

IN THE SENATE

SENATE BILL NO. 1126

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO CONCEALED WEAPONS; AMENDING SECTION 18-3301, IDAHO CODE, TO
2 PROVIDE FOR UNLAWFUL USE OF A WEAPON AND TO PROVIDE THAT AN INTENT TO
3 ASSAULT MAY NOT BE INFERRED FROM THE MERE CARRYING OR POSSESSION OF
4 THE WEAPON ITSELF, INCLUDING THE CARRYING OR POSSESSION OF A LOADED
5 FIREARM; AMENDING SECTION 18-3302, IDAHO CODE, TO REVISE PROVISIONS
6 FOR CARRYING WEAPONS, TO REVISE PROVISIONS FOR LICENSURE OF PERSONS FOR
7 CARRYING CONCEALED WEAPONS, TO PROVIDE PENALTIES AND TO MAKE TECHNICAL
8 CORRECTIONS; REPEALING SECTION 18-3302C, IDAHO CODE, RELATING TO PRO-
9 HIBITED CONDUCT WITH A CONCEALED WEAPON; AND AMENDING SECTION 18-3302D,
10 IDAHO CODE, TO REMOVE A CODE REFERENCE.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 18-3301, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 18-3301. DEADLY WEAPON -- POSSESSION WITH INTENT TO ~~ASSAULT~~ USE UNLAW-
16 FULLY. Every person having upon him any deadly weapon with intent to ~~assault~~
17 use it unlawfully against another is guilty of a misdemeanor. The intent re-
18 quired for a violation of the provisions of this section may not be inferred
19 from the mere carrying or possession of the weapon itself, including the car-
20 rying or possession of a firearm, whether loaded or unloaded, concealed or
21 unconcealed.

22 SECTION 2. That Section 18-3302, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 18-3302. ~~ISSUANCE OF LICENSES TO CARRY CONCEALED~~ CARRYING
25 WEAPONS. (1) Definitions. For purposes of this section:

26 (a) "Weapon" means any dirk, dirk knife, bowie knife, dagger, pistol,
27 revolver or any other deadly or dangerous weapon;

28 (b) "Concealed weapon" means a weapon that is carried on or about one's
29 person or otherwise readily accessible and in such a manner so as not to
30 be discernible to ordinary observation;

31 (c) "Restricted access area" means any area where the general public is
32 normally excluded. A restricted access area does not include common ar-
33 reas of egress or ingress open to the general public;

34 (d) "Law enforcement facility" means a facility that is owned, leased,
35 or operated by a law enforcement agency;

36 (e) "Court facility" means those areas in any building that are used in
37 connection with court proceedings, including courtrooms, jury rooms,
38 judge's chambers, offices and areas used to conduct court business,
39 waiting areas, and corridors adjacent to areas used in connection with

1 court proceedings, not including common areas of ingress and egress to
 2 the building;

3 (f) "Public mental health facility" means a state hospital or other fa-
 4 ility providing inpatient care for patients with psychiatric disor-
 5 ders.

6 (2) Prohibitions.

7 (a) No person shall carry a weapon in:

8 (i) The restricted access areas of a correctional facility or of a
 9 law enforcement facility;

10 (ii) A court facility. The area where concealed weapons are pro-
 11 hibited shall be the minimum necessary to fulfill the objective
 12 of this subsection. The governmental body having authority over a
 13 building containing court facilities shall designate and clearly
 14 mark those areas where weapons are prohibited and shall post no-
 15 tices at each entrance to the building of the prohibition against
 16 weapons in the restricted areas;

17 (iii) The restricted access areas of a public mental health facil-
 18 ity;

19 (iv) The provisions of this subsection shall not apply to peace
 20 officers while acting within the scope of their employment or se-
 21 curity personnel while engaged in their employment.

22 (b) No person under the age of twenty-one (21) years shall carry a con-
 23 cealed weapon without a license to carry a concealed weapon except:

24 (i) In the person's place of abode or fixed place of business, or
 25 on property in which the person has any ownership or leasehold in-
 26 terest; or

27 (ii) While outside the limits of or confines of any city while en-
 28 gaged in lawful hunting, fishing, trapping or other lawful outdoor
 29 activity.

