

1 **H. B. 2660**

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3 (By Delegates Ennis and Caputo)  
4 [Introduced January 20, 2011; referred to the  
5 Committee on Education.]  
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10 A BILL to amend and reenact §29-3-24 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §61-7-11a of said  
12 code, all relating to allowing fireworks displays on public  
13 school property upon approval of the State Superintendent of  
14 Schools and the State Fire Marshal.

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

16 That §29-3-24 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted; and that §61-7-11a of said code be  
18 amended and reenacted, all to read as follows:

19 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

20 **ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

21 **§29-3-24. Unlawful sale, possession or use of fireworks; permit**  
22 **for public display.**

23 (a) Except as hereinafter provided, no person, firm,  
24 copartnership or corporation shall offer for sale, possess, expose

1 for sale, sell at retail, keep with intent to sell at retail or use  
2 or explode any fireworks: *Provided*, That the State Fire Marshal may  
3 adopt reasonable rules ~~and regulations~~ for the granting of permits  
4 for the supervised displays of fireworks by municipalities, fair  
5 associations, amusement parks and other organizations or groups of  
6 individuals. The State Fire Marshal shall have the authority to  
7 charge a fee of \$10 to each applicant requesting a license to be a  
8 pyrotechnic operator as set forth in this article. The State Fire  
9 Marshal shall charge a scaled fee for all applications requesting  
10 permits to establish a pyrotechnics display as provided in this  
11 section. All fees required to be paid by the provisions of this  
12 section ~~shall be~~ are paid to the State Fire Marshal and thereafter  
13 deposited by him or her into a special account for the operation of  
14 the State Fire Commission. Such permits may be granted upon  
15 application to said State Fire Marshal and after approval of the  
16 local police and fire authorities of the community wherein the  
17 display is proposed to be held as provided herein and the filing of  
18 a bond by the applicant as provided hereinafter. Every such display  
19 shall be handled by a competent operator licensed or certified as  
20 to competency by the State Fire Marshal and shall be of such  
21 composition, character and so located, discharged or fired as in the  
22 opinion of the chief of the fire department, after proper  
23 inspection, and of the chief of police as to not be hazardous to  
24 property or endanger any person or persons. After such privilege  
25 shall have been granted, the sale, possession, use and distribution

1 of fireworks for such display ~~shall be~~ is lawful for that purpose  
2 only. No permit granted hereunder ~~shall be~~ is transferable.

3 The governing body or chief executive authority of the  
4 municipality shall require a bond from the licensee in a sum not  
5 less than \$1,000 conditioned on compliance with the provisions of  
6 this article and the regulations of the State Fire Commission:  
7 *Provided*, That no municipality shall be required to file such bond.

8 Before any permit for a pyrotechnic display ~~shall be~~ is issued,  
9 the person, firm or corporation making application therefor ~~shall~~  
10 must furnish proof of financial responsibility to satisfy claims for  
11 damages to property or personal injuries arising out of any act or  
12 omission on the part of such person, firm or corporation or any  
13 agent or employee thereof, in such amount, character and form as the  
14 State Fire Marshal determines to be necessary for the protection of  
15 the public.

16 (b) Notwithstanding any provision of this code to the contrary,  
17 a permit for a pyrotechnic display on public school property may be  
18 issued upon the approval of the State Superintendent of Schools and  
19 the State Fire Marshal. A permit issued under this subsection (b)  
20 is otherwise subject to the permitting and bonding requirements of  
21 subsection (a), except that no county board of education or other  
22 public school entity may be required to file bond under the  
23 provisions of subsection (a).

