

No. 624

RECEIVED

1989 APR 26 PM 4:10

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 624
(Originating in the Committee
(By Senator *on Judiciary*)

PASSED April 8, 1989

In Effect 90 days from Passage

ENROLLED

Senate Bill No. 624

(ORIGINATING IN THE COMMITTEE ON THE JUDICIARY.)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deadly weapons generally, defining certain terms; carrying deadly weapon without license or other authorization, penalties; license to carry deadly weapons, how obtained; revocation of license; exceptions as to prohibitions against carrying concealed deadly weapons; persons prohibited from possession of deadly weapons, penalties; possession of deadly weapons by minors, minor may be adjudged delinquent; possession of machine guns or automatic weapons, penalties; display of deadly weapons for sale or hire, sale to prohibited persons, penalties; brandishing or exposing deadly weapons, threatening or causing breach of the peace, penalties; exposing or brandishing firearm or deadly weapon on premises of school or court of law, penalties; negligent shooting, wounding or killing of human being or livestock while hunting, penalties; shooting across road or near building or crowd, penalties; right of certain persons to limit possession of firearms on premises; refusing to temporarily relinquish firearm or deadly weapon or to leave premises, penalties; and prohibition on possessing or carrying firearm or other deadly weapon on school premises.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§61-7-1. Legislative findings.

1 The Legislature finds that the overwhelming sup-
2 port of the citizens of West Virginia for article three,
3 section twenty-two of the Constitution of this State,
4 commonly known as the "Right to Keep and Bear
5 Arms Amendment" combined with the obligation of
6 the state to reasonably regulate the right of persons to
7 keep and bear arms for self-defense requires the
8 reenactment of this article.

§61-7-2. Definitions.

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

3 (1) "Blackjack" means a short bludgeon consisting,
4 at the striking end, of an encased piece of lead or some
5 other heavy substance and, at the handle end, a strap
6 or springy shaft which increases the force of impact
7 when a person or object is struck. The term "black-
8 jack" shall include, but not be limited to, a billy, billy
9 club, sand club, sandbag or slapjack.

10 (2) "Gravity knife" means any knife that has a blade
11 released from the handle by the force of gravity or the
12 application of centrifugal force, and when so released
13 is locked in place by means of a button, spring, lever,
14 or other locking or catching device.

15 (3) "Knife" means an instrument, intended to be
16 used or readily adaptable to be used as a weapon,
17 consisting of a sharp-edged or sharp-pointed blade,
18 usually made of steel, attached to a handle, which is
19 capable of inflicting cutting, stabbing or tearing
20 wounds. The term "knife" shall include, but not be
21 limited to, any dagger, dirk, poniard or stiletto with a
22 blade over three and one-half inches in length, any
23 switchblade knife or gravity knife, and any other
24 instrument capable of inflicting cutting, stabbing, or

25 tearing wounds. A pocket knife with a blade three and
26 one-half inches or less in length, a hunting or fishing
27 knife carried for hunting, fishing, sports or other
28 recreational uses, or a knife designed for use as a tool
29 or household implement shall not be included within
30 the term "knife" as defined herein, unless such knife
31 is knowingly used or intended to be used to produce
32 serious bodily injury or death.

33 (4) "Switchblade knife" means any knife having a
34 spring-operated blade which opens automatically upon
35 pressure being applied to a button, catch or other
36 releasing device in its handle.

37 (5) "Nunchuka" means a flailing instrument consist-
38 ing of two or more rigid parts, connected by a chain,
39 cable, rope or other non-rigid, flexible or springy
40 material, constructed in such a manner as to allow the
41 rigid parts to swing freely, so that one rigid part may
42 be used as a handle and the other rigid part may be
43 used as the striking end.

44 (6) "Metallic or false knuckles" means a set of finger
45 rings attached to a transverse piece, to be worn over
46 the front of the hand for use as a weapon, and
47 constructed in such a manner that, when striking
48 another person with the fist or closed hand, consider-
49 able physical damage may be inflicted upon the person
50 struck. The terms "metallic or false knuckles" shall
51 include any such instrument, without reference to the
52 metal or other substance or substances from which the
53 metallic or false knuckles are made.

54 (7) "Pistol" means a short firearm having a chamber
55 which is integral with the barrel, designed to be aimed
56 and fired by the use of a single hand.

