

bill to prohibit straw purchases of firearms

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[Effective from passage]

A BILL to amend and reenact §61-7-2 and §61-7-10 of the code of West Virginia, 1931, as amended, relating to prohibiting the purchase or attempt to purchase a firearm from a firearm dealer by a person other than the actual purchaser; prohibiting and punishing a person other than a law-enforcement officer acting within the scope of duty from soliciting a firearm dealer to convey a firearm other than to an actual buyer; prohibiting and punishing the purchase or other acquisition of a firearm with the intent of certain dispositions of the same; prohibiting and punishing an attempt by a person prohibited from possessing firearms to purchase a firearm through a third-party purchaser; defining terms; and conforming certain definitions to federal law.

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

2 That §61-7-2 and §61-7-10 of the code of West Virginia,
3 1931, as amended, be amended and reenacted, all to read as
4 follows:

5 **ARTICLE 7. DANGEROUS WEAPONS.**

6 **§61-7-2. Definitions.**

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

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

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

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

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

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

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

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

1 considerable physical damage may be inflicted upon the person
2 struck. The terms "metallic or false knuckles" shall include any
3 such instrument without reference to the metal or other
4 substance or substances from which the metallic or false
5 knuckles are made.

6 (7) "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 (8) "Revolver" means a short firearm having a cylinder of
10 several chambers that are brought successively into line with
11 the barrel to be discharged, designed to be aimed and fired by
12 the use of a single hand.

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

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

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

19 (11) "Firearm" means:

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

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

23 (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) "Actual buyer" means a person who purchases or
8 otherwise acquires a firearm from a licensed firearm dealer for
9 himself or herself or as a legitimate gift for a third party.

10 (15) "Alien" means any person not a citizen or national of
11 the United States.

12 (16) "Ammunition" means ammunition or cartridge cases,
13 primers, bullets, or propellant powder designed for use in any
14 firearm.

15 (17) "Antique firearm" means:

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

19 (B) Any replica of any firearm described in paragraph (A)
20 if such replica:

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

23 (ii) Uses rimfire or conventional centerfire fixed
24 ammunition which is no longer manufactured in the United States

1 and which is not readily available in the ordinary channels of
2 commercial trade; or

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

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

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

1 (A) Any Federal or State offenses pertaining to antitrust
2 violations, unfair trade practices, restraints of trade, or
3 other similar offenses relating to the regulation of business
4 practices; or

5 (B) Any State offense classified by the laws of the State
6 as a misdemeanor and punishable by a term of imprisonment of two
7 years or less.

8 (20) "Family or household member" has the same meaning as
9 in §48-27-204.

10 (21) "Firearm silencer" means any device for silencing,
11 muffling, or diminishing the report of a portable firearm,
12 including any combination of parts, designed or redesigned, and
13 intended for use in assembling or fabricating a firearm
14 silencer, and any part intended only for use in such assembly or
15 fabrication.

16 (22) "Fugitive from justice" means any person who has fled
17 from any State to avoid prosecution for a crime or to avoid
18 giving testimony in any criminal proceeding.

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

22 (24) "Intimate partner" means, with respect to a person,
23 the spouse of the person, a former spouse of the person, an

1 individual who is a parent of a child of the person, and an
2 individual who cohabitates or has cohabited with the person.

3 (25) "Law-enforcement officer" has the same meaning as in
4 §30-29-1.

5 (26) "Law-enforcement official" has the same meaning as in
6 §30-29-1. for the purposes of §61-7-10, this term includes any
7 federal law-enforcement officer or federal agent acting within
8 the scope of his or her official duties.

9 (27) "Licensed firearm dealer" means any person licensed as
10 a dealer under Title 18, United States Code, Chapter 44 (18
11 U.S.C. §§ 921 et seq.).

12 (28) "Loaded," with respect to a firearm, means that the
13 firearm:

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

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

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

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

1 A firearm is not loaded solely because a loaded clip,
2 magazine or speed-loader is readily accessible for immediate use
3 or loading of an otherwise unloaded firearm.

4 (29)(A) Except as otherwise provided in this subdivision,
5 "misdemeanor crime of domestic violence" means an offense that:

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

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

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

17 (i) The person was represented by counsel in the case, or
18 knowingly and intelligently waived the right to counsel in the
19 case; and

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

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

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

4 (30) "Readily accessible for immediate use" means that a
5 firearm, ammunition or other deadly weapon is carried on the
6 person or within such close proximity and in such a manner that
7 it can be retrieved and used as easily and quickly as if carried
8 on the person.