24 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

25 **ARTICLE 7. DANGEROUS WEAPONS.**

1 **§61-7-11a. Possessing deadly weapons on premises of educational**  
2 **facilities; reports by school principals; suspension**  
3 **of driver license; possessing deadly weapons on**  
4 **premises housing courts of law and in offices of**  
5 **family law master.**

6 (a) The Legislature hereby finds that the safety and welfare  
7 of the citizens of this state are inextricably dependent upon  
8 assurances of safety for children attending, and the persons  
9 employed by, schools in this state and for those persons employed  
10 with the judicial department of this state. It is for the purpose  
11 of providing such assurances of safety, therefore, that subsections  
12 (b), (g) and (h) of this section are enacted as a reasonable  
13 regulation of the manner in which citizens may exercise those rights  
14 accorded to them pursuant to section twenty-two, article three of  
15 the Constitution of the State of West Virginia.

16 (b) (1) It ~~shall be~~ is unlawful for any person to possess any  
17 firearm or any other deadly weapon on any school bus as defined in  
18 section one, article one, chapter seventeen-a of this code, or in  
19 or on any public or private primary or secondary education building,  
20 structure, facility or grounds thereof, including any vocational  
21 education building, structure, facility or grounds thereof where  
22 secondary vocational education programs are conducted or at any  
23 school-sponsored function.

24 (2) This subsection shall not apply to:

1 (A) A law-enforcement officer acting in his or her official  
2 capacity;

3 (B) A person specifically authorized by the board of education  
4 of the county or principal of the school where the property is  
5 located to conduct programs with valid educational purposes;

6 (C) A person who, as otherwise permitted by the provisions of  
7 this article, possesses an unloaded firearm or deadly weapon in a  
8 motor vehicle, or leaves an unloaded firearm or deadly weapon in a  
9 locked motor vehicle;

10 (D) Programs or raffles conducted with the approval of the  
11 county board of education or school which include the display of  
12 unloaded firearms; or

13 (E) The official mascot of West Virginia University, commonly  
14 known as "The Mountaineer", acting in his or her official capacity.

15 (3) Any person violating this subsection shall be guilty of a  
16 felony and, upon conviction thereof, shall be imprisoned in ~~the~~  
17 penitentiary a correctional facility of this state for a definite  
18 term of years of not less than two years nor more than ten years,  
19 or fined not more than \$5,000, or both.

20 (c) It ~~shall be~~ is the duty of the principal of each school  
21 subject to the authority of the State Board of Education to report  
22 any violation of subsection (b) of this section discovered by such  
23 principal to the State Superintendent of Schools within 72 hours  
24 after such violation occurs. The State Board of Education ~~shall~~  
25 must keep and maintain such reports and may prescribe rules

1 establishing policy and procedures for the making and delivery of  
2 the same as required by this subsection. In addition, it ~~shall be~~  
3 is the duty of the principal of each school subject to the authority  
4 of the State Board of Education to report any violation of  
5 subsection (b) of this section discovered by such principal to the  
6 appropriate local office of the ~~Division of Public Safety~~ State  
7 Police within seventy-two hours after such violation occurs.

8 (d) In addition to the methods of disposition provided by  
9 article five, chapter forty-nine of this code, any court which  
10 adjudicates a person who is fourteen years of age or older as  
11 delinquent for a violation of subsection (b) of this section may,  
12 in its discretion, order the Division of Motor Vehicles to suspend  
13 any driver's license or instruction permit issued to such person for  
14 such period of time as the court may deem appropriate, such  
15 suspension, however, not to extend beyond such person's nineteenth  
16 birthday; or, where such person has not been issued a driver's  
17 license or instruction permit by this state, order the Division of  
18 Motor Vehicles to deny such person's application for the same for  
19 such period of time as the court may deem appropriate, such denial,  
20 however, not to extend beyond such person's nineteenth birthday.  
21 Any suspension ordered by the court pursuant to this subsection  
22 ~~shall be~~ is effective upon the date of entry of such order. Where  
23 the court orders the suspension of a driver's license or instruction  
24 permit pursuant to this subsection, the court shall confiscate any  
25 driver's license or instruction permit in the adjudicated person's

1 possession and forward the same to the Division of Motor Vehicles.

