

HOUSE BILL 535

By Womick

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, Part 13 and Title 70, relative to
firearms.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1307, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) A person who is not otherwise prohibited from possessing a firearm, as defined in § 39-11-106, may possess a firearm either openly or concealed.

(2) A person who is not otherwise prohibited from possessing a weapon, other than a firearm, may possess a weapon either openly or concealed.

(b)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106, and:

(A) Has been convicted of a misdemeanor crime of domestic violence as defined in § 40-14-109(a) and is still subject to the disabilities of the conviction; or

(B) Is, at the time of the possession, subject to an order of protection that expressly restricts the individual's possession of a firearm.

(2) Subsection (b) shall not apply to any individual whose civil rights have been restored:

(A) Under Tennessee law by order of restoration, acquittal, expungement, or pardon; or

(B) By the law in the jurisdiction which originally entered the plea or conviction if the plea or conviction did not occur in this state.

(3) If the person is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether the person possesses firearms that constitute the business inventory under the federal license shall be determined based upon the applicable federal statutes or the rules, regulations, official letters, rulings, and publications of the bureau of alcohol, tobacco, firearms, and explosives.

(4) For purposes of this section, a person does not possess a firearm, including, but not limited to, firearms registered under the National Firearms Act (26 U.S.C. § 5801 et seq.), if:

(A) The firearm is in a safe or similar container that is securely locked and to which the person does not have the combination, keys, or other means of normal access; or

(B) The firearm is not in the actual possession of the person.

(5) A violation of subdivision (b)(1) is a Class A misdemeanor, and each violation constitutes a separate offense.

(c)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106, and has been convicted of a dangerous felony, as defined in § 39-17-1324(i)(1).

(2) Subdivision (c)(1) shall not apply to any individual whose civil rights have been restored:

(A) Under Tennessee law by order of restoration, acquittal, expungement, or pardon; or

(B) By the law in the jurisdiction that originally entered the plea or conviction if the plea or conviction did not occur in this state.

(3) An offense under subdivision (c)(1) is a Class E felony.

SECTION 2. Tennessee Code Annotated, Section 39-17-1308, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Section 39-17-1309, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section, "weapon of like kind" includes razors and razor blades, except those used solely for personal shaving, and any sharp pointed or edged instrument, except unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance.

(b)

(1) It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles, or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public school building or bus, on any public school campus, grounds, recreation area, athletic field, or any other property owned or primarily operated by any public school.

(2) A violation of subdivision (b)(1) is a Class E felony.

(c)

(1)

(A) It is an offense for any person to possess or carry, whether openly or concealed, any firearm, not used solely for instructional or school-sanctioned ceremonial purposes, in any public school building or bus, on any public or private school campus, grounds, recreation area,

athletic field, or any other property primarily owned or operated by any public school.

(B) It is not an offense under this subsection (c) for a nonstudent adult to possess a firearm, if the firearm is contained within a private vehicle operated by the adult and is not handled by the adult, or by any other person acting with the expressed or implied consent of the adult, while the vehicle is on school property.

(2) A violation of subdivision (c)(1) is a Class B misdemeanor.

(d)

(1) Each chief administrator of a public school shall display in prominent locations about the school a sign, at least six inches (6") high and fourteen inches (14") wide, stating:

FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF SIX (6) YEARS IMPRISONMENT AND A FINE NOT TO EXCEED THREE THOUSAND DOLLARS (\$3,000) FOR CARRYING WEAPONS ON SCHOOL PROPERTY.

(2) As used in subdivision (d)(1), "prominent locations about a school" includes, but is not limited to, sports arenas, gymnasiums, stadiums, and cafeterias.

