law; and

10 (ii) Has, as an element, the use or attempted use of
11 physical force, or the threatened use of a deadly weapon,
12 committed by a current or former spouse, parent, or guardian of
13 the victim, by a person with whom the victim shares a child in
14 common, by a person who is cohabiting with or has cohabited with
15 the victim as a spouse, parent, or guardian, or by a person
16 similarly situated to a spouse, parent, or guardian of the
17 victim.

18 (B) A person shall not be considered to have been convicted
19 of such an offense for purposes of this article, unless:

20 (i) The person was represented by counsel in the case, or
21 knowingly and intelligently waived the right to counsel in the
22 case; and

1 (ii) In the case of a prosecution for an offense described
2 in this paragraph for which a person was entitled to a jury
3 trial in the jurisdiction in which the case was tried, either:

4 (I) The case was tried by a jury, or

5 (II) The person knowingly and intelligently waived the
6 right to have the case tried by a jury, by guilty plea or
7 otherwise.

8 (31) "Private property owner" means any property owner
9 other than a public property owner.

10 (32) "Property owner" means an owner, lessee or other
11 person charged with the care, custody and control of real
12 property. For the purposes of this definition, "person" means
13 an individual or any entity which may acquire title to real
14 property.

15 (33) "Public property owner" means this state or any
16 political subdivision thereof, or any institution, agency or
17 other instrumentality thereof, in its capacity as a property
18 owner.

19 (34) "Readily accessible for immediate use" means that a
20 firearm, ammunition or other deadly weapon is carried on the
21 person or within such close proximity and in such a manner that
22 it can be retrieved and used as easily and quickly as if carried
23 on the person.

24 (35) "School bus" has the same meaning as in §17A-1-1.

1 (36) "School property":

2 (A) Means:

3 (i) Any public or private primary or secondary school
4 building and its improved grounds, whether leased or owned by
5 the school, including any vocational education building,
6 structure, facility or grounds thereof where secondary
7 vocational education programs are conducted; or

8 (ii) The area within a school bus when that school bus is
9 being used by any school described in subparagraph (i) of this
10 paragraph to transport one or more primary or secondary school
11 students to and from school-related activities, including
12 curricular, cocurricular, noncurricular, extracurricular and
13 supplementary activities; but

14 (B) Does not include:

15 (i) Any institution of higher education, public or private;
16 or

17 (ii) Any school bus when not in use.

18 (37) "Secure restricted access area":

19 (A) Means a secure area beyond a security perimeter and
20 security checkpoints where all visitors are screened for weapons
21 prohibited within the area, a secure weapon storage area is
22 provided and in which the safety of all occupants of the area is
23 protected by the security perimeter and the significant presence
24 of law-enforcement officers or professional security guards; and

1 (B) Does not include common areas of ingress and egress
2 open to the general public outside the security perimeter and
3 checkpoints.

4 (38) "Secure weapon storage area" means a facility
5 maintained in conjunction with a secure restricted access area,
6 school, courthouse or state court facility that:

7 (A) Provides free storage of any deadly weapon otherwise
8 lawful for the depositor to possess whose possession within the
9 secure restricted access area, school, courthouse or state court
10 facility is prohibited;

11 (B) Tags each weapon stored and issues a corresponding
12 receipt that protects the weapon from misplacement or erroneous
13 transfer and enables the depositor to retrieve the weapon upon
14 exiting the secure restricted access area, school, courthouse or
15 state court facility; and

16 (C) Which is open for retrieval at all times the secure
17 restricted access area, school, courthouse or state court
18 facility is occupied plus a reasonable amount of time thereafter
19 for a depositor who has lawfully entered and remained in the
20 secure restricted access area, school, courthouse or state court
21 facility to retrieve the weapon and not be unduly denied
22 restoration of his or her lawful possession of the weapon upon
23 leaving the secure restricted access area, school, courthouse or
24 state court facility.