57 (8) "Revolver" means a short firearm having a
58 cylinder of several chambers that are brought succes-
59 sively into line with the barrel to be discharged,
60 designed to be aimed and fired by the use of a single
61 hand.

62 (9) "Deadly weapon" means an instrument which is
63 designed to be used to produce serious bodily injury or

64 death, or is readily adaptable to such use. The term
65 “deadly weapon” shall include, but not be limited to,
66 the instruments defined in subdivisions (1) through (8)
67 of this section, or other deadly weapons of like kind or
68 character which may be easily concealed on or about
69 the person.

70 (10) “Concealed” means hidden from ordinary
71 observation so as to prevent disclosure or recognition.
72 A deadly weapon is concealed when it is carried on or
73 about the person in such a manner that another
74 person in the ordinary course of events would not be
75 placed on notice that the deadly weapon was being
76 carried.

77 (11) “Firearm” means any weapon which will expel
78 a projectile by action of an explosion.

79 (12) “Controlled substance” shall have the same
80 meaning as is ascribed to that term in subsection (d),
81 section one hundred one, article one, chapter sixty-a of
82 this code.

83 (13) “Drug” shall have the same meaning as is
84 ascribed to that term in subsection (l), section one
85 hundred one, article one, chapter sixty-a of this code.

**§61-7-3. Carrying deadly weapon without license or other
authorization; penalties.**

1 (a) Any person who carries a concealed deadly
2 weapon, without a state license or other lawful
3 authorization established under the provisions of this
4 code, shall be guilty of a misdemeanor, and, upon
5 conviction thereof, shall be fined not less than one
6 hundred dollars nor more than one thousand dollars
7 and may be imprisoned in the county jail for not more
8 than twelve months for the first offense; but upon
9 conviction of a second or subsequent offense, he or she
10 shall be guilty of a felony and, upon conviction
11 thereof, shall be imprisoned in the penitentiary not
12 less than one nor more than five years and fined not
13 less than one thousand dollars nor more than five
14 thousand dollars.

15 (b) It shall be the duty of the prosecuting attorney

16 in all cases to ascertain whether or not the charge
17 made by the grand jury is a first offense or is a second
18 or subsequent offense and, if it shall be a second or
19 subsequent offense, it shall be so stated in the indict-
20 ment returned, and the prosecuting attorney shall
21 introduce the record evidence before the trial court of
22 such second or subsequent offense and shall not be
23 permitted to use discretion in introducing evidence to
24 prove the same on the trial.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Any person desiring to obtain a state license to
2 carry a concealed deadly weapon shall apply to the
3 circuit court of his or her county for such license, and
4 shall pay to the clerk of the circuit court, at the time
5 of application, a filing fee of twenty dollars. The
6 applicant shall file with the clerk of the circuit court
7 an application in writing, duly verified, which sets
8 forth the following:

9 (1) That the applicant is a citizen of the United
10 States of America or lawfully resides in the United
11 States of America;

12 (2) That, on the date the application is made, the
13 applicant is a bona fide resident of this state and of the
14 county in which the application is made;

15 (3) That the applicant is eighteen years of age or
16 older;

17 (4) That the applicant is not addicted to alcohol, a
18 controlled substance or a drug, and is not an unlawful
19 user thereof;

20 (5) That the applicant has not been convicted of a
21 felony or of an act of violence involving the misuse of
22 such deadly weapon;

See 23 (6) That the applicant desires to carry such deadly
24 weapon for the defense of self, family, home or state,
25 or other lawful purpose;

See 26 (7) That the applicant is physically and mentally
27 competent to carry such weapon;



28 (8) That, in the case of a person applying for a
29 license to carry a concealed pistol or revolver, the
30 applicant has qualified under minimum requirements
31 for handling and firing such firearms. These minimum
32 requirements are those promulgated by the depart-
33 ment of natural resources and attained under the
34 auspices of the department of natural resources:
35 *Provided*, That the court shall waive this requirement
36 in the case of a renewal applicant who has previously
37 qualified: *Provided, however*, That the following may
38 be substituted for those minimum requirements
39 promulgated by the department of natural resources:

40 (A) Successful completion of any official national
41 rifle association firearms safety or training course;

42 (B) Successful completion of any firearms safety or
43 training course or class available to the general public
44 offered by an official law-enforcement organization,
45 community college, junior college, college, or private
46 or public institution or organization or firearms
47 training school, utilizing instructors currently certified
48 by the national rifle association;

49 (C) Successful completion of any firearms training
50 or safety course or class conducted by a firearms
51 instructor certified as such by the state or by the
52 national rifle association.

