

1 **H. B. 2346**

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3 (By Delegates Miley, Brown and Moore)
4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §61-7-7 of the Code of West Virginia,
11 1931, as amended, relating to clarifying that an individual is
12 prohibited from possessing firearms and ammunition when a
13 protective order is issued and served; and authorizing the
14 enforcement of firearms prohibition after the emergency
15 protective order is issued.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §61-7-7 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 7. DANGEROUS WEAPONS.**

20 **§61-7-7. Persons prohibited from possessing firearms;**
21 **classifications; reinstatement of rights to possess;**
22 **offenses; penalties.**

23 (a) Except as provided in this section, no person ~~shall~~ may

1 possess a firearm, as ~~such~~ is defined in section two of this
2 article, who:

3 (1) Has been convicted in any court of a crime punishable by
4 imprisonment for a term exceeding one year;

5 (2) Is habitually addicted to alcohol;

6 (3) Is an unlawful user of or habitually addicted to any
7 controlled substance;

8 (4) Has been adjudicated as a mental defective or who has been
9 involuntarily committed to a mental institution pursuant to the
10 provisions of chapter twenty-seven of this code: *Provided, That*
11 once an individual has been adjudicated as a mental defective or
12 involuntarily committed to a mental institution, he or she shall be
13 duly notified that they are to immediately surrender any firearms
14 in their ownership or possession: *Provided, however, That* the
15 Mental Hygiene Commissioner or circuit judge shall first make a
16 determination of the appropriate public or private individual or
17 entity to act as conservator for the surrendered property;

18 (5) Is an alien illegally or unlawfully in the United States;

19 (6) Has been discharged from the Armed Forces under
20 dishonorable conditions;

21 (7) Is subject to a domestic violence protective order that:

22 (A) Was issued ~~after a hearing of which such~~ by a magistrate,
23 family court judge or circuit court judge and the person has been
24 served or received actual notice and at which such person had an

1 ~~opportunity to participate~~ of the issuance of a protective order
2 and has been given a reasonable opportunity to comply with the
3 order as provided in section one thousand three, article twenty-
4 seven chapter forty-eight of this code;

5 (B) Restrains ~~such~~ the person from harassing, stalking or
6 threatening an intimate partner of ~~such~~ the person or child of ~~such~~
7 the intimate partner or person, or engaging in other conduct that
8 would place an intimate partner in reasonable fear of bodily injury
9 to the partner or child; and

10 (C) (i) Includes a finding that ~~such~~ the person represents a
11 credible threat to the physical safety of ~~such~~ the intimate partner
12 or child; or

13 (ii) By its terms explicitly prohibits the use, attempted use
14 or threatened use of physical force against ~~such~~ the intimate
15 partner or child that would reasonably be expected to cause bodily
16 injury; or

17 (8) Has been convicted of a misdemeanor offense of assault or
18 battery either under the provisions of section twenty-eight,
19 article two of this chapter or the provisions of subsection (b) or
20 (c), section nine of said article in which the victim was a current
21 or former spouse, current or former sexual or intimate partner,
22 person with whom the defendant has a child in common, person with
23 whom the defendant cohabits or has cohabited, a parent or guardian,
24 the defendant's child or ward or a member of the defendant's

1 household at the time of the offense or has been convicted in any
2 court of any jurisdiction of a comparable misdemeanor crime of
3 domestic violence.

4 Any person who violates the provisions of this subsection
5 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,
6 shall be fined not less than \$100 nor more than \$1,000 or confined
7 in ~~the county~~ jail for not less than ninety days nor more than one
8 year, or both fine and confined.

9 (b) Notwithstanding the provisions of subsection (a) of this
10 section, any person:

11 (1) Who has been convicted in this state or any other
12 jurisdiction of a felony crime of violence against the person of
13 another or of a felony sexual offense; or

14 (2) Who has been convicted in this state or any other
15 jurisdiction of a felony controlled substance offense involving a
16 Schedule I controlled substance other than marijuana, a Schedule II
17 or a Schedule III controlled substance as ~~such are~~ defined in
18 sections two hundred four, two hundred five and two hundred six,
19 article two, chapter sixty-a of this code and who possesses a
20 firearm as ~~such is~~ defined in section two of this article ~~shall be~~
21 is guilty of a felony and, upon conviction thereof, shall be
22 ~~confined~~ imprisoned in a state correctional facility for not more
23 than five years or fined not more than \$5,000, or both imprisoned
24 and fined. The provisions of subsection (c) of this section ~~shall~~

1 do not apply to persons convicted of offenses referred to in this
2 subsection or to persons convicted of a violation of this
3 subsection.

4 (c) Any person prohibited from possessing a firearm by the
5 provisions of subsection (a) of this section may petition the
6 circuit court of the county in which he or she resides to regain
7 the ability to possess a firearm and if the court finds by clear
8 and convincing evidence that the person is competent and capable of
9 exercising the responsibility concomitant with the possession of a
10 firearm, the court may enter an order allowing the person to
11 possess a firearm if ~~such~~ the possession would not violate any
12 federal law: *Provided*, That a person prohibited from possessing a
13 firearm by the provisions of subdivision (4), subsection (a) of
14 this section may petition to regain the ability to possess a
15 firearm in accordance with the provisions of section five, article
16 seven-a of this chapter.

NOTE: The purpose of this bill is to resolve a conflict in criminal statutes. Last year, the Legislature passed House Bill No. 2739 which authorized law-enforcement officers to seize any weapons in the respondent's possession at the time the officer serves the respondent with the order. Further, House Bill No. 2739 made the possession of a firearm by a respondent a criminal offense after an emergency protective order issued and before a hearing. This bill clarifies that law-enforcement may remove weapons possessed after service or notice but before an actual hearing.

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