1 (39) "Unloaded":

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

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

9 **§61-7-11a. Possessing deadly weapons on school property; reports**
10 **by school principals; suspension of driver license;**
11 **possessing deadly weapons in courthouses or court**
12 **facilities.**

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

1 (b) (1) ~~It shall be unlawful for any~~ Except as otherwise
2 provided in this subsection, no person ~~to~~ may possess any
3 ~~firearm or any other~~ deadly weapon:

4 (A) ~~On any school property; or bus, as defined in section~~
5 ~~one, article one, chapter seventeen-a of this code, or in or on~~
6 ~~any public or private primary or secondary education building,~~
7 ~~structure, facility or grounds thereof, including any vocational~~
8 ~~education building, structure, facility or grounds thereof where~~
9 ~~secondary vocational education programs are conducted or at any~~

10 (B) That portion of any property other than school property
11 that is open to the public and then exclusively used for school-
12 sponsored function functions or extracurricular activities,
13 while such functions or activities are occurring; or

14 (C) If the person is a minor or is a student of any primary
15 or secondary school, at any school-sponsored function or
16 extracurricular activity occurring on property not specified in
17 paragraphs (A) or (B) of this subdivision.

18 (2) This subsection shall not apply to:

19 (A) A law-enforcement officer acting in his or her official
20 capacity;

21 (B) A person specifically authorized by the board of
22 education of the county or principal of the school where the
23 property is located to conduct programs with valid educational
24 purposes;

1 (C) A person who, as otherwise permitted by the provisions
2 of this article, possesses ~~an unloaded firearm or~~ any deadly
3 weapon other than a loaded firearm, in a motor vehicle other
4 than a school bus, or leaves ~~an unloaded firearm or~~ any deadly
5 weapon other than a loaded firearm in a locked motor vehicle
6 other than a school bus;

7 (D) Programs or raffles conducted with the approval of the
8 county board of education or school which include the display of
9 unloaded firearms or other deadly weapons; ~~or~~

10 (E) Any person who possesses a deadly weapon as a part of
11 any program sponsored or facilitated by either the school or any
12 organization authorized by the school to conduct its programs
13 either on or off the school premises;

14 (F) A person possessing a knife or blade which he uses
15 customarily in his or her occupation, profession or trade;

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

19 (H) A person transporting a deadly weapon other than a
20 loaded firearm, while traversing school premises for the purpose
21 of gaining access to public or private lands open to hunting; or

22 (I) Any person authorized by the county school
23 superintendent in the case of the county schools, or the chief

1 administrative officer of a private school, in writing, to carry
2 such weapon.

3 Any exemption contained within this subsection only exempts
4 a person from the provisions of this subsection and does not
5 constitute an exemption from any other provision of this
6 article, including but not limited to §61-7-3.

7 (3) Each principal or other chief administrator of a public
8 or private school shall display at all public entrances to
9 school buildings, sports arenas, gymnasiums, stadiums, and
10 cafeterias; at the corners of school property that make a turn
11 of thirty (30) degrees or more and are not enclosed by fences,
12 walls, or other complete barriers with gates or controlled
13 entrances; at the gate or controlled entrances of enclosed
14 properties; and at the entrance of any access road for all open
15 areas owned, operated, leased, or controlled by the school,
16 signs conforming to the specifications of §61-7-16, which shall
17 contain the following text:

18 "UNLAWFUL POSSESSION OF A WEAPON ON SCHOOL PROPERTY IN WEST
19 VIRGINIA IS A FELONY.

20 "POSTED PURSUANT TO WV CODE §61-7-11a."

21 Failure to post the required signs shall bar any
22 prosecution under this subsection of any person who is at least
23 eighteen years of age and not a student of a primary or
24 secondary school. Failure to post the required signs shall not

1 prohibit any prosecution or other disciplinary action against
2 any minor or student.

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

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

23 (d) In addition to the methods of disposition provided by
24 article five, chapter forty-nine of this code, any court which

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

20 (e) (1) If a person eighteen years of age or older is
21 convicted of ~~violating~~ a felony under subsection (b) of this
22 section, and if such person does not act to appeal such
23 conviction within the time periods described in subdivision (2)
24 of this subsection, such person's license or privilege to

1 operate a motor vehicle in this state shall be revoked in
2 accordance with the provisions of this section.

