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OFFICE OF WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED
Committee Substitute for
SENATE BILL NO. 46

(By Senators Burdette, Mr. President, and Boley, By Request of the Executive)



PASSED March 12, 1994
In Effect August 1, 1994 Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 46

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 12, 1994; to take effect August 1, 1994.]

AN ACT to amend and reenact sections ten and eleven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-a, all relating to the reasonable regulation of the use and possession of deadly weapons generally; the unlawful display or offer for rent or sale of deadly weapons by persons and employees; unlawful sale, rental, giving or lending of deadly weapons by person and employee to person prohibited from possessing the same; use of a deadly weapon to cause or threaten a breach of the peace; legislative findings; unlawful possession of deadly weapon on school bus or property and exceptions thereto; unlawful possession of deadly weapon with intent to commit a crime on school bus or property; duty of principal to report; suspension of driver's license or instruction permit upon adjudication or conviction; duty of parent, custodian or legal guardian to report; unlawful possession of deadly weapon on

premises which house court of law or in offices of family law master and exceptions thereto; unlawful possession of deadly weapon with intent to commit a crime on premises which house court of law or in offices of family law master; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections ten and eleven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eleven-a, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

1 (a) (1) It shall be unlawful for any person to publicly
2 display and offer for rent or sale, or, where the person
3 is other than a natural person, to knowingly permit an
4 employee thereof to publicly display and offer for rent
5 or sale, to any passersby on any street, road or alley,
6 any deadly weapon, machine gun, submachine gun or
7 other fully automatic weapon, any rifle, shotgun or
8 ammunition for same.

9 (2) Any person violating the provisions of this
10 subsection shall be guilty of a misdemeanor, and, upon
11 conviction thereof, shall be fined not more than five
12 thousand dollars or shall be confined in the county jail
13 for not more than one year, or both fined and con-
14 fined, except that where the person violating the
15 provisions of this subsection is other than a natural
16 person, such person shall be fined not more than ten
17 thousand dollars.

18 (b) (1) It shall be unlawful for any person to know-
19 ingly sell, rent, give or lend, or, where the person is
20 other than a natural person, to knowingly permit an
21 employee thereof to knowingly sell, rent, give or lend,
22 any deadly weapon to a person prohibited from
23 possessing same by any provision of this article.

24 (2) Any person violating the provisions of this
25 subsection shall be guilty of a felony, and, upon
26 conviction thereof, shall be fined not more than
27 twenty-five thousand dollars or shall be imprisoned in
28 the penitentiary of this state for a definite term of
29 years of not less than three years nor more than ten
30 years, or both fined and imprisoned, except that where
31 the person violating the provisions of this subsection is
32 other than a natural person, such person shall be fined
33 not more than fifty thousand dollars.

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; criminal penalties.

1 It shall be unlawful for any person armed with a
2 firearm or other deadly weapon, whether licensed to
3 carry the same or not, to carry, brandish or use such
4 weapon in a way or manner to cause, or threaten, a
5 breach of the peace. Any person violating this section
6 shall be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be fined not less than fifty nor more
8 than one thousand dollars, or shall be confined in the
9 county jail not less than ninety days nor more than
10 one year, or both.

§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 in offices of family law master.

1 (a) The Legislature hereby finds that the safety and
2 welfare of the citizens of this state are inextricably
3 dependent upon assurances of safety for children in
4 school in this state and for those persons employed
5 with the judicial department of this state. It is for the
6 purpose of providing such assurances of safety, there-
7 fore, that subsection (b) of this section is enacted as a
8 reasonable regulation of the manner in which citizens
9 may exercise those rights accorded to them pursuant
10 to section twenty-two, article three of the Constitution
11 of the state of West Virginia.

12 (b) (1) It shall be unlawful for any person to possess

13 any firearm or any other deadly weapon on any school
14 bus as defined in section one, article one, chapter
15 seventeen-a of this code, or in or on any public or
16 private primary or secondary education building,
17 structure, facility or grounds thereof, including any
18 vocational education building, structure, facility or
19 grounds thereof where secondary vocational education
20 programs are conducted.

