

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4582

BY DELEGATE SHOTT

[Introduced February 13, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-7-11a of the Code of West Virginia, as amended, relating to
2 clarifying that students are not prohibited to possess a firearm or other deadly weapon on
3 a school bus as defined in section one, article one, chapter seventeen-a of this code or in
4 or on a public primary or secondary education building, structure, facility or grounds
5 including a vocational education building, structure, facility or grounds where secondary
6 vocational education programs are conducted or at a school-sponsored function, or in or
7 on a private primary or secondary education building, structure or facility.

Be it enacted by the Legislature of West Virginia:

**§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, or in or on a private primary or secondary education building, structure or
13 facility: *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon on or
14 in a private primary or secondary education building, structure or facility when such institution has
15 adopted written policies allowing for possession of firearms on or in the institution's buildings,

16 structures or facilities.

17 (2) This subsection does not apply to:

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

20 (B) Any probation officer appointed pursuant to §62-12-5 or §49-1-1 *et seq.* of this code in
21 the performance of his or her duties;

22 (C) A retired law-enforcement officer who:

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

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

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

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

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

32 (D) A person, other than a student, specifically authorized by the board of education of the
33 county or principal of the school where the property is located to conduct programs with valid
34 educational purposes;

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

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

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

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

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

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

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

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

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

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

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

63 (d) In addition to the methods of disposition provided by §49-5-1 *et. seq.* of this code, a
64 court which adjudicates a person who is fourteen years of age or older as delinquent for a violation
65 of subsection (b) of this section may order the Division of Motor Vehicles to suspend a driver's
66 license or instruction permit issued to the person for a period of time as the court considers
67 appropriate, not to extend beyond the person's 19th birthday. If the person has not been issued

68 a driver's license or instruction permit by this state, a court may order the Division of Motor
69 Vehicles to deny the person's application for a license or permit for a period of time as the court
70 considers appropriate, not to extend beyond the person's 19th birthday. A suspension ordered by
71 the court pursuant to this subsection is effective upon the date of entry of the order. Where the
72 court orders the suspension of a driver's license or instruction permit pursuant to this subsection,
73 the court shall confiscate any driver's license or instruction permit in the adjudicated person's
74 possession and forward to the Division of Motor Vehicles.

75 (e)(1) If a person 18 years of age or older is convicted of violating subsection (b) of this
76 section and if the person does not act to appeal the conviction within the time periods described
77 in subdivision (2) of this subsection, the person's license or privilege to operate a motor vehicle
78 in this state shall be revoked in accordance with the provisions of this section.

79 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
80 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If
81 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
82 transcript when the person convicted has not requested an appeal within 20 days of the
83 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
84 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
85 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was
86 entered.

87 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
88 determines that the person was convicted as described in subdivision (1) of this subsection, the
89 commissioner shall make and enter an order revoking the person's license or privilege to operate
90 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
91 in a secondary school, for a period of one year or until the person's 20th birthday, whichever is
92 the greater period. The order shall contain the reasons for the revocation and the revocation
93 period. The order of suspension shall advise the person that because of the receipt of the court's

94 transcript, a presumption exists that the person named in the order of suspension is the same
95 person named in the transcript. The commissioner may grant an administrative hearing which
96 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a
97 preliminary showing that a possibility exists that the person named in the notice of conviction is
98 not the same person whose license is being suspended. The request for hearing shall be made
99 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing
100 is for the person requesting the hearing to present evidence that he or she is not the person
101 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall
102 stay the license suspension pending the commissioner's order resulting from the hearing.

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

105 (f)(1) It is unlawful for a parent, guardian or custodian of a person less than 18 years of
106 age who knows that the person is in violation of subsection (b) of this section or has reasonable
107 cause to believe that the person's violation of subsection (b) is imminent to fail to immediately
108 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

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

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

114 (2) This subsection does not apply to:

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

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

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

120 or both fined and confined.

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

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

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

NOTE: The purpose of this bill is to clarify language regarding possession of a firearm or other deadly weapon on a school bus as defined in section one, article one, chapter seventeen-a of this code or in or on a public primary or secondary education building, structure, facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or at a school-sponsored function, or in or on a private primary or secondary education building, structure or facility.

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