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

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

1 the person that because of the receipt of the court's
2 transcript, a presumption exists that the person named in the
3 order of suspension is the same person named in the transcript.
4 The commissioner may grant an administrative hearing which
5 substantially complies with the requirements of the provisions
6 of ~~section two, article five a, chapter seventeen e~~ of this code
7 §17C-5A-2 upon a preliminary showing that a possibility exists
8 that the person named in the notice of conviction is not the
9 same person whose license is being suspended. Such request for
10 hearing shall be made within ten days after receipt of a copy of
11 the order of suspension. The sole purpose of this hearing shall
12 be for the person requesting the hearing to present evidence
13 that he or she is not the person named in the notice. ~~In the~~
14 ~~event~~ If the commissioner of motor vehicles grants an
15 administrative hearing, the commissioner shall stay the license
16 suspension pending the commissioner's order resulting from the
17 hearing.

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

21 (f) (1) It shall be unlawful for any parent(s), guardian(s)
22 or custodian(s) of ~~a person less than eighteen years of age~~ an
23 unemancipated minor who knows that ~~said person~~ the unemancipated
24 minor is in violation of subsection (b) of this section, or who

1 has reasonable cause to believe that said ~~person's~~ unemancipated
2 minor's violation of said subsection is imminent, to fail to
3 immediately report such knowledge or belief to the appropriate
4 school or law-enforcement officials.

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

9 (g) (1) ~~It shall be unlawful for~~ Except as provided by
10 subdivision (2) of this subsection, any person ~~to possess~~ who
11 possesses any ~~firearm or any other~~ deadly weapon ~~on any premises~~
12 ~~which houses a court of law or in the offices of a family law~~
13 ~~master~~ within any courthouse or court facility is guilty of a
14 misdemeanor, and, upon conviction thereof, shall be fined not
15 more than one thousand dollars, confined in jail for not more
16 than one year, or both.

17 (2) This subsection shall not apply to:

18 (A) ~~A law enforcement officer acting in his or her official~~
19 ~~capacity~~ Any person authorized to carry a concealed deadly
20 weapon pursuant to subsections (3), (4), (5), (6) or (8) of §61-
21 7-6; and or

22 (B) A person exempted from the provisions of this
23 subsection by order of record entered by a court with

1 jurisdiction over ~~such premises or offices~~ the applicable court
2 facility.

3 ~~(3) Any person violating this subsection shall be guilty of~~
4 ~~a misdemeanor, and, upon conviction thereof, shall be fined not~~
5 ~~more than one thousand dollars, or shall be confined in jail not~~
6 ~~more than one year, or both.~~ Any court facility without a secure
7 restricted access area shall provide a secure weapon storage
8 area in the same manner required of a secure restricted access
9 area. The lack of any secure weapon storage area does not exempt
10 any person from compliance with subdivision (1) of this
11 subsection.

12 (4) The chief judge having jurisdiction over a court
13 facility shall cause to be displayed at all public entrances to
14 the court facility and courthouse, signs conforming to the
15 specifications of §61-7-16, which shall contain the following
16 text:

17 "POSSESSION OF A DEADLY WEAPON IN A COURTHOUSE OR COURT
18 FACILITY IN WEST VIRGINIA IS PROHIBITED BY LAW.

19 "A SECURE WEAPON STORAGE AREA IS AVAILABLE FOR THE SECURE,
20 LAWFUL STORAGE OF YOUR WEAPON DURING YOUR VISIT.

21 "POSTED PURSUANT TO WV CODE §61-7-11a."

22 Failure to post the required signs shall prohibit any
23 prosecution under this subsection of any person licensed or
24 otherwise authorized to carry a concealed handgun. Failure to

1 post the required signs shall not prohibit any prosecution under
2 this subsection of any other person.