21 (2) This subsection shall not apply to:

22 (A) A law-enforcement officer acting in his or her
23 official capacity;

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

28 (C) A person who, as otherwise permitted by the
29 provisions of this article, possesses an unloaded fire-
30 arm or deadly weapon in a motor vehicle or leaves an
31 unloaded firearm or deadly weapon in a locked motor
32 vehicle.

33 (3) Any person violating this subsection shall be
34 guilty of a misdemeanor, and, upon conviction thereof,
35 shall be fined not more than one thousand dollars, or
36 shall be confined in jail not more than one year, or
37 both.

38 (c) (1) It shall be unlawful for any person to possess
39 any firearm or any other deadly weapon with the
40 intent to commit a crime on any school bus or in or
41 on any public or private primary or secondary educa-
42 tion building, structure, facility or grounds thereof,
43 including any vocational education building, structure,
44 facility or grounds thereof where secondary vocational
45 education programs are conducted.

46 (2) Any person violating this subsection shall be
47 guilty of a felony, and, upon conviction thereof, shall
48 be imprisoned in the penitentiary of this state for a
49 definite term of years of not less than two years nor
50 more than ten years, or fined not more than five
51 thousand dollars, or both.

52 (d) It shall be the duty of the principal of each school
53 subject to the authority of the state board of education
54 to report any violation of subsection (b) or (c) of this
55 section discovered by such principal to the state
56 superintendent of schools within seventy-two hours
57 after such violation occurs. The state board of educa-
58 tion shall keep and maintain such reports and may
59 prescribe rules establishing policy and procedures for
60 the making and delivery of the same as required by
61 this subsection. In addition, it shall be the duty of the
62 principal of each school subject to the authority of the
63 state board of education to report any violation of
64 subsection (b) or (c) of this section discovered by such
65 principal to the appropriate local office of the division
66 of public safety within seventy-two hours after such
67 violation occurs

68 (e) In addition to the methods of disposition provided
69 by article five, chapter forty-nine of this code, any
70 court which adjudicates a person who is fourteen
71 years of age or older as delinquent for a violation of
72 subsection (b) or (c) of this section may, in its discre-
73 tion, order the division of motor vehicles to suspend
74 any driver's license or instruction permit issued to
75 such person for such period of time as the court may
76 deem appropriate, such suspension, however, not to
77 extend beyond such person's nineteenth birthday; or,
78 where such person has not been issued a driver's
79 license or instruction permit by this state, order the
80 division of motor vehicles to deny such person's
81 application for the same for such period of time as the
82 court may deem appropriate, such denial, however,
83 not to extend beyond such person's nineteenth birth-
84 day. Any suspension ordered by the court pursuant to
85 this subsection shall be effective upon the date of
86 entry of such order. Where the court orders the
87 suspension of a driver's license or instruction permit
88 pursuant to this subsection, the court shall confiscate
89 any driver's license or instruction permit in the
90 adjudicated person's possession and forward the same
91 to the division of motor vehicles.

92 (f) (1) If a person eighteen years of age or older is

93 convicted of violating subsection (b) or (c) of this
94 section, and if such person does not act to appeal such
95 conviction within the time periods described in subdivi-
96 sion (2) of this subsection, such person's license or
97 privilege to operate a motor vehicle in this state shall
98 be revoked in accordance with the provisions of this
99 section.

100 (2) The clerk of the court in which the person is
101 convicted as described in subdivision (1) of this
102 subsection shall forward to the commissioner a tran-
103 script of the judgment of conviction. If the conviction
104 is the judgment of a magistrate court, the magistrate
105 court clerk shall forward such transcript when the
106 person convicted has not requested an appeal within
107 twenty days of the sentencing for such conviction. If
108 the conviction is the judgment of a circuit court, the
109 circuit clerk shall forward such transcript when the
110 person convicted has not filed a notice of intent to file
111 a petition for appeal or writ of error within thirty days
112 after the judgment was entered.