53 A photocopy of a certificate of completion of any of
54 the courses or classes or an affidavit from the instruc-
55 tor, school, club, organization, or group that conducted
56 or taught said course or class attesting to the successful
57 completion of the course or class by the applicant or a
58 copy of any document which shows successful comple-
59 tion of the course or class, shall constitute evidence of
60 qualification under this section.

61 (b) The court shall issue or deny such license within
62 thirty days after the application is filed with the
63 circuit clerk. The court shall, if necessary, hear
64 evidence upon all matters stated in such application
65 and upon any other matter related to the eligibility of
66 the applicant under subsection (a) of this section. If
67 from such application or the proof it appears that the

68 purpose for such person to carry such weapon is
69 defense of self, family, home or state, or other lawful
70 purpose, and all other conditions in subsection (a) are
71 complied with, the court, or the judge thereof in
72 vacation, shall grant such license.

73 (c) In the event an application is denied, the specific
74 reasons for the denial shall be stated in the order of
75 the court denying the application. Upon denial of an
76 application and at the request of the applicant made
77 within ten days of such denial, the court shall schedule
78 the matter for a hearing. The applicant may be
79 represented by counsel, but in no case shall the court
80 be required to appoint counsel for an applicant. The
81 final order of the court shall include the court's
82 findings of fact and conclusions of law.

83 (d) If an application is approved, the court shall
84 require in its order granting the license that before
85 any license shall be issued or become effective, the
86 applicant shall pay to the sheriff a license fee in the
87 amount of fifty dollars. Any such license shall be valid
88 for five years, unless sooner revoked.

89 (e) All license fees collected hereunder shall be paid
90 by the sheriff and accounted for to the auditor as other
91 license taxes are collected and paid, and the state tax
92 commissioner shall prepare all suitable forms for
93 licenses and certificates showing that such license has
94 been granted and shall do any other act required to be
95 done to protect the state and see to the enforcement of
96 this section.

97 (f) The clerk of the circuit court shall, immediately
98 after the license is granted as aforesaid, furnish the
99 superintendent of the department of public safety a
100 certified copy of the order of the court granting such
101 license, for which service the clerk shall be paid a fee
102 of two dollars which shall be taxed as costs in the
103 proceeding. It shall be the duty of the clerk of each
104 circuit court to furnish to the superintendent of the
105 department of public safety, at any time so requested,
106 a certified list of all such licenses issued in the county.

107 (g) No person who is engaged in the receipt, review,
108 or in the issuance of such license shall incur any civil
109 liability as the result of the lawful performance of his
110 or her duties under this article.

§61-7-5. Revocation of license.

1 A license to carry a deadly weapon shall be deemed
2 revoked at such time as the person licensed becomes
3 unable to meet the criteria for initial licensure set
4 forth in section four of this article. Any person
5 licensed under the provisions of this article shall
6 immediately surrender his or her license to the circuit
7 court upon becoming ineligible for continued licensure.

**§61-7-6. Exceptions as to prohibitions against carrying
concealed deadly weapons.**

1 The licensure provisions set forth in this article shall
2 not apply to:

3 (1) Any person carrying a deadly weapon upon his
4 own premises; nor shall anything herein prevent a
5 person from carrying any firearm, unloaded, from the
6 place of purchase to his or her home, residence or
7 place of business or to a place of repair and back to his
8 or her home, residence or place of business, nor shall
9 anything herein prohibit a person from possessing a
10 firearm while hunting in a lawful manner or while
11 traveling from his or her home, residence or place of
12 business to a hunting site, and returning to his or her
13 home, residence or place of business;

14 (2) Any person who is a member of a properly
15 organized target-shooting club authorized by law to
16 obtain firearms by purchase or requisition from this
17 state, or from the United States for the purpose of
18 target practice, from carrying any pistol, as defined in
19 this article, unloaded, from his home, residence or
20 place of business to a place of target practice, and from
21 any such place of target practice back to his home,
22 residence or place of business, for using any such
23 weapon at such place of target practice in training and
24 improving his skill in the use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement

26 official as such are defined in section one, article
27 twenty-nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department
29 of corrections duly appointed pursuant to the provi-
30 sions of section five, article five, chapter twenty-eight
31 of this code while such employee is on duty;

32 (5) Any member of the armed forces of the United
33 States or the militia of this state while such member
34 is on duty;

35 (6) Any circuit judge, prosecuting attorney, assistant
36 prosecuting attorney or a duly appointed investigator
37 employed by a prosecuting attorney.

