

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4038

BY DELEGATES HORST, SUMMERS, STEELE, LINVILLE,
KIMBLE, SMITH, CROUSE, B. WARD, HANNA, BOOTH, AND
PHILLIPS

[Introduced January 12, 2022; Referred to the
Committee on the Judiciary Committee on.]

1 A BILL to amend and reenact §61-7-3, §61-7-6, and §61-7-7 of the Code of West Virginia, 1931,
 2 as amended, all relating to allowing those persons 18 to 20 years old to be able to carry a
 3 concealed deadly weapon without a permit, as is presently allowed for those persons 21
 4 years and older.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-3. Carrying a deadly weapon without provisional license or other authorization by persons under ~~twenty-one~~ eighteen years of age; penalties.

1 (a) Any person under ~~twenty-one~~ eighteen years of age and not otherwise prohibited from
 2 possessing firearms under section seven of this article who carries a concealed deadly weapon,
 3 without a state license or other lawful authorization established under the provisions of this code,
 4 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor
 5 more than \$1,000 and may be imprisoned in jail for not more than twelve months for the first
 6 offense; but upon conviction of a second or subsequent offense, he or she is guilty of a felony
 7 and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one
 8 nor more than five years and fined not less than \$1,000 nor more than \$5,000.

9 (b) The prosecuting attorney in all cases shall ascertain whether or not the charge made
 10 by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or
 11 subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney
 12 shall introduce the record evidence before the trial court of such second or subsequent offense
 13 and may not be permitted to use discretion in introducing evidence to prove the same on the trial.

~~§61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age; exemptions~~
Exemptions from licensing fees.

1 ~~(a) The provisions in section three of this article do not apply to any person at least~~
 2 ~~eighteen years of age and fewer than twenty-one years of age who is:~~

- 3 ~~(1) Carrying a deadly weapon upon his or her own premises;~~
- 4 ~~(2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence~~
5 ~~or place of business or to a place of repair and back to his or her home, residence or place of~~
6 ~~business; or~~
- 7 ~~(3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her~~
8 ~~home, residence or place of business to a hunting site and returning to his or her home, residence~~
9 ~~or place of business;~~
- 10 ~~(4) A member of a properly organized target shooting club authorized by law to obtain~~
11 ~~firearms by purchase or requisition from this state or from the United States for the purpose of~~
12 ~~target practice from carrying any pistol, as defined in this article, unloaded, from his or her home,~~
13 ~~residence or place of business to a place of target practice and from any place of target practice~~
14 ~~back to his or her home, residence or place of business, for using any such weapon at a place of~~
15 ~~target practice in training and improving his or her skill in the use of the weapons;~~
- 16 ~~(5) A law enforcement officer or law enforcement official or chief executive as defined in~~
17 ~~section one, article twenty-nine, chapter thirty of this code;~~
- 18 ~~(6) An employee of the West Virginia Division of Corrections duly appointed pursuant to~~
19 ~~section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;~~
- 20 ~~(7) A member of the United States armed forces, reserve or National Guard;~~
- 21 ~~(8) A resident of another state who holds a valid permit or license to possess or carry a~~
22 ~~handgun issued by a state or a political subdivision subject to the provisions and limitations set~~
23 ~~forth in section six-a of this article;~~
- 24 ~~(9) A federal law enforcement officer or federal police officer authorized to carry a weapon~~
25 ~~in the performance of the officer's duty; and~~
- 26 ~~(10) A parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-~~
27 ~~two of this code in the performance of his or her duties.~~
- 28 (b) The following judicial officers and prosecutors and staff are exempt from paying any

29 application fees or licensure fees required under this article. However, they shall make application
 30 and satisfy all licensure and handgun safety and training requirements to obtain a license as set
 31 forth in section four of this article:

- 32 (1) Any justice of the Supreme Court of Appeals of West Virginia;
- 33 (2) Any circuit judge;
- 34 (3) Any retired justice or retired circuit judge designated senior status by the Supreme
 35 Court of Appeals of West Virginia;
- 36 (4) Any family court judge;
- 37 (5) Any magistrate;
- 38 (6) Any prosecuting attorney;
- 39 (7) Any assistant prosecuting attorney; or
- 40 (8) Any duly appointed investigator employed by a prosecuting attorney.

§61-7-7. Persons prohibited from possessing firearms; classifications; right of nonprohibited persons over ~~twenty-one~~ eighteen years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.

