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Bill Title: An Act To Amend Title 11 Of The Delaware Code Relating To Safe School And Recreation Zones.

Spectrum: Partisan Bill (Democrat 2-0)

Status: (*Passed*) 2024-03-07 - Signed by Governor [HB276 Detail]

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SPONSOR: Rep. Schwartzkopf & Sen. S. McBride

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 276

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SAFE SCHOOL AND RECREATION ZONES.

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

Section 1. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1457. Possession of a ~~firearm~~ weapon in a Safe Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm and does so while in or on a “Safe Recreation Zone” shall be guilty of the crime of possession of a ~~firearm~~ weapon in a Safe Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

(1) *Section 1442.* — Carrying a concealed deadly weapon; class G felony; class D felony.

(2) *Section 1444.* — Possessing a destructive weapon; class E felony.

(3) *Section 1446.* — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

(4) *Section 1448.* — Possession and purchase of deadly weapons by persons prohibited; class F felony.

(5) *Section 1452.* — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

(6) *Section 1453.* — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(7) *Section 1466.* —

Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault weapons; class E or F felony.

(c) For the purpose of this section:

(1) “Constable” means an individual who licensed under Chapter 56 of Title 24.

(2) “Firearm” means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444(a) and (c) of this title and includes BB guns.

(3) “Police officer” means as defined in § 8401 of this title.

(4) “Safe Recreation Zone” means any building or structure owned, operated, leased or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

(d) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be convicted both of the crime of possession of a weapon in a Safe ~~School and~~ Recreation Zone and of the underlying offense as defined elsewhere by the laws of the State.

(e) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or in a Safe ~~School and~~ Recreation Zone.

(f) ~~It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed pursuant to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or recreational activity. The affirmative defense established in this section shall be proved by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this chapter.~~
[Repealed.]

(g) [Repealed.]

(h) This section does not apply to any of the following:

(1) A police officer.

(2) A constable employed by a recreation zone who is acting in that capacity within a Safe Recreation Zone.

(i) [Repealed.]

(j) The penalty for possession of a weapon in a Safe Recreation Zone shall be:

(1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;

(2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;

(3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the underlying offense.

(4) If the underlying offense is a class D felony, the crime shall also be a class D felony.

(5), (6) [Repealed.]

§ 1457A. Possession of a firearm in a Safe School Zone; class E felony.

(a) As used in this section:

(4) “Qualified retired law-enforcement officer” means as defined in § 1441B of this title.

(b) Any person who knowingly possesses a firearm while in or on a Safe School Zone shall be guilty of the crime of possession of a firearm in a Safe School Zone.

(c) Subsection (b) of this section shall not apply to any of the following:

(2) A constable employed by a school or school district who is acting in an official capacity within a Safe School Zone.

(7) A qualified retired law-enforcement officer who is employed or contracted by a school or school district to assist with security or investigations and who is acting in an official capacity within a Safe School Zone.

(e) A person who violates this section is guilty of a class E felony.

SYNOPSIS

This Act is a follow-up to House Bill No. 201, as amended by House Amendment No. 3 and Senate Amendment No. 3, which was passed in 2023. That bill originally repealed the offense of “Possession of a weapon in a Safe School and Recreation Zone,” which was not actually a separate crime but rather operated as an aggravator and sentence enhancement on certain underlying crimes, and replaced it with “Possession of a firearm in a Safe School and Recreation Zone” which is a separate and self-contained criminal offense. Subsequently Senate Amendment No. 3 was passed and attached to the bill. That amendment separated the “school zone” from the “recreation zone” offenses and was intended to reinstate the original sentence enhancement scheme for offenses in a “Safe Recreation Zone.”

This Act reinstates references in the “Safe Recreation Zone” statute to weapons other than firearms and makes other minor technical corrections.

This Act also adds a qualified retired law-enforcement officer who is employed or contracted by a school or district to assist with security or investigations to the list of persons exempt from the prohibition on the knowing possession of a firearm in or on a Safe School Zone. It also clarifies that constables employed by a school or a school district and acting in an official capacity are exempt.