

Senate Bill No. 35

(By Senators Leonhardt and Karnes)

[Introduced January 14, 2015; referred to the Committee on Government Organization; and then
to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended; and to
amend and reenact §61-7-6 and §61-7-6a of said code, all relating to exceptions to
prohibitions against carrying one or more concealed deadly weapons and reciprocity
agreements for licenses to carry concealed weapons; and providing that any law-abiding
person twenty-one years of age or older may carry a concealed deadly weapon anywhere
within the boundaries of the state, including on or within municipally owned or controlled
buildings, recreation centers or properties, without first obtaining a license to carry concealed
deadly weapons.

Be it enacted by the Legislature of West Virginia:

That §8-12-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted;
and that §61-7-6 and §61-7-6a of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED

1 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
2 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
3 **MUNICIPALITIES.**

4 **§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession,**
5 **transfer, ownership, carrying, transport, sale and storage of certain weapons**
6 **and ammunition.**

7 (a) Except as provided by the provisions of this section and the provisions of section five of
8 this article, neither a municipality nor the governing body of any municipality may, by ordinance or
9 otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or
10 store any ~~revolver, pistol, rifle or shotgun~~ firearm of any kind, any firearm part or component
11 including any magazine or other ammunition feed device or any ammunition or ammunition
12 components to be used therewith nor to ~~so~~ regulate the keeping of gunpowder so as to directly or
13 indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict
14 with state law.

15 ~~(b) For the purposes of this section:~~

16 ~~(1) "Municipally owned or operated building" means any building that is used for the~~
17 ~~business of the municipality, such as a courthouse, city hall, convention center, administrative~~
18 ~~building or other similar municipal building used for a municipal purpose permitted by state law:~~
19 ~~Provided, That "municipally owned or operated building" does not include a building owned by a~~
20 ~~municipality that is leased to a private entity where the municipality primarily serves as a property~~
21 ~~owner receiving rental payments.~~

22 ~~(2) "Municipally owned recreation facility" means any municipal swimming pool, recreation~~

1 ~~center, sports facility, facility housing an after-school program or other similar facility where~~
2 ~~children are regularly present.~~

3 ~~(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or~~
4 ~~regulate the carrying or possessing of a firearm in municipally owned or operated buildings.~~

5 ~~(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person~~
6 ~~from carrying or possessing a firearm openly or that is not lawfully concealed in a municipally~~
7 ~~owned recreation facility: *Provided*, That a municipality may not prohibit a person with a valid~~
8 ~~concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally~~
9 ~~owned recreation facility and securely storing the firearm out of view and access to others during~~
10 ~~their time at the municipally owned recreation facility.~~

11 ~~(3) A person may keep an otherwise lawfully possessed firearm in a motor vehicle in~~
12 ~~municipal public parking facilities if the vehicle is locked and the firearm is out of view.~~

13 ~~(4) A municipality may not prohibit or regulate the carrying or possessing of a firearm on~~
14 ~~municipally owned or operated property other than municipally owned or operated buildings and~~
15 ~~municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section: *Provided*,~~
16 ~~That a municipality may prohibit persons who do not have a valid concealed handgun license from~~
17 ~~carrying or possessing a firearm on municipally owned or operated property.~~

18 ~~(d) It shall be an absolute defense to an action for an alleged violation of an ordinance~~
19 ~~authorized by this section prohibiting or regulating the possession of a firearm that the person: (1)~~
20 ~~Upon being requested to do so, left the premises with the firearm or temporarily relinquished the~~
21 ~~firearm in response to being informed that his or her possession of the firearm was contrary to~~
22 ~~municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession~~

1 of the firearm:

2 ~~(e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or~~
3 ~~possessing of a firearm pursuant to subsection (c) of this section shall prominently post a clear~~
4 ~~statement at each entrance to all applicable municipally owned or operated buildings or municipally~~
5 ~~owned recreation facilities setting forth the terms of the regulation or prohibition.~~

6 ~~(f)~~ (b) Redress for an alleged violation of this section may be sought through the provisions
7 of chapter fifty-three of this code, which may include the awarding of reasonable attorneys fees and
8 costs.

9 ~~(g)~~ (c) Upon the effective date of this section, section fourteen, article seven, chapter sixty-
10 one of this code is inapplicable to municipalities. For the purposes of that section, municipalities
11 may not be considered a person charged with the care, custody and control of real property.

12 ~~(h)~~ (d) This section does not:

13 (1) Impair the authority of any municipality, or the governing body thereof, to enact any
14 ordinance or resolution respecting the power to arrest, convict and punish any individual under the
15 provisions of subdivision (16), section five of this article or from enforcing any such ordinance or
16 resolution, except as limited in this section;

17 (2) Authorize municipalities to restrict the carrying or possessing of firearms, which are
18 otherwise lawfully possessed, on public streets and sidewalks of the municipality; ~~Provided, That~~
19 ~~whenever pedestrian or vehicular traffic is prohibited in an area of a municipality for the purpose of~~
20 ~~a temporary event of limited duration, not to exceed fourteen days, which is authorized by a~~
21 ~~municipality, a municipality may prohibit persons who do not have a valid concealed handgun~~
22 ~~license from possessing a firearm in the area where the event is held; or~~

1 (3) Limit the authority of a municipality to restrict the commercial use of real estate in
2 designated areas through planning or zoning ordinances.