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

8       (2) The clerk of the court in which the person is convicted as  
9 described in subdivision (1) of this subsection shall forward to the  
10 commissioner a transcript of the judgment of conviction. If the  
11 conviction is the judgment of a magistrate court, the magistrate  
12 court clerk shall forward such transcript when the person convicted  
13 has not requested an appeal within twenty days of the sentencing for  
14 such conviction. If the conviction is the judgment of a circuit  
15 court, the circuit clerk shall forward such transcript when the  
16 person convicted has not filed a notice of intent to file a petition  
17 for appeal or writ of error within thirty days after the judgment  
18 was entered.

19       (3) If, upon examination of the transcript of the judgment of  
20 conviction, the commissioner shall determine that the person was  
21 convicted as described in subdivision (1) of this subsection, the  
22 commissioner shall make and enter an order revoking such person's  
23 license or privilege to operate a motor vehicle in this state for  
24 a period of one year, or, in the event the person is a student  
25 enrolled in a secondary school, for a period of one year or until

1 the person's twentieth birthday, whichever is the greater period.  
2 The order shall contain the reasons for the revocation and the  
3 revocation period. The order of suspension ~~shall advise~~ advises the  
4 person that because of the receipt of the court's transcript, a  
5 presumption exists that the person named in the order of suspension  
6 is the same person named in the transcript. The commissioner may  
7 grant an administrative hearing which substantially complies with  
8 the requirements of the provisions of section two, article five-a,  
9 chapter seventeen-c of this code upon a preliminary showing that a  
10 possibility exists that the person named in the notice of conviction  
11 is not the same person whose license is being suspended. Such  
12 request for hearing ~~shall be~~ is made within ten days after receipt  
13 of a copy of the order of suspension. The sole purpose of this  
14 hearing ~~shall be~~ is for the person requesting the hearing to present  
15 evidence that he or she is not the person named in the notice. In  
16 the event the commissioner grants an administrative hearing, the  
17 commissioner shall stay the license suspension pending the  
18 commissioner's order resulting from the hearing.

19 (4) For the purposes of this subsection, a person is convicted  
20 when such person enters a plea of guilty or is found guilty by a  
21 court or jury.

22 (f) (1) It ~~shall be~~ is unlawful for any parent(s), guardian(s)  
23 or custodian(s) of a person less than eighteen years of age who  
24 knows that said person is in violation of subsection (b) of this  
25 section, or who has reasonable cause to believe that said person's



1 violation of said subsection is imminent, to fail to immediately  
2 report such knowledge or belief to the appropriate school or law-  
3 enforcement officials.

4 (2) Any person violating this subsection ~~shall be~~ is guilty of  
5 a misdemeanor and, upon conviction thereof, shall be fined not more  
6 than \$1,000, or shall be confined in jail not more than one year,  
7 or both.

8 (g) (1) It ~~shall be~~ is unlawful for any person to possess any  
9 firearm or any other deadly weapon on any premises which houses a  
10 court of law or in the offices of a family law master.

11 (2) This subsection shall not apply to:

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

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

17 (3) Any person violating this subsection ~~shall be~~ is guilty of  
18 a misdemeanor and, upon conviction thereof, shall be fined not more  
19 than \$1,000, or shall be confined in jail not more than one year,  
20 or both.

21 (h) (1) It ~~shall be~~ is unlawful for any person to possess any  
22 firearm or any other deadly weapon on any premises which houses a  
23 court of law or in the offices of a family law master with the  
24 intent to commit a crime.

25 (2) Any person violating this subsection ~~shall be~~ is guilty of

1 a felony, and, upon conviction thereof, shall be imprisoned in ~~the~~  
2 ~~penitentiary~~ a correctional facility of this state for a definite  
3 term of years of not less than two years nor more than ten years,  
4 or fined not more than \$5,000, or both.

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

7 (j) Nothing in this section may be construed to prohibit a  
8 pyrotechnic display on public school property in accordance with the  
9 provisions of chapter twenty-nine, article three, section twenty-  
10 four.

NOTE: The purpose of this bill is to allow fireworks displays on public school property upon approval of the State Superintendent of Schools and the State Fire Marshal.

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