1 (a) Except as provided in this section, no person shall possess a firearm, as such is
 2 defined in ~~section two of this article~~ §61-7-2, who:

- 3 (1) Has been convicted in any court of a crime punishable by imprisonment for a term
 4 exceeding one year;
- 5 (2) Is habitually addicted to alcohol;
- 6 (3) Is an unlawful user of or habitually addicted to any controlled substance;
- 7 (4) Has been adjudicated to be mentally incompetent or who has been involuntarily
 8 committed to a mental institution pursuant to the provisions of ~~chapter twenty-seven of this code~~
 9 §27-1-1 et seq. of this Code or in similar law of another jurisdiction: *Provided*, That once an
 10 individual has been adjudicated as a mental defective or involuntarily committed to a mental

11 institution, he or she shall be duly notified that they are to immediately surrender any firearms in
12 their ownership or possession: *Provided, however,* That the mental hygiene commissioner or
13 circuit judge shall first make a determination of the appropriate public or private individual or entity
14 to act as conservator for the surrendered property;

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

16 (6) Has been discharged from the armed forces under dishonorable conditions;

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

18 (A) Was issued after a hearing of which such person received actual notice and at which
19 such person had an opportunity to participate;

20 (B) Restrains such person from harassing, stalking or threatening an intimate partner of
21 such person or child of such intimate partner or person, or engaging in other conduct that would
22 place an intimate partner in reasonable fear of bodily injury to the partner or child; and

23 (C)(i) Includes a finding that such person represents a credible threat to the physical safety
24 of such intimate partner or child; or

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

28 (8) Has been convicted of a misdemeanor offense of assault or battery either under the
29 provisions of ~~section twenty-eight, article two of this chapter~~ §61-2-28 of this Code or the
30 provisions of ~~subsection (b) or (c), section nine of said article~~ §61-2-9(b) or §61-2-9(c) of this Code
31 or a federal or state statute with the same essential elements in which the victim was a current or
32 former spouse, current or former sexual or intimate partner, person with whom the defendant has
33 a child in common, person with whom the defendant cohabits or has cohabited, a parent or
34 guardian, the defendant's child or ward or a member of the defendant's household at the time of
35 the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor
36 crime of domestic violence.

37 Any person who violates the provisions of this subsection shall be guilty of a misdemeanor
38 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined
39 in the county jail for not less than 90 days nor more than one year, or both.

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

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

43 (2) Who has been convicted in this state or any other jurisdiction of a felony controlled
44 substance offense involving a Schedule I controlled substance other than marijuana, a Schedule
45 II or a Schedule III controlled substance as such are defined in ~~sections two hundred four, two~~
46 ~~hundred five and two hundred six, article two, chapter sixty-a of this code~~ §60A-2-204, §60A-2-
47 205, and §60A-2-206 of this Code and who possesses a firearm as such is defined in section two
48 of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state
49 correctional facility for not more than five years or fined not more than \$5,000, or both. The
50 provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred
51 to in this subsection or to persons convicted of a violation of this subsection.

52 (c) Any person may carry a concealed deadly weapon without a license therefor who is:

53 (1) At least ~~twenty-one~~ eighteen years of age;

54 (2) A United States citizen or legal resident thereof;

55 (3) Not prohibited from possessing a firearm under the provisions of this section; and

56 (4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g)

57 or (n).

58 (d) As a separate and additional offense to the offense provided for in subsection (a) of
59 this section, and in addition to any other offenses outlined in this code, and except as provided
60 by subsection (e) of this section, any person prohibited by subsection (a) of this section from
61 possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction
62 thereof, shall be confined in a state correctional facility for not more than three years or fined not

63 more than \$5,000, or both.

64 (e) As a separate and additional offense to the offense described in subsection (b) of this
65 section, and in addition to any other offenses outlined in this code, any person prohibited by
66 subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty
67 of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not
68 more than ten years or fined not more than \$10,000, or both.

69 (f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of
70 this section may petition the circuit court of the county in which he or she resides to regain the
71 ability to possess a firearm and if the court finds by clear and convincing evidence that the person
72 is competent and capable of exercising the responsibility concomitant with the possession of a
73 firearm, the court may enter an order allowing the person to possess a firearm if such possession
74 would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm
75 by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability
76 to possess a firearm in accordance with the provisions of ~~section five, article seven-a of this~~
77 ~~chapter~~ §61-7A-5 of this Code.

78 (g) Any person who has been convicted of an offense which disqualifies him or her from
79 possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set
80 aside or who subsequent thereto receives an unconditional pardon for said offense shall not be
81 prohibited from possessing a firearm by the provisions of the section.

NOTE: The purpose of this bill is to allow those persons 18-20 years of age to be permitted to carry a deadly weapon, as those persons 21 and over are currently permitted to do.

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