WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

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

PASSED April 8, 1989
In Effect 90 days from Passage
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(Originating in the Committee on the Judiciary.)

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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 support of the citizens of West Virginia for article three, section twenty-two of the Constitution of this State, commonly known as the “Right to Keep and Bear Arms Amendment” combined with the obligation of the state to reasonably regulate the right of persons to keep and bear arms for self-defense requires the reenactment of this article.

§61-7-2. Definitions.

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

   (1) “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term “blackjack” shall include, but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

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

   (3) “Knife” means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. The term “knife” shall include, but not be limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or
tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term “knife” as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

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

(5) “Nunchuka” means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other non-rigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(6) “Metallic or false knuckles” means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The terms “metallic or false knuckles” shall include any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

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

(8) “Revolver” means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(9) “Deadly weapon” means an instrument which is 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 (1), 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
in all cases to ascertain whether or not the charge
made by the grand jury is a first offense or is a second
or subsequent offense and, if it shall be a second or
subsequent offense, it shall be so stated in the indict-
ment returned, and the prosecuting attorney shall
introduce the record evidence before the trial court of
such second or subsequent offense and shall not be
permitted to use discretion in introducing evidence to
prove the same on the trial.

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

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

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

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

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

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

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

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

(7) That the applicant is physically and mentally
competent to carry such weapon;
(f) That, in the case of a person applying for a license to carry a concealed pistol or revolver, the applicant has qualified under minimum requirements for handling and firing such firearms. These minimum requirements are those promulgated by the department of natural resources and attained under the auspices of the department of natural resources: Provided, That the court shall waive this requirement in the case of a renewal applicant who has previously qualified: Provided, however, That the following may be substituted for those minimum requirements promulgated by the department of natural resources:

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

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

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

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class, shall constitute evidence of qualification under this section.

(b) The court shall issue or deny such license within thirty days after the application is filed with the circuit clerk. The court shall, if necessary, hear evidence upon all matters stated in such application and upon any other matter related to the eligibility of the applicant under subsection (a) of this section. If from such application or the proof it appears that the
purpose for such person to carry such weapon is
defense of self, family, home or state, or other lawful
purpose, and all other conditions in subsection (a) are
complied with, the court, or the judge thereof in
vacation, shall grant such license.

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

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

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

(f) The clerk of the circuit court shall, immediately
after the license is granted as aforesaid, furnish the
superintendent of the department of public safety a
certified copy of the order of the court granting such
license, for which service the clerk shall be paid a fee
of two dollars which shall be taxed as costs in the
proceeding. It shall be the duty of the clerk of each
circuit court to furnish to the superintendent of the
department of public safety, at any time so requested,
a certified list of all such licenses issued in the county.
(g) No person who is engaged in the receipt, review, or in the issuance of such license shall incur any civil liability as the result of the lawful performance of his or her duties under this article.

§61-7-5. Revocation of license.

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

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

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

1. Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site, and returning to his or her home, residence or place of business;

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

3. Any law-enforcement officer or law-enforcement
official as such are defined in section one, article
twenty-nine, chapter thirty of this code;
(4) Any employee of the West Virginia department
of corrections duly appointed pursuant to the provi-
sions of section five, article five, chapter twenty-eight
of this code while such employee is on duty;
(5) Any member of the armed forces of the United
States or the militia of this state while such member
is on duty;
(6) Any circuit judge, prosecuting attorney, assistant
prosecuting attorney or a duly appointed investigator
employed by a prosecuting attorney.

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

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

Any person who violates the provisions of this
section shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than one
hundred dollars nor more than one thousand dollars
or confined in the county jail for not less than ninety 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 to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: Provided, That a minor may possess a firearm upon premises owned by said minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property: Provided, however, That nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

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


1 It shall be unlawful for any person to carry, transport, or have in his possession, any machine gun, submachine gun, or any other fully automatic weapon unless he or she has fully complied with applicable federal statutes and all applicable rules and regulations of the secretary of the treasury of the United States relating to such firearms.

Any person who violates the provision of this section shall be guilty of a misdemeanor, and, upon conviction
 thereof, shall be fined not less than one thousand
dollars nor more than five thousand dollars, or shall be
confined in the county jail for not less than ninety
days nor more than one year, or both.

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

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

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

(c) Any person, partnership, corporation or firm
violating the provisions of this section shall be guilty
of a misdemeanor, and, upon conviction thereof, shall
be fined not less than five hundred dollars nor more
than five thousand dollars or shall be confined in the
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.

(a) It shall be unlawful for any person armed with
a firearm or other deadly weapon, whether licensed to
carry the same or not, to carry, brandish, or use such
weapon in a way or manner to cause, or threaten, a
breach of the peace. Any person violating this subsec-
tion shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than fifty nor
more than one thousand dollars, or shall be confined
in the county jail not less than ninety days nor more
than one year, or both.

(b) It shall be unlawful for any person armed with
a firearm or deadly weapon, except for law-
enforcement officers on duty, to expose, brandish,
unholster or hold such firearm in his or her hand or
expose, brandish or hold such deadly weapon in his or
her hand (1) On the premises of any primary or
secondary educational facility in this state, except for
valid educational purposes by faculty or by individuals
invited by faculty; or (2) on any premises housing a
court of law. Any person violating this subsection shall
be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than two hundred
dollars nor more than one thousand dollars, or con-
fined in the county jail not less than six months nor
more than one year, or both.

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

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

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

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

(b) Any person operating a gun repair shop, licensed
to do business in the state of West Virginia and duly
licensed under applicable federal statutes, is exempt
from the prohibition established by this section and
section fifty-eight, article two, chapter twenty of this
code for the purpose of test-firing firearms.

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

Notwithstanding the provisions of this article, any
owner, lessee or other person charged with the care,
custody and control of real property may prohibit the
carrying openly or concealed of any firearm or deadly
weapon on property under his or her domain; provided, That for purposes of this section "person" means an
individual or any entity which may acquire title to real
property. Any person carrying or possessing a firearm to temporarily relinquish possession of such firearm or
other deadly weapon, upon being requested to do so,
or to leave such premises, while in possession of such
firearm or other deadly weapon, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not more than one thousand dollars or confined
in the county jail not more than six months, or both:
provided, That the provisions of this section shall not
apply to those persons set forth in subsections (3)
through (6) of section six of this code while such
persons are acting in an official capacity: provided,
however, That under no circumstances may any
person possess or carry or cause the possession or
carrying of any firearm or other deadly weapon on the
premises of any primary or secondary educational
facility in this state unless such person is a law-
enforcement officer or he or she has the express
written permission of the county school
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 day of , 1989.

Governor