30 (c) No person shall provide information on the application for a li-
 31 cence to carry a concealed weapon knowing the same to be untrue.

32 (3) Licenses to carry concealed weapons.

33 (a) The sheriff of a county, on behalf of the state of Idaho, shall,
 34 within ninety (90) days after the filing of an application by any per-
 35 son who is not disqualified from possessing or receiving a firearm un-
 36 der state or federal law, issue a license to the person to carry a weapon
 37 concealed on his person within this state. For licenses issued before
 38 July 1, 2006, a license shall be valid for four (4) years from the date of
 39 issue. For licenses issued on or after July 1, 2006, a license shall be
 40 valid for five (5) years from the date of issue. ~~The citizen's consti-~~
 41 ~~tutional right to bear arms shall not be denied to him, unless one (1) of~~
 42 ~~the following applies. He:~~ The sheriff must issue the license unless he
 43 determines that the applicant has not provided evidence of firearm fa-
 44 miliarity, as may be required under subsection (3) (j) of this section,
 45 or that the applicant:

46 (a*i*) Is ineligible to own, possess or receive a firearm under the
 47 provisions of state or federal law;

48 (b*ii*) Is formally charged with a crime punishable by imprisonment
 49 for a term exceeding one (1) year;

- 1 (~~e~~iii) Has been adjudicated guilty in any court of a crime punish-
2 able by imprisonment for a term exceeding one (1) year;
3 (~~d~~iv) Is a fugitive from justice;
4 (~~e~~v) Is an unlawful user of, or addicted to, marijuana or any de-
5 pressant, stimulant or narcotic drug, or any other controlled sub-
6 stance as defined in 21 U.S.C. 802;
7 (~~f~~vi) Is currently suffering or has been adjudicated as follows,
8 based on substantial evidence:
9 (~~i~~A) Lacking mental capacity as defined in section 18-210,
10 Idaho Code;
11 (~~i~~B) Mentally ill as defined in section 66-317, Idaho Code;
12 (~~i~~C) Gravely disabled as defined in section 66-317, Idaho
13 Code; or
14 (~~i~~D) An incapacitated person as defined in section 15-5-
15 101(a), Idaho Code.
16 (~~g~~vii) Is or has been discharged from the armed forces under dis-
17 honorabale conditions;
18 (~~h~~viii) Is or has been adjudicated guilty of or received a with-
19 held judgment or suspended sentence for one (1) or more crimes of
20 violence constituting a misdemeanor, unless three (3) years have
21 elapsed since disposition or pardon has occurred prior to the date
22 on which the application is submitted;
23 (~~i~~x) Has had entry of a withheld judgment for a criminal offense
24 which would disqualify him from obtaining a concealed weapon li-
25 cense;
26 (~~j~~x) Is an alien illegally in the United States;
27 (~~k~~xi) Is a person who, having been a citizen of the United States,
28 has renounced his or her citizenship;
29 (~~l~~xii) Is under twenty-one (21) years of age;
30 (~~m~~xiii) Is free on bond or personal recognizance pending trial,
31 appeal or sentencing for a crime which would disqualify him from
32 obtaining a concealed weapon license; or
33 (~~n~~xiv) Is subject to a protection order issued under chapter 63,
34 title 39, Idaho Code, that restrains the person from harassing,
35 stalking or threatening an intimate partner of the person or child
36 of the intimate partner or person, or engaging in other conduct
37 that would place an intimate partner in reasonable fear of bodily
38 injury to the partner or child.

39 The license application shall be in a form to be prescribed by the
40 director of the Idaho state police, and shall ask only the name, ad-
41 dress, description and signature of the licensee, date of birth, place
42 of birth, social security number, military status, citizenship and
43 the driver's license number or state identification card number of the
44 licensee if used for identification in applying for the license. The
45 application shall indicate that provision of the social security number
46 is optional. The license application shall contain a warning substan-
47 tially as follows:

48 CAUTION: Federal law and state law on the possession of weapons and
49 firearms differ. If you are prohibited by federal law from possessing

1 a weapon or a firearm, you may be prosecuted in federal court. A state
2 permit is not a defense to a federal prosecution.