(e) Subsections (b) and (c) shall not apply to the following persons:

(1) Persons employed in the army, air force, navy, coast guard, or marine service of the United States or any member of the Tennessee national guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(2) Civil officers of the United States in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the state, or of any county, city, or town, charged with the enforcement of the laws of the state, when in the discharge of their official duties;

(5) Any pupils who are members of the reserve officers' training corps or pupils enrolled in a course of instruction or members of a club or team, and who are required to carry arms or weapons in the discharge of their official class or team duties;

(6) Any private police employed by the administration or board of trustees of any public or private institution of higher education in the discharge of their duties;

(7) Any registered security guard/officer who meets the requirements of the Private Protective Services Licensing and Regulatory Act, compiled in title 62, chapter 35, and who is discharging the officer's official duties; and

(8) A person who transports or stores firearms or ammunition in a motor vehicle.

(f) For purposes of this section, a "public school" includes any institution operated by a governmental entity to provide education services in grades K—12. A "public school" does not include a building, facility, or structure used primarily for noneducational purposes.

(g) The board of directors or other managing body of a private school may elect to declare the campus of such facility off limits under this section by posting signage in

conformity with subsection (d) and including such notice on its contract with the parents, guardians, or legal custodians of the students.

SECTION 4. Tennessee Code Annotated, Section 39-17-1310, is amended by deleting the section in its entirety and substituting instead the following:

It is an affirmative defense to prosecution under § 39-17-1309 that the person's behavior was in strict compliance with the requirements of one (1) of the following classifications:

(1) A person hunting during the lawful hunting season on lands owned by any public or private educational institution and designated as open to hunting by the administrator of the educational institution;

(2) A person possessing unloaded hunting weapons while transversing the grounds of any public or private educational institution for the purpose of gaining access to public or private lands open to hunting with the intent to hunt on the public or private lands unless the lands of the educational institution are posted prohibiting entry;

(3) A person possessing guns or knives when conducting or attending "gun and knife shows" and the program has been approved by the administrator of the educational institution;

(4) A person entering the property for the sole purpose of delivering or picking up passengers and who does not remove, utilize, or allow to be removed or utilized any weapon from the vehicle;

(5) A person who transported or stored firearms or ammunition in a motor vehicle in conformity with § 39-17-1313;

(6) A person attending a function or activity at the school, which function or activity is not being conducted by the school administration or otherwise as part of the educational or organized extracurricular activities of the school; or

(7) A person demonstrating that the signage required by § 39-17-1309(d) was not posted in conformity with the requirements of § 39-17-1309(d).

SECTION 5. Tennessee Code Annotated, Section 39-17-1311, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 39-17-1313, is amended by deleting the section in its entirety and substituting instead the following:

(a) A person who legally possesses a firearm, firearm ammunition, or firearm accessories may transport or store the items in a motor vehicle while on or utilizing any public or private street, access road, driveway, or parking area if:

(1) The person legally possesses or otherwise legally occupies the motor vehicle;

(2) The motor vehicle is in a location where it is otherwise permitted to be; and

(3) The firearm, if the person is not in or in the immediate vicinity of the motor vehicle, is kept from ordinary observation, which may include, but is not limited to, being stored within the trunk, glove box, or interior of the motor vehicle or other container.

(b) A firearm, firearm ammunition, or firearm accessories may be removed from the motor vehicle or handled in the case of self-defense or defense of another.

(c)

(1) No person, including, but not limited to, an employer, shall restrict a person's right to lawfully possess a firearm, firearm ammunition, or firearm accessories pursuant to this section.

(2) It is unlawful for an employer to impose any adverse employment consequences or otherwise punish an employee lawfully possessing a firearm, firearm ammunition, or firearm accessories pursuant to this section.

(3) An employee facing unlawful workplace retaliation may seek injunctive relief, and actual damages, and shall, upon prevailing, be awarded attorney's fees and expenses.

