

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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WEST VIRGINIA LEGISLATURE
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SENATE BILL NO. 400

(By Senator BOWMAN, ET AL)

PASSED MARCH 9, 1996
In Effect NINETY DAYS FROM Passage

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 400

(By SENATORS BOWMAN, WOOTON, ANDERSON, BUCKALEW,
DEEM, DITTMAR, MILLER, OLIVERIO, ROSS,
SCOTT AND WIEDEBUSCH)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to repeal sections seven and eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-e, all relating to criminal offenses involving explosives; definitions; penalties cumulative; illegal possession of destructive devices, explosive materials or incendiary devices; criminal use of destructive devices, explosive materials or incendiary devices; causing death or injury, penalties; causing death or injury to an explosives detection animal; manufacture, purchase, sale, advertising for sale, transporting or possession or use of hoax bomb; possession or use of hoax bomb in commission of a felony; theft of explosive material from storage magazines or buildings; receipt, possession, storage, sale or transportation of stolen explosive material; wanton endanger-

ment involving destructive devices, explosive materials or incendiary devices; exemptions; contraband, seizure and forfeiture; legislative findings; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article three-e, all to read as follows:

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (a) "Destructive device" means any bomb, grenade,
4 mine, rocket, missile, pipebomb or similar device con-
5 taining an explosive, incendiary, explosive gas or ex-
6 panding gas which is designed or so constructed as to
7 explode by such filler and is capable of causing bodily
8 harm or property damage; any combination of parts,
9 either designed or intended for use in converting any
10 device into a destructive device and from which a
11 destructive device may be readily assembled.

12 "Destructive device" does not include a firearm as
13 such is defined in section two, article seven of this
14 chapter or model rockets and their components as
15 defined in section twenty-three, article three, chapter
16 twenty-nine of this code..

17 (b) "Explosive material" means any chemical com-
18 pound, mechanical mixture or device that is commonly
19 used or can be used for the purpose of producing an
20 explosion and which contains any oxidizing and combus-
21 tive units or other ingredients in such proportions,
22 quantities or packaging that an ignition by fire, by
23 friction, by concussion, by percussion, by detonator or by
24 any part of the compound or mixture may cause a

25 sudden generation of highly heated gases. These materi-
26 als include, but are not limited to, powders for blasting,
27 high or low explosives, blasting materials, blasting
28 agents, blasting emulsions, blasting fuses other than
29 electric circuit breakers, detonators, blasting caps and
30 other detonating agents and black or smokeless powders
31 not manufactured or used for lawful sporting purposes
32 or fireworks defined in section twenty-three, article
33 three, chapter twenty-nine of this code which are not
34 used in violation of this article. Also included are all
35 explosive materials listed annually by the office of the
36 state fire marshal and published in the state register,
37 said publication being hereby mandated.

38 (c) "Hoax bomb" means any device or object that by its
39 design, construction, content or characteristics appears
40 to be, or is represented to be or to contain a destructive
41 device, explosive material or incendiary device as
42 defined in this section, but is, in fact, an inoperative
43 facsimile or imitation of such a destructive device,
44 explosive material or incendiary device.

45 (d) "Incendiary device" means a container containing
46 gasoline, kerosene, fuel oil, or derivative thereof, or other
47 flammable or combustible material, having a wick or
48 other substance or device which, if set or ignited, is
49 capable of igniting such gasoline, kerosene, fuel oil, or
50 derivative thereof, or other flammable or combustible
51 material: *Provided*, That no similar device commercially
52 manufactured and used solely for the purpose of illumi-
53 nation shall be deemed to be an incendiary device.

54 (e) "Legal authority" means that right as expressly
55 stated by statute or law.

56 (f) "Person" shall mean an individual, corporation,
57 company, association, firm, partnership, society or joint
58 stock company.

59 (g) "Storage magazine" is defined to mean any building
60 or structure, other than an explosives manufacturing
61 building, approved by the legal authority for the storage

62 of explosive materials.