3 The sheriff shall require any person who is applying for original is-
4 suance of a license to submit his fingerprints in addition to the other
5 information required in this subsection. Within five (5) days after
6 the filing of an application, the sheriff shall forward the application
7 and fingerprints to the Idaho state police for a records check of state
8 and national files. The Idaho state police shall conduct a national
9 fingerprint-based records check and return the results to the sheriff
10 within seventy-five (75) days. The sheriff shall not issue a license
11 before receiving the results of the records check and must deny a li-
12 cense if the applicant is disqualified under any of the criteria listed
13 in subparagraphs (~~a~~i) through (~~x~~iv) of this subsection.

14 The license will be in a form substantially similar to that of the
15 Idaho driver's license. It will bear the signature, name, address, date
16 of birth, picture of the licensee, expiration date and the driver's li-
17 cense number or state identification card number of the licensee if used
18 for identification in applying for the license. Upon issuing a license
19 under the provisions of this section, the sheriff will notify the Idaho
20 state police on a form or in a manner prescribed by the state police. In-
21 formation relating to an applicant or licensee received or maintained
22 pursuant to this section by the sheriff or Idaho state police is confi-
23 dential and exempt from disclosure under section 9-338, Idaho Code.

24 (~~2~~b) The fee for original issuance of a license shall be twenty dollars
25 (\$20.00) paid to the sheriff for the purpose of enforcing the provisions
26 of this chapter. The sheriff may collect any additional fees necessary
27 to cover the cost of processing fingerprints lawfully required by any
28 state or federal agency or department, and the cost of materials for
29 the license lawfully required by any state agency or department, which
30 costs shall be paid to the state.

31 (~~3~~c) The fee for renewal of the license shall be fifteen dollars
32 (\$15.00). The sheriff may collect any additional fees necessary to
33 cover the processing costs lawfully required by any state or federal
34 agency or department, and the cost of materials for the license lawfully
35 required by any state agency or department, which costs shall be paid to
36 the state. If a licensee applying for renewal has not previously been
37 required to submit fingerprints, the sheriff shall require the licensee
38 to do so and may collect any additional fees necessary to cover the cost
39 of processing fingerprints lawfully required by any state or federal
40 agency or department.

41 (~~4~~d) Every license that is not, as provided by law, suspended, revoked
42 or disqualified in this state shall be renewable at any time during the
43 ninety (90) day period before its expiration or within ninety (90) days
44 after the expiration date. Renewal notices shall be mailed out ninety
45 (90) days prior to the expiration date of the license. The sheriff shall
46 require the licensee applying for renewal to complete an application.
47 The sheriff shall submit the application to the Idaho state police for a
48 records check of state and national databases. The Idaho state police
49 shall conduct the records check and return the results to the sheriff
50 within thirty (30) days. The sheriff shall not issue a renewal before

1 receiving the results of the records check and must deny a license if the
2 applicant is disqualified under any of the criteria listed in subsec-
3 tion (~~13~~), subparagraphs (a) through (xiv) of this section. A renewal
4 license shall be valid for a period of five (5) years. A license so
5 renewed shall take effect on the expiration date of the prior license.
6 A licensee renewing ninety-one (91) days or more after the expiration
7 date of the license shall pay a late renewal penalty of ten dollars
8 (\$10.00) in addition to the renewal fee, except that any licensee serv-
9 ing on active duty in the armed forces of the United States during the
10 renewal period shall not be required to pay a late renewal penalty upon
11 renewing ninety-one (91) days or more after the expiration date of the
12 license. The fee shall be paid to the sheriff for the purpose of enforc-
13 ing the provisions of this chapter.

14 (~~5e~~) Notwithstanding the requirements of this section, the sheriff of
15 the county of the applicant's residence may issue a temporary emergency
16 license for good cause pending review under subsection (1) paragraph
17 (a) of this subsection.