3 (h) ~~(1) It shall be unlawful for Any person to possess who,~~
4 with the intent to commit any crime, possesses any firearm or
5 any other deadly weapon within any courthouse or court facility,
6 ~~on any premises which houses a court of law or in the offices of~~
7 ~~a family law master with the intent to commit a crime.~~

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

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

15 **§61-7-13. Uniform law.**

16 (a) This article is uniformly applicable throughout this
17 state and in all its political subdivisions. The individual
18 right to keep and bear arms, being a fundamental individual
19 right that predates the Second Amendment of the United States
20 Constitution and Article III, §23 of the state constitution, and
21 being a constitutionally protected right in every part of this
22 state, the Legislature finds the need to provide uniform laws
23 throughout the state regulating the ownership, possession,
24 purchase, other acquisition, transport, storage, carrying, sale

1 or other transfer of firearms, air guns, their components and
2 their ammunition, and, except as specified in subsection (e) of
3 this section, to exercise exclusive occupation of the field of
4 regulation in these areas to the exclusion of all other
5 governmental authorities in this state. The Legislature intends
6 that the provisions of subsections (b) through (d) of this
7 section be liberally construed and that the provisions of
8 subsection (e) of this section be narrowly construed.

9 (b) Except as specifically provided by the United States
10 Constitution, the constitution of this state, federal law or a
11 specific provision of this code, any person, without further
12 license, permission, restriction, delay or process, may own,
13 possess, purchase, sell, transfer, transport, store or keep any
14 firearm, air gun, part of a firearm or air gun, their components
15 and their ammunition. No department, agency, authority, board,
16 commission, council, institution of higher education or other
17 entity of this state or any political subdivision thereof may
18 enact or enforce any ordinance, resolution, motion, rule or
19 policy, and no officer, director, appointee, employee or agent
20 of any such entity may take any administrative action,
21 pertaining to firearms, air guns, their components or their
22 ammunition other than those expressly authorized by the
23 Legislature by statute. For purposes of this subsection, a
24 statute that does not expressly refer to deadly weapons,

1 firearms, air guns, handguns, ammunition, or components or
2 combination thereof, shall not be construed to provide express
3 authorization.

4 (c) In addition to any other relief provided, the court
5 shall award costs and reasonable attorney fees to any person,
6 group or entity that prevails in a challenge to an ordinance,
7 resolution, motion, rule, policy or administrative action as
8 being in conflict with this section.

9 (d) In this section:

10 (1) The possession, transporting or carrying of firearms,
11 their components or their ammunition include, but are not
12 limited to, the possession, transporting or carrying, openly or
13 concealed on or about a person's person, of firearms, their
14 components or their ammunition; and

15 (2) "Air gun" means any weapon other than a firearm or
16 antique firearm which will or is designed to expel a projectile
17 by means of a compressed gas that generates a propelling force.

18 (e) This section does not apply to any of the following:

19 (1) A county or municipal zoning ordinance that regulates
20 or prohibits the commercial sale of firearms, air guns or
21 components or ammunition for firearms or air guns in areas zoned
22 for residential or agricultural uses;

23 (2) A county or municipal zoning ordinance that specifies
24 the hours of operation or the geographic areas where the

1 commercial sale of firearms, air guns or components or
2 ammunition for firearms or air guns may occur, provided that the
3 zoning ordinance is consistent with zoning ordinances for other
4 retail establishments in the same geographic area and does not
5 result in a de facto prohibition of the commercial sale of
6 firearms, air guns or components or ammunition for firearms or
7 air guns in areas zoned for commercial, retail or industrial
8 uses;

9 (3) The establishment of a secure restricted access area
10 and a secure weapon storage area in a public building and the
11 restriction or prohibition of weapons in the secure restricted
12 access area in a manner that does not violate §61-7-14;

13 (4) The otherwise lawful actions of a law-enforcement
14 officer or law-enforcement official acting within the scope of
15 his or her official duties;

16 (5) Any rules or administrative actions of a state, local
17 or regional correctional facility;