§61-3E-2. Penalties cumulative.

1 It is the intention of the Legislature in enacting this
2 article that all criminal offenses and penalties defined in
3 this article shall be cumulative and shall be in addition
4 to any other offenses and penalties provided for by law.
5 The Legislature contemplates and authorizes separate
6 and consecutive sentences for the offenses defined in this
7 article and other offenses provided for or defined by law.
8 The Legislature declares as a matter of law that for the
9 offenses defined in this article that involve injuries or
10 death to persons those offenses are separate offenses as
11 to each person whose injury or death results from the
12 conduct proscribed by this article.

§61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty.

1 Any person who possesses or manufactures any explo-
2 sive material without first obtaining a permit to use
3 explosives from the office of the state fire marshal or
4 who possesses or manufacturers any destructive device
5 or incendiary device shall be guilty of a felony, and, upon
6 conviction thereof, shall be committed to the custody of
7 the division of corrections for not less than one nor more
8 than ten years or fined not more than five thousand
9 dollars, or both.

§61-3E-4. Criminal use of destructive device, explosive material or incendiary device; penalty.

1 Any person who unlawfully and intentionally damages
2 the property of another or attempts to damage the
3 property of another by the use of a destructive device,
4 explosive material or incendiary device shall be guilty of
5 a felony, and, upon conviction thereof, shall be commit-
6 ted to the custody of the division of corrections for not
7 less than two nor more than ten years, or fined not more
8 than ten thousand dollars, or both.

§61-3E-5. Causing death or injury; penalties.

1 (a) Any person who violates the provisions of this
2 article which violation causes bodily injury to any person
3 shall be guilty of a felony, and, upon conviction thereof,
4 shall be committed to the custody of the division of
5 corrections for not less than two nor more than ten years,
6 or fined not more than five thousand dollars, or both.

7 (b) Any person who violates the provisions of this
8 article which violation causes serious bodily injury to
9 any person shall be guilty of a felony, and, upon conviction
10 thereof, shall be committed to the custody of the
11 division of corrections for not less than three nor more
12 than fifteen years, or fined not more than ten thousand
13 dollars, or both.

14 (c) Any person who violates the provisions of this
15 article which violation causes the death of any person
16 shall be guilty of a felony, and, upon conviction thereof,
17 shall be committed to the custody of the division of
18 corrections for a definite term of years of not less than
19 ten years nor more than forty years. No person sentenced
20 to a period of imprisonment pursuant to the
21 provisions of this subsection shall be eligible for parole
22 prior to having served a minimum of ten years.

§61-3E-6. Causing death or injury to an explosives detection animal; penalty.

1 Any person who violates the provisions of this article
2 which violation causes death, serious or debilitating
3 bodily injury to an explosives detection animal owned or
4 used by a law-enforcement agency, shall be guilty of a
5 felony, and, upon conviction thereof, be committed to the
6 custody of the division of corrections for not less than
7 one year nor more than five years or fined not more than
8 five thousand dollars, or both.

§61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty.

1 (a) Any person who knowingly manufactures, pur-

2 chases, sells, advertises for sale, transports or possesses
3 a hoax bomb with intent to violate any provision of this
4 code shall be guilty of a misdemeanor. Any person
5 convicted of a violation of this section shall be incarcer-
6 ated in a county or regional jail for not less than six
7 months nor more than one year, or fined five thousand
8 dollars, or both.

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section, any person who possesses or uses a hoax
11 bomb to commit or attempt to commit any felony shall
12 be guilty of a felony, and, upon conviction thereof, shall
13 be committed to the custody of the division of correc-
14 tions for not less than one nor more than ten years, or
15 fined not more than ten thousand dollars, or both.

**§61-3E-8. Theft of explosive material from storage magazines
or buildings; penalty.**

1 Any person who breaks and enters or shall enter
2 without breaking any storage magazine, shop, office,
3 storehouse, warehouse or any other building or out-
4 house adjoining thereto, any railcar, boat, vessel or
5 motor vehicle within the jurisdiction of any county
6 within this state where explosive material is stored, with
7 the intent to commit larceny shall be guilty of a felony,
8 and, upon conviction thereof, shall be committed to the
9 custody of the division of corrections for not less than
10 one nor more than ten years or fined not more than ten
11 thousand dollars, or both.