(c) No business entity, public or private employer, or the owner, manager, or legal possessor of the property shall be held liable in any civil action for damages, injuries, or death resulting from or arising out of another's actions involving a firearm or firearm ammunition transported or stored in a motor vehicle unless the business entity, public or private employer, or the owner, manager, or legal possessor of the property commits an offense involving the use of the stored firearm or ammunition or intentionally solicits or procures the conduct resulting in the damage, injury, or death. Nor shall a business entity, public or private employer, or the owner, manager, or legal possessor of the property be responsible for the theft of a firearm or ammunition stored in a motor vehicle.

(d) For purposes of this section:

(1) "Motor vehicle" means any motor vehicle as defined in § 55-1-103 that is in the lawful possession of the individual, but shall not include any motor vehicle that is owned or leased by a governmental or business entity and that is provided by such entity to the individual for use during the course of employment if the governmental or business entity has adopted a written policy prohibiting

firearms or ammunition not required for employment within the entity's motor vehicles; and

(2)

(A) "Parking area" means any property provided by a business entity, public or private employer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients, or employees to park privately owned motor vehicles;

(B) "Parking area" does not include the grounds or property of an owner-occupied, single-family detached residence, or a tenant-occupied single-family detached residence.

(e) A person transporting, storing, or both transporting and storing a firearm, firearm ammunition, or firearm accessories in accordance with this section does not violate this section if the firearm, firearm ammunition, or firearm accessories are observed by another person or security device in the course of the individual storing the firearm in or on a motor vehicle.

SECTION 7. Tennessee Code Annotated, Section 39-17-1314, is amended by deleting the section in its entirety and substituting instead the following:

(a) The state reserves to itself the entire field of regulation within the state of all arms and weapons, including, but not limited to, the possession, use, ownership, purchase, sale, acquisition, transfer, taxation, discharge, transportation, and manufacture of arms, weapons, firearms, ammunition, edged weapons, and all accessories. Any laws, regulations, ordinances, or enactments, other than those enacted by the general assembly, including, but not limited to, local laws, regulations, or ordinances, whether now existing or enacted after the effective date of this act, are void.

(b) Notwithstanding subsection (a), other governmental entities, including local governments and subdivisions of state government, may regulate by ordinance the following:

(1) The use or possession of arms by individuals directly employed as government officials while acting within the course and scope of their official duties except as limited by § 39-17-1313; and

(2) Ordinances relative to weapons but only to the extent expressly authorized by state statute.

(c) The general assembly declares that the lawful design, marketing, manufacture, and sale of firearms and ammunition to the public are not unreasonably dangerous activities and do not constitute a nuisance per se.

(d)

(1) The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association, or dealer by or on behalf of any state entity, county, municipality, or metropolitan government for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public shall be reserved exclusively to the state.

(2) Nothing in this subsection (d) shall be construed to prohibit a county, municipality, or metropolitan government from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the county, municipality, or metropolitan government.

(3) Nothing in this subsection (d) shall preclude an individual from bringing a cause of action for breach of a written contract, for breach of an

express warranty, or for injuries resulting from defects in the materials or workmanship in the manufacture of the firearm.

(e) Subsections (c) and (d) shall not apply in any litigation brought by an individual against a firearms or ammunition manufacturer, trade association, or dealer.

(f) Notwithstanding any law, any enactment, including any statute, rule, regulation, ordinance, or order that is owned, maintained, or used by any government entity or official that has the intent or effect of creating or maintaining any registry or database of civilians who privately own or possess firearms or of firearms privately owned or possessed by civilians, is prohibited. This subsection (f) shall not apply to registries or databases of:

(1) Stolen firearms that have not been recovered;

(2) Firearms while in the possession of the government as evidence in criminal actions; or

(3) Privately owned firearms where the then current owner has expressly consented to the temporary inclusion of the firearm in a government database or registry.

(g) All federal laws, ordinances, rules, or regulations relative to the rights of citizens, residents, or civilians within this state concerning or in any way relative to arms or the authority of this state to exclusively regulate the entire field of arms within the boundaries of this state are declared void. No state or local funds shall be expended for the purposes of furthering or enforcing any laws, ordinances, rules, or regulations declared void by this part. No official of this state or any subdivision thereof shall enforce any laws, ordinances, rules, or regulations declared void by this part.