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

10 (32) "Unloaded":

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

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

18 **§61-7-10. Display of deadly weapons for sale or hire; sale to**
19 **prohibited persons; prohibited acts by firearms**
20 **purchasers; penalties.**

21 (a) ~~(1) It shall be unlawful for any~~ No person ~~to~~ may
22 publicly display and offer for rent or sale, or, where the
23 person is other than a natural person, ~~to~~ knowingly permit an
24 employee thereof to publicly display and offer for rent or sale,

1 to any passersby on any street, road or alley, any deadly
2 weapon, ~~machine gun, submachine gun or other fully automatic~~
3 ~~weapon, any rifle, shotgun or ammunition for same.~~

4 ~~(2) Any person violating the provisions of this subsection~~
5 ~~shall be guilty of a misdemeanor, and, upon conviction thereof,~~
6 ~~shall be fined not more than five thousand dollars or shall be~~
7 ~~confined in the county jail for not more than one year, or both~~
8 ~~fined and confined, except that where the person violating the~~
9 ~~provisions of this subsection is other than a natural person,~~
10 ~~such person shall be fined not more than ten thousand dollars.~~

11 (b) ~~(1) It shall be unlawful for any~~ No person to may
12 knowingly sell, rent, give or lend, or, where the person is
13 other than a natural person, ~~to~~ knowingly permit an employee
14 thereof to knowingly sell, rent, give or lend, any ~~deadly weapon~~
15 firearm or ammunition to a person prohibited from purchasing or
16 possessing same a firearm or ammunition by any provision of this
17 article or by 18 U.S.C. § 922(g) or (n) or other applicable
18 federal law.

19 (c) No person, except a law-enforcement officer who is
20 acting in the performance of official duties within his or her
21 jurisdiction, may solicit, persuade, encourage or entice or
22 attempt or conspire to solicit, persuade, encourage or entice
23 any licensed firearm dealer to sell, rent, give, lend or
24 otherwise convey a firearm other than to an actual buyer or

1 willfully and intentionally aid or abet the commission of any
2 act prohibited by this subsection.

3 (d) No person, except a law-enforcement officer who is
4 acting in the performance of official duties within his or her
5 jurisdiction, may purchase, rent, borrow or otherwise receive,
6 or attempt or conspire to purchase, rent, borrow or otherwise
7 receive, a firearm, whether from a licensed firearm dealer or
8 otherwise, with the intent to:

9 (1) Sell, rent, give, lend or otherwise provide the firearm
10 to any person who he or she knows or has reason to believe is
11 ineligible under federal law, the laws of this state or the laws
12 of the state in which the resale or other transfer is intended
13 to occur to purchase or otherwise receive from a licensed
14 firearm dealer a firearm for whatever reason;

15 (2) Transport the firearm out of this state to be sold,
16 rented, given, lent or otherwise provided to another person who
17 the transferor knows is ineligible under federal law, the laws
18 of this state or the laws of the state in which the resale or
19 other transfer is intended to occur, to purchase, receive or
20 possess a firearm; or

21 (3) If the firearm is a handgun, transport the handgun out
22 of this state to be resold or otherwise provided to any person
23 who is not a resident of this state, unless the transfer is for
24 temporary use for lawful sporting purposes or the transfer would

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the transfer is intended to occur.

Whenever a violation of this subsection involves more than one firearm, each firearm involved shall constitute a separate and distinct offense.

(e) No person who is ineligible to purchase or otherwise receive or possess a firearm in this state may solicit, employ, assist or conspire with any person in violating subsection (d) of this section.

~~(2) (f) Any person violating the provisions of~~ who violates any of the provisions of subsections (b) through (e) of this subsection shall be section is guilty of a felony and, upon conviction thereof, shall be fined not more than ~~twenty-five~~ one hundred thousand dollars, ~~or shall be imprisoned in the penitentiary of this state~~ for a definite term of years of not less than three years nor more than ten years, or both ~~fined and imprisoned~~, except that where the person ~~violating the provisions of~~ committing an offense punishable under this subsection is other than a natural person, such person shall be fined not more than two hundred fifty thousand dollars. When a violation of subsection (d) of this section involves more than one firearm, or when a person violates subsection (e) of this section, the sentence of imprisonment under this subsection shall be mandatory and not subject to suspension, probation,

1 work release, home confinement, parole or any alternative to
2 actual imprisonment until the at least three years have been
3 served. The sentences for each separate offense under
4 subsections (d) or (e) of this section shall be imposed
5 consecutively.

6 (g) Except as otherwise provided in subsection (f) of this
7 section, any person who violates any provision of this section
8 is guilty of a misdemeanor and, upon conviction thereof, shall
9 be fined not more than ten thousand dollars, confined in jail
10 for not more than one year, or both, except that where the
11 person committing the violation is other than a natural person,
12 such person shall be fined not more than twenty-five thousand
13 dollars.

NOTE: The purpose of this bill is to prohibit "straw purchases" of firearms in which a person ineligible under federal law to purchase or possess a firearm attempts to purchase a firearm from a firearm dealer through a third party who is not ineligible. This bill also conforms certain definitions to federal law.

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>