

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 244

BY SENATORS AZINGER AND RUCKER

[Originating in the Committee on Education; Reported

on January 31, 2018]

1 A BILL to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating
2 to specifying the conditions under which it is unlawful to possess a firearm or other deadly
3 weapon at school-sponsored functions; revising the conditions under which a retired law-
4 enforcement officer may possess a firearm or other deadly weapon on a school bus, in a
5 public primary or secondary education building, structure, facility or grounds, or at certain
6 school-sponsored functions; and revising conditions for which certain persons holding a
7 valid concealed handgun permit can possess a concealed handgun in a motor vehicle in
8 in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public
9 school.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

1 (a) The Legislature finds that the safety and welfare of the citizens of this state are
2 inextricably dependent upon assurances of safety for children attending and persons employed
3 by schools in this state and for persons employed by the judicial department of this state. It is for
4 the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h),
5 of this code and §61-7-11a(b)(2)(I) of this code are enacted as a reasonable regulation of the
6 manner in which citizens may exercise the rights accorded to them pursuant to section 22, article
7 III of the Constitution of the State of West Virginia.

8 (b) ~~(1) It is unlawful for a person to possess a firearm or other deadly weapon on a school~~
9 ~~bus as defined in §17A-1-1 of this code or in or on a public primary or secondary education~~
10 ~~building, structure, facility, or grounds including a vocational education building, structure, facility,~~
11 ~~or grounds where secondary vocational education programs are conducted or at a school-~~
12 ~~sponsored function that is taking place in a specific area that is owned, rented, or leased by a~~

13 ~~county school board or local public school for the actual period of time used by the school entity~~
14 ~~and has clear signage to that effect, or in or on a private primary or secondary education building,~~
15 ~~structure, or facility: *Provided*, That it shall not be unlawful to possess a firearm or other deadly~~
16 ~~weapon on or in a private primary or secondary education building, structure, or facility when such~~
17 ~~institution has adopted written policies allowing for possession of firearms on or in the institution's~~
18 ~~buildings, structures, or facilities. (1) It is unlawful to possess a firearm or other deadly weapon:~~

19 (A) On a school bus as defined in §17A-1-1 of this code;

20 (B) In or on the grounds of any primary or secondary educational facility of any type:

21 *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the
22 grounds of any private primary or secondary school, if such institution has adopted a written policy
23 allowing for possession of firearms or other deadly weapons in the facility or on the grounds
24 thereof;

25 (C) At a school-sponsored function that is taking place in a specific area that is owned,
26 rented, or leased by the West Virginia Department of Education, the West Virginia Secondary
27 Schools Activities Commission, a county school board, or local public school for the actual period
28 of time the function is occurring.

29 (2) This subsection does not apply to:

30 (A) A law-enforcement officer employed by a federal, state, county, or municipal law-
31 enforcement agency;

32 (B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code in the
33 performance of his or her duties;

34 ~~(C) A retired law-enforcement officer who:~~

35 ~~(i) Is employed by a state, county or municipal law-enforcement agency;~~

36 ~~(ii) Is covered for liability purposes by his or her employer;~~

37 ~~(iii) Is authorized by a county board of education and the school principal to serve as~~
38 ~~security for a school;~~

39 ~~(iv) Meets all the requirements to carry a firearm as a qualified retired law enforcement~~
40 ~~officer under the Law Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S.~~
41 ~~C. §926C(c); and~~

42 ~~(v) Meets all of the requirements for handling and using a firearm established by his or her~~
43 ~~employer and has qualified with his or her firearm to those requirements;~~

44 (C) A retired law-enforcement officer who meets all the requirements to carry a firearm as
45 a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004,
46 as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and
47 has on their person official identification in accordance with that act;

48 (D) A person specifically authorized by the board of education of the county or principal of
49 the school where the property is located to conduct programs with valid educational purposes;

50 (E) A person who, as otherwise permitted by the provisions of this article, possesses an
51 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
52 weapon in a locked motor vehicle;