**§61-7-7. Persons prohibited from possession of deadly
weapons.**

1 Notwithstanding any provision of this code to the
2 contrary, no person who: (1) Has been convicted of a
3 felony in this state or in any other jurisdiction; (2) has
4 been discharged under less than honorable conditions
5 from the armed forces of the United States; (3) has
6 been adjudicated as a mental incompetent or has been
7 committed involuntarily to a mental institution; (4) is
8 an alien illegally or unlawfully in the United States; or
9 (5) is addicted to alcohol, a controlled substance or a
10 drug, or is an unlawful user thereof shall have in his
11 or her possession any firearm or other deadly weapon:
12 *Provided*, That any person prohibited from possessing
13 a firearm or other deadly weapon by the provisions of
14 this section may petition the circuit court of the
15 county in which he or she resides and if the court
16 finds by clear and convincing evidence that such
17 person is competent and capable of exercising the
18 responsibility concomitant with the possession of a
19 firearm or other deadly weapon the court may enter
20 an order allowing such person to possess such weapon
21 if such would not violate any federal statute.

22 Any person who violates the provisions of this
23 section shall be guilty of a misdemeanor, and, upon
24 conviction thereof, shall be fined not less than one
25 hundred dollars nor more than one thousand dollars

26 or confined in the county jail for not less than ninety
27 days nor more than one year, or both.

**§61-7-8. Possession of deadly weapons by minors;
prohibitions.**

1 Notwithstanding any other provision of this article
2 to the contrary, a person under the age of eighteen
3 years who is not married or otherwise emancipated
4 shall not possess or carry concealed or openly any
5 deadly weapon: *Provided*, That a minor may possess a
6 firearm upon premises owned by said minor or his
7 family or on the premises of another with the permis-
8 sion of his or her parent or guardian and in the case
9 of property other than his or her own or that of his
10 family, with the permission of the owner or lessee of
11 such property: *Provided, however*, That nothing in
12 this section shall prohibit a minor from possessing a
13 firearm while hunting in a lawful manner or while
14 traveling from a place where he or she may lawfully
15 possess a deadly weapon, to a hunting site, and
16 returning to a place where he or she may lawfully
17 possess such weapon.

18 A violation of this section by a person under the age
19 of eighteen years shall subject the child to the juris-
20 diction of the circuit court under the provisions of
21 article five, chapter forty-nine of this code, and such
22 minor may be proceeded against in the same manner
23 as if he or she had committed an act which if commit-
24 ted by an adult would be a crime, and may be
25 adjudicated delinquent.

§61-7-9. Possession of machine guns, penalties.

1 It shall be unlawful for any person to carry, trans-
2 port, or have in his possession, any machine gun,
3 submachine gun, or any other fully automatic weapon
4 unless he or she has fully complied with applicable
5 federal statutes and all applicable rules and regula-
6 tions of the secretary of the treasury of the United
7 States relating to such firearms.

8 Any person who violates the provision of this section
9 shall be guilty of a misdemeanor, and, upon conviction

10 thereof, shall be fined not less than one thousand
11 dollars nor more than five thousand dollars, or shall be
12 confined in the county jail for not less than ninety
13 days nor more than one year, or both.

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

1 (a) It shall be unlawful for any person to publicly
2 display and offer for rent or sale, to passersby on any
3 street, road or alley, any deadly weapon, machine gun,
4 submachine gun or other fully automatic weapon, any
5 rifle, shotgun or ammunition for same.

6 (b) It shall be unlawful for any person to knowingly
7 sell, rent, give or lend any of the arms mentioned in
8 this article to a person prohibited from possessing
9 same by any provision of this article.

