

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 391**

BY SENATORS TRUMP, LEONHARDT, MILLER,  
CARMICHAEL, WOELFEL, BOSO, GAUNCH, ROMANO,  
KARNES, ASHLEY, BEACH, BLAIR, PREZIOSO, PLYMALE  
AND UNGER

[Introduced January 26, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §60A-4-414, relating to use of a firearm during, in relation to, or in furtherance  
 3 of violation of Uniform Controlled Substances Act; creating felony offense of use or  
 4 possession of firearm; providing for penalties; clarifying that offense is separate and  
 5 distinct from other offenses; denying eligibility for sentencing alternatives; and clarifying  
 6 the term “convicted”.

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

1 That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new  
 2 section, designated §60A-4-414, to read as follows:

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-414. Use or Possession of a Firearm.**

3 (a) Any person who, during and in relation to any offense under this article, uses or carries  
 4 a firearm, or who, in furtherance of such an offense, possesses a firearm, is guilty of a felony, and  
 5 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five  
 6 years nor more than twenty years: *Provided*, That if the firearm is discharged, the person shall be  
 7 imprisoned for not less than ten years nor more than forty years.

8 (b) The offense established by this section shall be in addition to, and a separate and  
 9 distinct offense from, any other offense set forth in this code.

10 (c) Those individuals convicted under this section are not eligible for sentencing  
 11 alternatives made available to circuit court judges under other provisions of this code. For  
 12 purposes of this subsection, “convicted” includes adjudications found by a jury, by plea of guilty  
 13 or nolo contendere or by the court if the person is tried without a jury.

NOTE: The purpose of this bill is to create an additional penalty for use of a firearm in furtherance of a drug offense. The bill additionally includes a heightened penalty if the firearm is discharged.

This bill was recommended for introduction by the Joint Committee on the Judiciary that met during the 2015-2016 Interim session.

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