18 (6) Any resolution, motion, rule or policy adopted by the
19 state board of education, a county board of education or the
20 governing authority of an institution of higher education
21 relating to:

22 (A) Students receiving military training in the Reserved
23 Officers' Training Corps or other military training program
24 administered by the educational institution;

1 (B) Athletic events involving firearms or air guns; or

2 (C) Authorizing a resident of a dormitory located at the
3 institution to request only a roommate who will not possess
4 firearms, air guns, ammunition or other deadly weapons within
5 the dormitory room, providing for the exclusion of firearms, air
6 guns, ammunition or other deadly weapons from any dormitory room
7 whose residents make the election described in this paragraph,
8 reserving to the residents of any such room the right to
9 mutually agree to make or change an election under this
10 paragraph at any time, and to enforce any election under this
11 paragraph;

12 (7) Any regulation of the possession, carrying, storage,
13 transportation, use, care or maintenance of weapons owned by any
14 public agency; or

15 (8) Any regulation of the possession, carrying, storage,
16 transportation, use, care or maintenance of weapons in the
17 course of employment by a public agency by individuals who are:

18 (A) Employed as law-enforcement officers or security
19 officers; or

20 (B) Required to possess, carry, transport or store a weapon
21 by the employing agency.

1 §61-7-14. Right of certain persons to limit possession of
2 firearms or other deadly weapons on premises; notice
3 required.

4 (a) Notwithstanding the provisions of this article, and
5 except as otherwise provided in this section, any owner, lessee
6 or other person charged with the care, custody and control of
7 real private property owner may prohibit or restrict the
8 carrying openly or concealed of any firearm or deadly weapon on
9 property under his or her domain. ~~Provided, That for purposes of~~
10 this section "person" means an individual or any entity which
11 may acquire title to real property.

12 (b) Notwithstanding any provision of this code to the
13 contrary, no public property owner, nor any officer, employee or
14 agent of a public property owner, may prohibit or restrict, by a
15 person licensed to carry a concealed weapon or authorized by
16 federal law or the laws of this state to carry a concealed
17 weapon without a license, the lawful possession or carrying of
18 any deadly weapon whose possession by that person does not
19 violate federal law or the laws of this state, except in a
20 secure restricted access area or those places where carrying
21 firearms or other deadly weapons is prohibited by this code or
22 by federal law.

23 (c) No person, property owner, tenant, employer or business
24 entity shall be liable in any civil action for any occurrence

1 that results from or is connected to the use of a deadly weapon
2 that was lawfully stored, carried or possessed, unless the
3 person, property owner, tenant, employer or business entity
4 commits a criminal act involving the use of the deadly weapon.

5 (d) Any person carrying or possessing a firearm or other
6 deadly weapon on the property of another who refuses to
7 temporarily relinquish possession of such firearm or other
8 deadly weapon, upon being lawfully requested to do so, or to
9 leave such premises, while in possession of such firearm or
10 other deadly weapon, ~~shall be~~ is guilty of a misdemeanor, and,
11 upon conviction thereof, shall be fined not more than one
12 thousand dollars, ~~or~~ confined in ~~the county~~ jail for not more
13 than six months, or both. ~~Provided, That the provisions of~~

14 (e) Any prohibition or restriction on possessing or
15 carrying any weapon under this section shall not apply to those
16 persons set forth in subsections (3), (4), (5), ~~through~~ (6) or
17 (8) of section six of this code §61-7-6 while such persons are
18 acting in an official capacity: ~~Provided, however, That under no~~
19 ~~circumstances may any person possess or carry or cause the~~
20 ~~possession or carrying of any firearm or other deadly weapon on~~
21 ~~the premises of any primary or secondary educational facility in~~
22 ~~this state unless such person is a law enforcement officer or he~~
23 ~~or she has the express written permission of the county school~~
24 ~~superintendent.~~ Except in the case of a prohibition or

1 restriction applicable to a private residence established by the
2 private property owner, and regardless of whether actual or
3 effective notice is given by other means, no prohibition or
4 restriction on possessing or carrying any weapon under this
5 section shall be valid unless signs are posted pursuant to §61-
6 7-16. No person, otherwise lawfully possessing or carrying any
7 deadly weapon, may be subjected to any adverse action by any
8 property owner, employer or other person for violating any
9 prohibition or restriction on possessing or carrying such weapon
10 unless notice of such prohibition or restriction has been given
11 in the form required by this section.