**§61-3E-9. Receipt, possession, storage, sale or transportation of
stolen explosive material; penalty.**

1 Any person who receives, conceals, transports, ships,
2 stores, barter, sells or disposes of any explosive material
3 knowing or have reason to know that such materials is
4 stolen is guilty of a felony, and, upon conviction thereof,
5 shall be committed to the custody of the division of
6 corrections for not less than one nor more than ten years
7 or fined not more than ten thousand dollars, or both.

§61-3E-10. Wanton endangerment involving destructive de-

vices, explosive materials or incendiary devices; penalty.

1 Any person who wantonly performs any act with a
2 destructive device, explosive material or incendiary
3 device which creates substantial risk of death or serious
4 bodily injury to another shall be guilty of a felony, and,
5 upon conviction thereof, shall be committed to the
6 custody of the division of corrections for not less than
7 two years nor more than ten years or fined not more than
8 ten thousand dollars, or both.

§61-3E-11. Exemptions.

1 (a) Unless specifically prohibited by any provision of
2 this code or the laws of the United States, nothing in this
3 article shall prohibit the authorized manufacture, sale,
4 transportation, distribution, use or possession of any
5 explosive material by any person holding a permit for
6 such issued by the office of the state fire marshal. Any
7 person performing a lawful activity pursuant to or
8 regulated by the terms of a permit issued by the division
9 of environmental protection, or any office thereof, shall
10 be exempt from the provisions of this article.

11 (b) Unless specifically prohibited by any other provi-
12 sion of this code or the laws of the United States, nothing
13 in this section shall prohibit the authorized manufacture,
14 transportation, distribution, use or possession of any
15 explosive, destructive device or incendiary device by a
16 member of the armed forces or law-enforcement officers
17 whenever such persons are acting lawfully and in the
18 line of duty; nor shall it prohibit the manufacture,
19 transportation, distribution, use or possession of any
20 explosive material, destructive device or incendiary
21 device to be used solely for lawful scientific research or
22 lawful educational purposes. Any person engaged in
23 otherwise lawful blasting activities failing to obtain a
24 permit or in possession of an expired permit issued by
25 the office of the state fire marshal shall not be construed
26 to be in violation of the article.

§61-3E-12. Contraband, seizure, forfeiture.

1 Any destructive device, explosive material, incendiary
2 device or hoax bomb possessed, involved in, used or
3 intended to be used in a violation of this article or any
4 violation of any criminal law or regulation of this state
5 are hereby declared to be contraband and any property
6 interest therein shall be vested in the state of West
7 Virginia. Said contraband may be seized by the office of
8 the state fire marshal or other law-enforcement agency
9 conducting said investigation and upon application to
10 the circuit court of the county in which said contraband
11 is seized be forfeited to the state of West Virginia for
12 destruction or for training purposes by the office of the
13 state fire marshal or other law-enforcement agency.

§61-3E-13. Legislative findings.

1 The Legislature hereby finds and declares that the
2 seizure and use of items under the provisions of this
3 article is not contemplated to be a forfeiture as the same
4 is used in section five, article XII of the Constitution of
5 West Virginia and to the extent that such seizure and use
6 may be found to be such a forfeiture, the Legislature
7 hereby finds and declares that the proceeds from a
8 seizure and use under this article is not part of net
9 proceeds as the same is contemplated by section five,
10 article XII of the Constitution of West Virginia.

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

Rudy Schowover
.....
Chairman Senate Committee

Rudy Seaint
.....
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

David B. ...
.....
Clerk of the Senate

Bryan M. ...
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert ...
.....
Speaker House of Delegates

The within is approved this the 15th
day of April, 1996

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/28/94

Time

9:46 am