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

4 **ARTICLE 7. DANGEROUS WEAPONS.**

5 **§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions from**
6 **licensing fees.**

7 (a) The licensure provisions ~~set forth in~~ of section three of this article do not apply to:

8 ~~(1) Any person:~~

9 ~~(A) Carrying a deadly weapon upon his or her own premises;~~

10 ~~(B) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence~~
11 ~~or place of business or to a place of repair and back to his or her home, residence or place of~~
12 ~~business; or~~

13 ~~(C) Possessing a firearm while hunting in a lawful manner or while traveling from his or her~~
14 ~~home, residence or place of business to a hunting site and returning to his or her home, residence or~~
15 ~~place of business;~~

16 (1) Any person twenty-one years of age or older, who may lawfully possess a firearm or other
17 deadly weapon, whether that person is a resident of the state, or not;

18 (2) Any person who is a member of a properly organized target-shooting club authorized by
19 law to obtain firearms by purchase or requisition from this state or from the United States for the
20 purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or
21 her home, residence or place of business to a place of target practice and from any place of target
22 practice back to his or her home, residence or place of business, for using any such weapon at a place

1 of target practice in training and improving his or her skill in the use of the weapons;

2 (3) Any law-enforcement officer or law-enforcement official as defined in section one, article
3 twenty-nine, chapter thirty of this code;

4 (4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to
5 the provisions of section eleven-c, article one, chapter twenty-five of this code while the employee
6 is on duty;

7 (5) Any member of the Armed Forces of the United States or the militia of this state while
8 the member is on duty;

9 (6) Any resident of another state who holds a valid permit or license to possess or carry a
10 handgun issued by a state or a political subdivision subject to the provisions and limitations set forth
11 in section six-a of this article;

12 (7) Any federal law-enforcement officer or federal police officer authorized to carry a weapon
13 in the performance of the officer's duty;

14 (8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty;
15 and

16 (9) Any parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-
17 two of this code in the performance of their duties.

18 (b) On and after July 1, 2013, the following judicial officers and prosecutors and staff ~~shall~~
19 ~~be exempted~~ are exempt from paying any application fees or licensure fees required under this
20 article. However, on and after that same date, they ~~shall be~~ are required to make application and
21 satisfy all licensure and handgun safety and training requirements set forth in section four of this
22 article before ~~carrying a concealed handgun in this state~~ being issued a license for carrying a

1 concealed deadly weapon in this state. The following judicial officers and prosecutors and staff may
2 also fall within the exception found in subsection (a) of this section, if they meet its requirements:

3 (1) Any justice of the Supreme Court of Appeals of West Virginia;

4 (2) Any circuit judge;

5 (3) Any retired justice or retired circuit judge designated senior status by the Supreme Court
6 of Appeals of West Virginia;

7 (4) Any family court judge;

8 (5) Any magistrate;

9 (6) Any prosecuting attorney;

10 (7) Any assistant prosecuting attorney; or

11 (8) Any duly appointed investigator employed by a prosecuting attorney.

12 **§61-7-6a. Reciprocity and recognition; out-of-state concealed handgun permits.**

13 (a) A valid out-of-state permit or license to possess or carry a handgun is valid in this state
14 for the carrying of a concealed handgun, if the following conditions are met:

15 (1) The permit or license holder is twenty-one years of age or older;

16 (2) The permit or license is in his or her immediate possession;

17 (3) The permit or license holder is not a resident of the State of West Virginia; and

18 (4) The Attorney General has been notified by the Governor of the other state that the other
19 state allows residents of West Virginia who are licensed in West Virginia to carry a concealed
20 handgun to carry a concealed handgun in that state or the Attorney General has entered into a written
21 reciprocity agreement with the appropriate official of the other state whereby the state agrees to
22 honor West Virginia concealed handgun licenses in return for same treatment in this state.

1 (b) A holder of a valid permit or license from another state who is authorized to carry a
2 concealed handgun in this state pursuant to provisions of this section is subject to the same laws and
3 restrictions with respect to carrying a concealed handgun as a resident of West Virginia who is so
4 permitted and must carry the concealed handgun in compliance with the laws of this state.

5 (c) A license or permit from another state is not valid in this state if the holder is or becomes
6 prohibited by law from possessing a firearm.

7 (d) The West Virginia Attorney General shall seek to obtain recognition of West Virginia
8 concealed handgun licenses and enter into and execute reciprocity agreements on behalf of the State
9 of West Virginia with states for the recognition of concealed handgun permits issued pursuant to
10 this article.

11 (e) The West Virginia State Police shall maintain a registry of states with which the State of
12 West Virginia has entered into reciprocity agreements or which recognize West Virginia concealed
13 handgun licenses on the criminal information network and make the registry available to law-
14 enforcement officers for investigative purposes.

15 (f) Every twelve months after the effective date of this section, the West Virginia Attorney
16 General shall make written inquiry of the concealed handgun licensing or permitting authorities in
17 each other state as to: (i) Whether a West Virginia resident may carry a concealed handgun in their
18 state based upon having a valid West Virginia concealed handgun permit; ~~and~~ (ii) whether a West
19 Virginia resident may carry a concealed handgun in their state based upon that state's law permitting
20 law-abiding citizens to carry a concealed handgun without a license; and (iii) whether a West
21 Virginia resident may carry a concealed handgun in that state based upon having a valid West
22 Virginia concealed handgun permit, pursuant to the laws of that state or by the execution of a valid

1 reciprocity agreement between the states.

2 (g) The West Virginia State Police shall make available to the public a list of states which
3 have entered into reciprocity agreements with the State of West Virginia or that allow residents of
4 West Virginia who are licensed in West Virginia to carry a concealed handgun to carry a concealed
5 handgun in that state.

NOTE: The purpose of this bill is to provide that any law-abiding person twenty-one years of age or older may carry a concealed weapon within the boundaries of the state, including on or within municipally owned or controlled buildings, recreation centers or properties, without first obtaining a license to carry concealed deadly weapons.

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