(h) Any person, including any entity or organization whose membership may be adversely affected by any governmental enactment, action, or omission in violation of

this section, may file suit against the governmental entity for any actual damages, declaratory relief, injunctive relief, or civil rights violations. If the governmental enactment or action was a discretionary determination by one (1) or more individuals, then those individuals may be named as parties to the action as well and shall not rely on any claim of immunity for purposes of the action. If the court issues any injunction or grants any declaratory or other relief against a governmental entity in any suit commenced pursuant to this subsection (h), the court shall also award to the nongovernmental party:

(1) Attorney's fees and all costs, including positive consideration of whether the action was brought on a contingency basis; and

(2) Expert witness fees and expenses.

SECTION 8. Tennessee Code Annotated, Section 39-17-1321, is amended by deleting the section in its entirety and substituting instead the following:

(a) It is an offense for a person to possess a handgun while under the influence of alcohol, any controlled substance, or controlled substance analogue.

(b) It is an offense for a person to possess a firearm if the person is both:

(1) Within the confines of an establishment open to the public where liquor, wine, or other alcoholic beverages, as defined in § 57-3-101(a), or beer, as defined in § 57-6-102, is served for consumption on the premises; and

(2) Consuming any alcoholic beverage or beer.

(c) A violation of this section is a Class A misdemeanor.

SECTION 9. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting subsections (e) and (v) in their entirety and deleting the third sentence of subsection (m).

SECTION 10. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting subsection (p) and substituting instead the following:

(p) The department shall charge an application and processing fee of fifty dollars (\$50.00). The fee shall cover all aspects of processing the application and issuing a permit.

SECTION 11. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting subsection (r) and substituting instead the following:

(r)

(1) A facially valid handgun permit, firearms permit, weapons permit, or similar license issued by another state shall be valid in this state according to its terms and shall be treated as if it is a handgun permit issued by this section.

(2) The commissioner of safety shall enter into written reciprocity agreements with other states that require the execution of the agreements. The commissioner of safety shall prepare and publicly publish a current list of states honoring permits issued by the state of Tennessee and shall make the list available to anyone upon request. The commissioner of safety shall also prepare and publicly publish a current list of states that, after inquiry by the commissioner, refuse to enter into a reciprocity agreement with this state or honor handgun carry permits issued by this state. To the extent that any state may impose conditions in the reciprocity agreements, the commissioner of safety shall publish those conditions as part of the list.

SECTION 12. Tennessee Code Annotated, Section 39-17-1351, is amended by deleting from subdivision (w)(1) the language “neither the department nor an instructor or employee of a department approved handgun safety course” and substituting instead the language “neither the department nor any other government official”.

SECTION 13. Tennessee Code Annotated, Section 39-17-1359, is amended by deleting the section in its entirety and substituting instead the following:

(a) Except as provided in § 39-17-1313, an individual, corporation, business entity, or local, state, or federal government entity or agent thereof is authorized to prohibit the possession of weapons by any person who is on property owned, operated, or managed or under the control of the individual, corporation, business entity, or government entity.

(b)

(1) Notice of the prohibition permitted by subsection (a) shall be accomplished by displaying one (1) or both of the notices described in subdivision (b)(3) in prominent locations, including all entrances primarily used by persons entering the property, building, or portion of the property or building where weapon possession is prohibited. Either form of notice used shall be of a size that is plainly visible to the average person entering the building, property, or portion of the building or property posted.

(2) The notice required by this section shall be in English, but a duplicate notice may also be posted in any language used by patrons, customers, or persons who frequent the place where weapon possession is prohibited.