10 (c) Any person, partnership, corporation or firm
11 violating the provisions of this section shall be guilty
12 of a misdemeanor, and, upon conviction thereof, shall
13 be fined not less than five hundred dollars nor more
14 than five thousand dollars or shall be confined in the
15 county jail for not more than one year, or both.

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; brandishing deadly weapons on premises of educational facility or court; penalties.

1 (a) It shall be unlawful for any person armed with
2 a 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 subsec-
6 tion shall be guilty of a misdemeanor, and, upon
7 conviction thereof, shall be fined not less than fifty nor
8 more than one thousand dollars, or shall be confined
9 in the county jail not less than ninety days nor more
10 than one year, or both.

11 (b) It shall be unlawful for any person armed with
12 a firearm or deadly weapon, except for law-
13 enforcement officers on duty, to expose, brandish,
14 unholster or hold such firearm in his or her hand or

15 expose, brandish or hold such deadly weapon in his or
16 her hand (1) On the premises of any primary or
17 secondary educational facility in this state, except for
18 valid educational purposes by faculty or by individuals
19 invited by faculty; or (2) on any premises housing a
20 court of law. Any person violating this subsection shall
21 be guilty of a misdemeanor, and, upon conviction
22 thereof, shall be fined not less than two hundred
23 dollars nor more than one thousand dollars, or con-
24 fined in the county jail not less than six months nor
25 more than one year, or both.

§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

1 It shall be unlawful for any person, while engaged in
2 hunting or pursuing game animals, game birds or
3 game fowl, carelessly or negligently to shoot, wound or
4 kill any human being, or any livestock, or destroy or
5 injure any other chattels or property, and any person
6 violating this section shall be guilty of a misdemeanor,
7 and, upon conviction thereof, shall be fined not less
8 than one thousand dollars nor more than ten thousand
9 dollars, or shall be confined in the county jail for a
10 period not exceeding one year, or both.


§61-7-13. Shooting across road or near building or crowd; penalty.

1 (a) It shall be unlawful for any person to shoot or
2 discharge any firearm across or in any public road in
3 this state, at any time, or within four hundred feet of
4 any schoolhouse or church, or within five hundred
5 feet of any dwelling house by any person other than
6 the owner and his or her family or guests, or on or
7 near any park or other place where persons gather for
8 purposes of pleasure, and any person violating this
9 section shall be guilty of a misdemeanor, and, upon
10 conviction thereof, shall be fined not less than one
11 hundred dollars nor more than five hundred dollars,
12 or shall be imprisoned in the county jail not more
13 than one hundred days.

14 (b) Any person operating a gun repair shop, licensed
15 to do business in the state of West Virginia and duly

16 licensed under applicable federal statutes, is exempt
17 from the prohibition established by this section and
18 section fifty-eight, article two, chapter twenty of this
19 code for the purpose of test-firing firearms.

**§61-7-14. Right of certain persons to limit possession of
firearms on premises.**

1 Notwithstanding the provisions of this article, any
2 owner, lessee or other person charged with the care,
3 custody and control of real property may prohibit the
4 carrying openly or concealed of any firearm or deadly
5 weapon on property under his or her domain; **provided**, That for purposes of this section "person" means an
6 Any person carrying or possessing a firearm individual or any entity which may acquire title to real
7 deadly weapon on the property of another w^h property.
8 to temporarily relinquish possession of such firearm or 
9 other deadly weapon, upon being requested to do so,
10 or to leave such premises, while in possession of such
11 firearm or other deadly weapon, shall be guilty of a
12 misdemeanor, and, upon conviction thereof, shall be
13 fined not more than one thousand dollars or confined
14 in the county jail not more than six months, or both:
15 *Provided*, That the provisions of this section shall not
16 apply to those persons set forth in subsections (3)
17 through (6) of section six of this code while such
18 persons are acting in an official capacity: *Provided*,
19 *however*, That under no circumstances may any
20 person possess or carry or cause the possession or
21 carrying of any firearm or other deadly weapon on the
22 premises of any primary or secondary educational
23 facility in this state unless such person is a law-
24 enforcement officer or he or she has the express
25 written permission of the county school
26 superintendent.


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


.....
Chairman Senate Committee

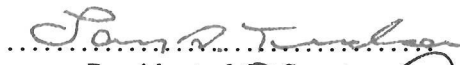

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 26th
day of April 1989.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/89

Time 10:50