

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4387

BY DELEGATES J. NELSON, MOFFATT, R. SMITH, IHLE,

MCGEEHAN, FOLK, FAIRCLOTH AND FOSTER

[Introduced February 3, 2016; Referred
to the Committee on the Judiciary]

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

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

1 (a) Except as provided by the provisions of this section and the provisions of section five
 2 of this article, neither a municipality nor the governing body of any municipality may, by ordinance
 3 or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport,
 4 sell or store any ~~revolver, pistol, rifle or shotgun~~ firearm of any kind, any firearm part or component
 5 including any magazine or other ammunition feed device or any ammunition or ammunition
 6 components to be used therewith nor to ~~se~~ regulate the keeping of gunpowder so as to directly

7 or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict
8 with state law.

9 (b) For the purposes of this section:

10 (1) ~~“Municipally owned or operated building” means any building that is used for the~~
11 ~~business of the municipality, such as a courthouse, city hall, convention center, administrative~~
12 ~~building or other similar municipal building used for a municipal purpose permitted by state law:~~
13 ~~Provided, That “municipally owned or operated building” does not include a building owned by a~~
14 ~~municipality that is leased to a private entity where the municipality primarily serves as a property~~
15 ~~owner receiving rental payments.~~

16 (2) ~~“Municipally owned recreation facility” means any municipal swimming pool, recreation~~
17 ~~center, sports facility, facility housing an after-school program or other similar facility where~~
18 ~~children are regularly present.~~

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

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

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

29 (4) ~~A municipality may not prohibit or regulate the carrying or possessing of a firearm on~~
30 ~~municipally owned or operated property other than municipally owned or operated buildings and~~
31 ~~municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section:~~
32 ~~Provided, That a municipality may prohibit persons who do not have a valid concealed handgun~~

33 ~~license from carrying or possessing a firearm on municipally owned or operated property.~~

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

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

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

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

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

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

55 ~~(2) Authorize municipalities to restrict the carrying or possessing of firearms, which are~~
56 ~~otherwise lawfully possessed, on public streets and sidewalks of the municipality; ~~Provided, That~~~~
57 ~~whenever pedestrian or vehicular traffic is prohibited in an area of a municipality for the purpose~~
58 ~~of a temporary event of limited duration, not to exceed fourteen days, which is authorized by a~~

59 ~~municipality, a municipality may prohibit persons who do not have a valid concealed handgun~~
60 ~~license from possessing a firearm in the area where the event is held; or~~

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

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

2 (1) ~~Any person:~~

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

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

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

10 (1) Any person eighteen years of age or older, who may lawfully possess a firearm or other
11 deadly weapon, whether that person is a resident of the state, or not;

12 (2) Any person who is a member of a properly organized target-shooting club authorized
13 by law to obtain firearms by purchase or requisition from this state or from the United States for
14 the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from
15 his or her home, residence or place of business to a place of target practice and from any place
16 of target practice back to his or her home, residence or place of business, for using any such
17 weapon at a place of target practice in training and improving his or her skill in the use of the

18 weapons;

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

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

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

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

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

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

33 (b) On and after July 1, 2013, the following judicial officers and prosecutors and staff ~~shall~~
34 ~~be exempted~~ are exempt from paying any application fees or licensure fees required under this
35 article. However, on and after that same date, they ~~shall be~~ are required to make application and
36 satisfy all licensure and handgun safety and training requirements set forth in section four of this
37 article before ~~carrying a concealed handgun in this state~~ being issued a license for carrying a
38 concealed deadly weapon in this state. The following judicial officers and prosecutors and staff
39 fall within the exception found in subsection (a) of this section, if they meet its requirements:

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

41 (2) Any circuit judge;

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

- 44 (4) Any family court judge;
- 45 (5) Any magistrate;
- 46 (6) Any prosecuting attorney;
- 47 (7) Any assistant prosecuting attorney; or
- 48 (8) Any duly appointed investigator employed by a prosecuting attorney.

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

- 1 (a) A valid out-of-state permit or license to possess or carry a handgun is valid in this state
2 for the carrying of a concealed handgun, if the following conditions are met:
- 3 (1) The permit or license holder is twenty-one years of age or older;
- 4 (2) The permit or license is in his or her immediate possession;
- 5 (3) The permit or license holder is not a resident of the State of West Virginia; and
- 6 (4) The Attorney General has been notified by the Governor of the other state that the
7 other state allows residents of West Virginia who are licensed in West Virginia to carry a
8 concealed handgun to carry a concealed handgun in that state or the Attorney General has
9 entered into a written reciprocity agreement with the appropriate official of the other state whereby
10 the state agrees to honor West Virginia concealed handgun licenses in return for same treatment
11 in this state.
- 12 (b) A holder of a valid permit or license from another state who is authorized to carry a
13 concealed handgun in this state pursuant to provisions of this section is subject to the same laws
14 and restrictions with respect to carrying a concealed handgun as a resident of West Virginia who
15 is so permitted and must carry the concealed handgun in compliance with the laws of this state.
- 16 (c) A license or permit from another state is not valid in this state if the holder is or becomes
17 prohibited by law from possessing a firearm.
- 18 (d) The West Virginia Attorney General shall seek to obtain recognition of West Virginia
19 concealed handgun licenses and enter into and execute reciprocity agreements on behalf of the
20 State of West Virginia with states for the recognition of concealed handgun permits issued

21 pursuant to this article.

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

26 (f) Every twelve months after the effective date of this section, the West Virginia Attorney
27 General shall make written inquiry of the concealed handgun licensing or permitting authorities in
28 each other state as to: (i) Whether a West Virginia resident may carry a concealed handgun in
29 their state based upon having a valid West Virginia concealed handgun permit; ~~and~~ (ii) whether a
30 West Virginia resident may carry a concealed handgun in their state based upon that state's law
31 permitting law-abiding citizens to carry a concealed handgun without a license; and (iii) whether
32 a West Virginia resident may carry a concealed handgun in that state based upon having a valid
33 West Virginia concealed handgun permit, pursuant to the laws of that state or by the execution of
34 a valid reciprocity agreement between the states.

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

NOTE: The purpose of this bill is to provide that any law-abiding person eighteen 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 a heading or the present law, and underscoring indicates new language that would be added.