WEST VIRGINIA CODE CHAPTER 61 ARTICLE 3E

WV Legislature

§61-3E-1. Definitions.

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

(a) "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

"Destructive device" does not include a firearm as such is defined in section two, article seven of this chapter, or sparkling devices, novelties, toy caps, model rockets and their components or fireworks as these terms are defined in section two, article three-e, chapter twenty-nine of this code, or high power rockets and their components, as defined in this section.

(b) "Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes. Also included are all explosive materials listed annually by the office of the State Fire Marshal and published in the State Register, said publication being hereby mandated.

(c) "High power rocket" means the term as defined in National Fire Protection Association Standard 1127, "Code for High Power Rocketry."

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

(e) "Incendiary device" means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: Provided, That no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device.

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

(g) "Model rocket" means the term as defined in National Fire Protection Association Standard 1122, "Code for Model Rocketry."

(h) "Person" means an individual, corporation, company, association, firm, partnership, society or joint stock company.

(i) "Storage magazine" is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage of explosive materials.

WV Legislature

§61-3E-2. Penalties cumulative.

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

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

Any person who possesses or manufactures any explosive material without first obtaining a permit to use explosives from the office of the state Fire Marshal or who possesses or manufacturers any destructive device or incendiary device shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years or fined not more than $5,000, or both.

WV Legislature

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

Any person who unlawfully and intentionally damages the property of another or attempts to damage the property of another by the use of a destructive device, explosive material or incendiary device shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than two nor more than ten years, or fined not more than $10,000, or both.

WV Legislature

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

(a) Any person who violates the provisions of this article which violation causes bodily injury to any person shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than two nor more than ten years, or fined not more than $5,000, or both.

(b) Any person who violates the provisions of this article which violation causes serious bodily injury to any person shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than three nor more than fifteen years, or fined not more than $10,000, or both.

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

WV Legislature

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

Any person who violates the provisions of this article which violation causes death, serious or debilitating bodily injury to an explosives detection animal owned or used by a law-enforcement agency, shall be guilty of a felony and, upon conviction thereof, be committed to the custody of the Division of Corrections for not less than one year nor more than five years or fined not more than $5,000 or both. Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State Fire Marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills, and replacement costs of any disabled or killed animal.

WV Legislature

§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.

(a) Any person who knowingly manufactures, purchases, sells, advertises for sale, transports or possesses a hoax bomb with intent to violate any provision of this code shall be guilty of a misdemeanor. Any person convicted of a violation of this section shall be incarcerated in a county or regional jail for not less than six months nor more than one year, or fined $5,000, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who possesses or uses a hoax bomb to commit or attempt to commit any felony shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years, or fined not more than $10,000, or both.

WV Legislature

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

Any person who breaks and enters or shall enter without breaking any storage magazine, shop, office, storehouse, warehouse or any other building or out-house adjoining thereto, any railcar, boat, vessel or motor vehicle within the jurisdiction of any county within this state where explosive material is stored, with the intent to commit larceny shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years or fined not more than $10,000, or both.

WV Legislature

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

Any person who receives, conceals, transports, ships, stores, barters, sells or disposes of any explosive material knowing or have reason to know that such materials is stolen is guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than one nor more than ten years or fined not more than $10,000, or both.

WV Legislature

§61-3E-10. Wanton endangerment involving destructive devices, explosive materials or incendiary devices; penalty.

Any person who wantonly performs any act with a destructive device, explosive material or incendiary device which creates substantial risk of death or serious bodily injury to another shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for not less than two years nor more than ten years or fined not more than $10,000, or both.

WV Legislature

§61-3E-11. Exemptions.

(a) Unless specifically prohibited by any provision of this code or the laws of the United States, nothing in this article prohibits the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the State Fire Marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the Division of Environmental Protection, or any office thereof, is exempt from the provisions of this article.

(b) Unless specifically prohibited by any other provision of this code or the laws of the United States, nothing in this section prohibits the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the armed forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit issued by the office of the State Fire Marshal is not in violation of the article.

(c) Nothing contained in this article applies to sparkling devices or novelties or to the sale, purchase, possession, use, transportation or storage of fireworks as regulated in article three-e, chapter twenty-nine of this code.

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

Any destructive device, explosive material, incendiary device or hoax bomb possessed, involved in, used or intended to be used in a violation of this article or any violation of any criminal law or regulation of this state are hereby declared to be contraband and any property interest therein shall be vested in the State of West Virginia. Said contraband may be seized by the office of the state Fire Marshal or other law-enforcement agency conducting said investigation and upon application to the circuit court of the county in which said contraband is seized be forfeited to the State of West Virginia for destruction or for training purposes by the office of the state Fire Marshal or other law-enforcement agency.

WV Legislature

§61-3E-13. Legislative findings.

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

WV Legislature