12 **§61-7-16. Regulation of signs prohibiting weapons; failure to**
13 **post constitutes defense.**

14 (a) All signs indicating a prohibition or restriction on
15 possessing or carrying handguns or other deadly weapons must be
16 in the form prescribed by this section.

17 (b) A sign regulated by this section shall not be valid or
18 enforceable unless the sign:

19 (1) Expresses the prohibition in both written language
20 interdict and universal sign language;

21 (2) Is posted at each entrance into a building where a
22 person is prohibited or restricted from carrying a designated
23 weapon, including each separate entry door at any entrance
24 equipped with more than one door, and must be:

1 (A) Clearly visible from outside the building from a
2 distance of at least thirty feet;

3 (B) Not less than eight inches wide by twelve inches tall
4 in size with an opaque white background;

5 (C) Contain in black one-inch tall or larger uppercase type
6 at the bottom of the sign and centered between the lateral edges
7 of the sign, words indicating the nature of the prohibition;

8 (D) Contain a black silhouette of a handgun inside a red
9 circle at least seven inches in diameter with a red diagonal
10 line that runs from the lower left to the upper right at a
11 forty-five degree angle from the horizontal;

12 (E) A diameter of a circle; and

13 (F) Placed not less than forty inches and not more than
14 sixty inches from the bottom of the building's entrance door;
15 and

16 (3) If the premises where designated weapons are prohibited
17 does not have doors, then the signs contained in subdivision (1)
18 of this subsection must be:

19 (A) Not less than thirty-six inches wide by forty-eight
20 inches tall in size;

21 (B) Contain in black three-inch tall or larger uppercase
22 type at the bottom of the sign and centered between the lateral
23 edges of the sign, words indicating the nature of the
24 prohibition or restriction;

1 (C) Contain a black silhouette of a handgun inside a red
2 circle at least thirty-four inches in diameter with a red
3 diagonal line that is at least two inches wide and runs from the
4 lower left to the upper right at a forty-five degree angle from
5 the horizontal and must be a diameter of a circle whose
6 circumference is at least two inches wide;

7 (D) Placed not less than forty inches and not more than
8 ninety-six inches above the ground; and

9 (E) Posted in sufficient quantities to be clearly visible
10 from any point of entry onto the premises and readable from a
11 distance of at least thirty feet.

12 (c) Any sign regulated by this section must expressly
13 declare whether persons licensed or otherwise authorized by law
14 to carry concealed handguns are exempt from the restriction or
15 prohibition. Failure to state that a person licensed or
16 otherwise authorized by law to carry concealed handguns
17 constitutes an exception from the prohibition or restriction for
18 persons licensed or otherwise authorized by law to carry
19 concealed handguns.

20 (d) Except as otherwise provided by a more specific
21 provision of this code, it is a defense to any criminal offense
22 under this code prohibiting or restricting the possession or
23 carrying of deadly weapons in specified locations or to an
24 adverse action other than a criminal prosecution taken against a

1 person violating any restriction or prohibition on where weapons
2 may be possessed or carried that the defendant was licensed or
3 otherwise authorized by law to carry concealed handguns, that
4 the person was not carrying any deadly weapons other than
5 handguns and that the signage required to be posted under this
6 section was not properly posted.

NOTE: The purpose of this bill is to reform the state
preemption of firearm regulations and establish uniform signage
requirements for all places, both public and private property,
where the possession or carrying of weapons has been prohibited.

Strike-throughs indicate language which would be
eliminated; underscoring indicates new language which would be
added. §61-7-13 and §61-7-16 are new; therefore, strike-
throughs and underscoring have been omitted.

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