(3)

(A) If a sign is used as the method of posting, it shall contain language substantially similar to the following:

AS AUTHORIZED BY T.C.A. § 39-17-1359, POSSESSION OF A WEAPON ON POSTED PROPERTY OR IN A POSTED BUILDING IS PROHIBITED AND IS A CRIMINAL OFFENSE.

(B) As used in this section, "language substantially similar to" means the sign contains language plainly stating that:

(i) The property is posted under authority of Tennessee law;

(ii) Weapons or firearms are prohibited on the property, in the building, or on the portion of the property or building that is posted; and

(iii) Possessing a weapon in an area that is posted is a criminal offense.

(C) A building, property, or a portion of a building or property, shall be considered properly posted in accordance with this section if one (1) or both of the following are displayed in prominent locations, including all entrances primarily used by persons entering the property, building, or portion of the property or building where weapon possession is prohibited:

(i) The international circle and slash symbolizing the prohibition of the item within the circle; or

(ii) The posting sign described in this subdivision (b)(3).

(c)

(1) It is an offense to possess a weapon in a building or on property that is properly posted in accordance with this section.

(2) Possession of a weapon on posted property in violation of this section is a Class B misdemeanor punishable by fine only of five hundred dollars (\$500).

(d) Nothing in this section shall be construed to alter, reduce, or eliminate any civil or criminal liability that a property owner or manager may have for injuries arising on their property.

(e) This section shall not apply to title 70 regarding wildlife laws, rules, and regulations.

(f) A political subdivision of this state, including state agencies, departments, and local governmental entities, may not prohibit possession of firearms by civilians, if the firearms are carried or possessed primarily for personal defensive use, under this section unless the governmental entity enacts a regulation or ordinance based on one (1) or more public hearings at which factual findings are made, based on existing criminal records by the Tennessee bureau of investigation and public testimony. The entity must find that there is clear and convincing evidence that infringing the rights of individual citizens to provide for their own self-defense is necessary to prevent an existing problem with violent criminal activity in the specific public property or properties in question. However, no governmental entity or political subdivision of the state shall take any action to prohibit the possession of firearms by civilians in or on the grounds of any public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, recreation area, lake, or other similar public place that is owned or operated by the state, a county, a municipality, or an instrumentality thereof.

SECTION 14. Tennessee Code Annotated, Section 70-4-117, is amended by deleting subsections (d), (e), and (f) and substituting instead the following:

(d) Notwithstanding subsection (a), a person with a handgun carry permit pursuant to § 39-17-1351, or a person otherwise legally in possession of a handgun primarily for personal defensive use, may possess a handgun at any time while on the premises of any refuge, public hunting area, wildlife management area, or national forest land maintained by the state. Nothing in this subsection (d) shall authorize a person to use any handgun to hunt game unless the person is in full compliance with all wildlife laws, rules, and regulations.

SECTION 15. Tennessee Code Annotated, Section 70-4-123, is amended by deleting subsections (a) and substituting instead the following:

(a) It is an offense for any person hunting big game with a bow and arrow to be in possession of firearms during the archery-only deer season; provided, that persons authorized to carry a handgun pursuant to § 39-17-1351, or persons otherwise legally in possession of a handgun primarily for personal defensive use, may be in possession of a handgun while hunting big game with a bow and arrow during the archery-only deer season.

SECTION 16. Tennessee Code Annotated, Section 70-5-101, is amended by deleting subsections (c) and (d) and substituting instead the following:

(c) Notwithstanding subsection (b), a person with a handgun carry permit pursuant to § 39-17-1351 or persons otherwise legally in possession of a handgun primarily for personal defensive use may possess a handgun the entire year while on the premises of any refuge, public hunting area, or wildlife management area or national forest land maintained by the state. Nothing in this subsection (c) shall authorize a person to use any handgun to hunt unless the person is in full compliance with all wildlife laws, rules, and regulations.

SECTION 17. This act shall take effect July 1, 2015, the public welfare requiring it.