

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4139

BY DELEGATES UPSON AND HAMRICK

[Introduced January 16, 2018; Referred
to the Committee on Education then the Judiciary.]

1 A BILL to amend and reenact §61-7-11a of the Code of West Virginia, 1931, relating to specifying
2 the conditions where and by whom it is unlawful to possess a firearm at school-sponsored
3 functions; identifying the area of those functions; revising the conditions when a retired
4 law-enforcement officer may possess a firearm; prohibiting education officials from
5 authorizing certain individuals; and providing where in a locked vehicle a firearm may be
6 placed.

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 subsections (b), (g) and (h) of this section and
5 paragraph (l), subdivision (2), subsection (b) of this section are enacted as a reasonable
6 regulation of the manner in which citizens may exercise the rights accorded to them pursuant to
7 section twenty-two, article three 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, or 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.

19 (2) This subsection does not apply to:

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

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

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

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

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

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

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

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

34 ~~(D) A person specifically authorized by the Board of Education of the county or principal~~
35 ~~of the school where the property is located to conduct programs with valid educational purposes~~

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

40 ~~(E)~~ (D) A person who, as otherwise permitted by the provisions of this article, possesses
41 an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly

42 weapon in a locked motor vehicle;

43 ~~(F)~~ (E) Programs or raffles conducted with the approval of the county board of education
44 or school which include the display of unloaded firearms;

45 ~~(G)~~ (F) The official mascot of West Virginia University, commonly known as the
46 Mountaineer, acting in his or her official capacity;

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

49 ~~(I)~~ (H) Any person, twenty-one years old or older, who has a valid concealed handgun
50 permit may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle
51 or other areas of vehicular ingress or egress to a public school: *Provided, That:*

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

54 (ii) When he or she is not occupying the vehicle the person stores the handgun out of view
55 from persons outside the vehicle, the vehicle is locked, and the handgun is in a ~~locked trunk, glove~~
56 ~~box or other interior compartment~~ glove box or other interior compartment, or in a locked trunk,
57 or in a locked container securely fixed to the vehicle.

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

61 (c) A school principal subject to the authority of the State Board of Education who
62 discovers a violation of subsection (b) of this section shall report the violation as soon as possible
63 to:

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

67 (2) The appropriate local office of the State Police, county sheriff or municipal police

68 agency.

69 (d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a
70 court which adjudicates a person who is fourteen years of age or older as delinquent for a violation
71 of subsection (b) of this section may order the Division of Motor Vehicles to suspend a driver's
72 license or instruction permit issued to the person for a period of time as the court considers
73 appropriate, not to extend beyond the person's nineteenth birthday. If the person has not been
74 issued a driver's license or instruction permit by this state, a court may order the Division of Motor
75 Vehicles to deny the person's application for a license or permit for a period of time as the court
76 considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension
77 ordered by the court pursuant to this subsection is effective upon the date of entry of the order.
78 Where the court orders the suspension of a driver's license or instruction permit pursuant to this
79 subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated
80 person's possession and forward to the Division of Motor Vehicles.

81 (e)(1) If a person eighteen years of age or older is convicted of violating subsection (b) of
82 this section and if the person does not act to appeal the conviction within the time periods
83 described in subdivision (2) of this subsection, the person's license or privilege to operate a motor
84 vehicle in this state shall be revoked in accordance with the provisions of this section.

85 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
86 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If
87 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
88 transcript when the person convicted has not requested an appeal within twenty days of the
89 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
90 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
91 notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was
92 entered.

93 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner

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

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

111 (f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years
112 of age who knows that the person is in violation of subsection (b) of this section or has reasonable
113 cause to believe that the person's violation of subsection (b) is imminent to fail to immediately
114 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

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

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

120 (2) This subsection does not apply to:

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

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

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

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

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

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

NOTE: The purpose of this bill is to specify the conditions where it is unlawful to possess a firearm at school-sponsored functions. The bill identifies the area of those functions. The bill revises the conditions when a retired law-enforcement officer may possess a firearm. The bill prohibits education officials from authorizing certain individuals. The bill provides where in a locked vehicle a firearm may be placed.

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