53 (F) Programs or raffles conducted with the approval of the county board of education or
54 school which include the display of unloaded firearms;

55 (G) The official mascot of West Virginia University, commonly known as the Mountaineer,
56 acting in his or her official capacity;

57 (H) The official mascot of Parkersburg South High School, commonly known as the Patriot,
58 acting in his or her official capacity; or

59 (I) Any person, 21 years old or older, who has a valid concealed handgun permit may
60 possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas
61 of vehicular ingress or egress to a public school: *Provided, That:*

62 (i) When he or she is occupying the vehicle the person stores the handgun out of view
63 from persons outside the vehicle; or

64 (ii) When he or she is not occupying the vehicle the person stores the handgun out of view
65 from persons outside the vehicle, the vehicle is locked, and the handgun is in a ~~locked trunk, glove~~

66 ~~box or other interior compartment~~ glove box or other interior compartment, or in a locked trunk,
67 or in a locked container securely fixed to the vehicle.

68 (3) A person violating this subsection is guilty of a felony and, upon conviction thereof,
69 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
70 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

71 (c) A school principal subject to the authority of the State Board of Education who
72 discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

73 (1) The State Superintendent of Schools. The State Board of Education shall keep and
74 maintain these reports and may prescribe rules establishing policy and procedures for making
75 and delivering the reports as required by this subsection; and

76 (2) The appropriate local office of the State Police, county sheriff or municipal police
77 agency.

78 (d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a
79 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of
80 §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver's license
81 or instruction permit issued to the person for a period of time as the court considers appropriate,
82 not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's
83 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
84 the person's application for a license or permit for a period of time as the court considers
85 appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the
86 court pursuant to this subsection is effective upon the date of entry of the order. Where the court
87 orders the suspension of a driver's license or instruction permit pursuant to this subsection, the
88 court shall confiscate any driver's license or instruction permit in the adjudicated person's
89 possession and forward to the Division of Motor Vehicles.

90 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this
91 code and if the person does not act to appeal the conviction within the time periods described in

92 §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this
93 state shall be revoked in accordance with the provisions of this section.

94 (2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1)
95 of this code shall forward to the commissioner a transcript of the judgment of conviction. If the
96 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
97 transcript when the person convicted has not requested an appeal within 20 days of the
98 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
99 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
100 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was
101 entered.

102 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
103 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the
104 commissioner shall make and enter an order revoking the person's license or privilege to operate
105 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
106 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever
107 is the greater period. The order shall contain the reasons for the revocation and the revocation
108 period. The order of suspension shall advise the person that because of the receipt of the court's
109 transcript, a presumption exists that the person named in the order of suspension is the same
110 person named in the transcript. The commissioner may grant an administrative hearing which
111 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a
112 preliminary showing that a possibility exists that the person named in the notice of conviction is
113 not the same person whose license is being suspended. The request for hearing shall be made
114 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing
115 is for the person requesting the hearing to present evidence that he or she is not the person
116 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall
117 stay the license suspension pending the commissioner's order resulting from the hearing.

118 (4) For the purposes of this subsection, a person is convicted when he or she enters a
119 plea of guilty or is found guilty by a court or jury.

120 (f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of
121 age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable
122 cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to
123 immediately report his or her knowledge or belief to the appropriate school or law-enforcement
124 officials.

125 (2) A person violating this subsection is guilty of a misdemeanor and, upon conviction
126 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,
127 or both fined and confined.

128 (g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
129 premises of a court of law, including family courts.

130 (2) This subsection does not apply to:

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

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

134 (3) A person violating this subsection is guilty of a misdemeanor and, upon conviction
135 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,
136 or both fined and confined.

137 (h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
138 premises of a court of law, including family courts, with the intent to commit a crime.

139 (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,
140 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
141 years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

142 (i) Nothing in this section may be construed to be in conflict with the provisions of federal
143 law.