113 (3) If, upon examination of the transcript of the
114 judgment of conviction, the commissioner shall deter-
115 mine that the person was convicted as described in
116 subdivision (1) of this subsection, the commissioner
117 shall make and enter an order revoking such person's
118 license or privilege to operate a motor vehicle in this
119 state for a period of one year, or, in the event the
120 person is a student enrolled in a secondary school, for
121 a period of one year or until the person's twentieth
122 birthday, whichever is the greater period. The order
123 shall contain the reasons for the revocation and the
124 revocation period. The order of suspension shall advise
125 the person that because of the receipt of the court's
126 transcript, a presumption exists that the person named
127 in the order of suspension is the same person named
128 in the transcript. The commissioner may grant an
129 administrative hearing which substantially complies
130 with the requirements of the provisions of section two,
131 article five-a, chapter seventeen-c of this code upon a
132 preliminary showing that a possibility exists that the
133 person named in the notice of conviction is not the

134 same person whose license is being suspended. Such
135 request for hearing shall be made within ten days
136 after receipt of a copy of the order of suspension. The
137 sole purpose of this hearing shall be for the person
138 requesting the hearing to present evidence that he or
139 she is not the person named in the notice. In the event
140 the commissioner grants an administrative hearing,
141 the commissioner shall stay the license suspension
142 pending the commissioner's order resulting from the
143 hearing.

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

147 (g) (1) It shall be unlawful for any parent, custodian
148 or other legal guardian of a person less than eighteen
149 years of age who knows that said person is in violation
150 of subsection (b) or (c) of this section, or who has
151 reasonable cause to believe that said person's violation
152 of said subsections is imminent, to fail to report such
153 knowledge or belief to the appropriate school or law
154 enforcement officials.

155 (2) Any person violating this subsection shall be
156 guilty of a misdemeanor, and, upon conviction thereof,
157 shall be fined not more than one thousand dollars, or
158 shall be confined in jail not more than one year, or
159 both.

160 (h) (1) It shall be unlawful for any person to possess
161 any firearm or any other deadly weapon on any
162 premises which houses a court of law or in the offices
163 of a family law master.

164 (2) This subsection shall not apply to:

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

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

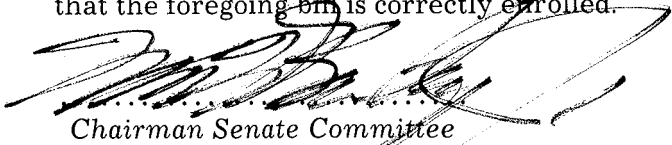
170 (3) Any person violating this subsection shall be
171 guilty of a misdemeanor, and, upon conviction thereof,

172 shall be fined not more than one thousand dollars, or
173 shall be confined in jail not more than one year, or
174 both.

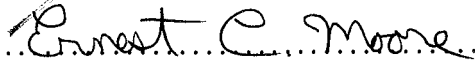
175 (i) (1) It shall be unlawful for any person to possess
176 any firearm or any other deadly weapon on any
177 premises which houses a court of law or in the offices
178 of a family law master with the intent to commit a
179 crime.

180 (2) Any person violating this subsection shall be
181 guilty of a felony, and, upon conviction thereof, shall
182 be imprisoned in the penitentiary of this state for a
183 definite term of years of not less than two years nor
184 more than ten years, or fined not more than five
185 thousand dollars, or both.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



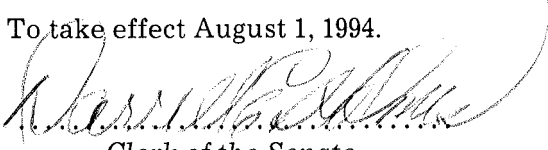
Chairman Senate Committee



Chairman House Committee

Originated in the Senate.

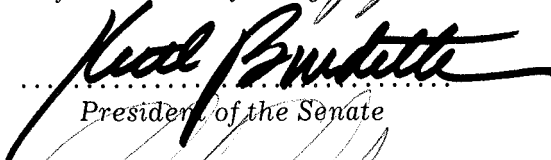
To take effect August 1, 1994.



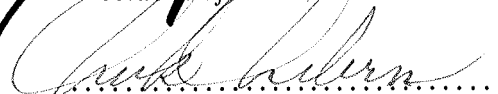
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within ~~unapproved~~ ³⁰⁴⁶ approved this the

day of ... March, 1994.



Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/94

Time

1:00 pm