18 (~~6f~~) A city, county or other political subdivision of this state shall
19 not modify the requirements of this section, nor may a political sub-
20 division ask the applicant to voluntarily submit any information not
21 required in this section. A civil action may be brought to enjoin a
22 wrongful refusal to issue a license or a wrongful modification of the
23 requirements of this section. The civil action may be brought in the
24 county in which the application was made or in Ada county at the discre-
25 tion of the petitioner. Any person who prevails against a public agency
26 in any action in the courts for a violation of subsections (1) through
27 (5) paragraphs (a) through (e) of this subsection, shall be awarded
28 costs, including reasonable attorney's fees incurred in connection
29 with the legal action.

30 (~~7~~) Except in the person's place of abode or fixed place of business, or
31 on property in which the person has any ownership or leasehold interest, a
32 person shall not carry a concealed weapon without a license to carry a con-
33 cealed weapon. For the purposes of this section, a concealed weapon means
34 any dirk, dirk knife, bowie knife, dagger, pistol, revolver or any other
35 deadly or dangerous weapon. The provisions of this section shall not apply
36 to any lawfully possessed shotgun or rifle.

37 (~~8g~~) A county sheriff, deputy sheriff or county employee who issues a
38 license to carry a concealed weapon under this section shall not incur
39 any civil or criminal liability as the result of the performance of his
40 duties under this section.

41 (~~9~~) While in any motor vehicle, inside the limits or confines of any
42 city, a person shall not carry a concealed weapon on or about his person
43 without a license to carry a concealed weapon. This shall not apply to any
44 firearm located in plain view whether it is loaded or unloaded. A firearm may
45 be concealed legally in a motor vehicle so long as the weapon is disassembled
46 or unloaded.

47 (~~10h~~) In implementing the provisions of this section on behalf of the
48 state of Idaho, the sheriff shall make applications readily available
49 at the office of the sheriff or at other public offices in his jurisdic-
50 tion.

1 ~~(11i)~~ The sheriff of a county may issue a license to carry a concealed
 2 weapon to those individuals between the ages of eighteen (18) and
 3 twenty-one (21) years who in the judgment of the sheriff warrant the is-
 4 suance of the license to carry a concealed weapon. Such issuance shall
 5 be subject to limitations which the issuing authority deems appropri-
 6 ate. Licenses issued to individuals between the ages of eighteen (18)
 7 and twenty-one (21) years shall be easily distinguishable from regular
 8 licenses.

9 ~~(12)~~ The requirement to secure a license to carry a concealed weapon un-
 10 der this section shall not apply to the following persons:

11 ~~(a)~~ Officials of a county, city, state of Idaho, the United
 12 States, peace officers, guards of any jail, court appointed atten-
 13 dants or any officer of any express company on duty;

14 ~~(b)~~ Employees of the adjutant general and military division of the
 15 state where military membership is a condition of employment when
 16 on duty;

17 ~~(c)~~ Criminal investigators of the attorney general's office,
 18 criminal investigators of a prosecuting attorney's office, prose-
 19 cutors and their deputies;

20 ~~(d)~~ Any person outside the limits of or confines of any city while
 21 engaged in lawful hunting, fishing, trapping or other lawful out-
 22 door activity;

23 ~~(e)~~ Any publicly elected Idaho official;

24 ~~(f)~~ Retired peace officers or detention deputies with at least ten
 25 ~~(10)~~ years of service with the state or a political subdivision as
 26 a peace officer or detention deputy and who have been certified by
 27 the peace officer standards and training council;

28 ~~(g)~~ Any person who has a valid permit from a state or local law
 29 enforcement agency or court authorizing him to carry a concealed
 30 weapon. A valid permit or license issued in another state will
 31 only be considered valid in this state if the permit is in the
 32 permittee's or licensee's physical possession.

33 ~~(13j)~~ When issuing a license pursuant to this section, the sheriff may
 34 require the applicant to demonstrate familiarity with a firearm and
 35 shall accept any of the following, provided the applicant may select
 36 whichever of the following applies:

37 ~~(a)~~ i) Completion of any hunter education or hunter safety course
 38 approved by the department of fish and game or a similar agency of
 39 another state;

40 ~~(b)~~ ii) Completion of any national rifle association firearms
 41 safety or training course or any national rifle association hunter
 42 education course;

43 ~~(c)~~ iii) Completion of any firearms safety or training course or
 44 class available to the general public offered by a law enforcement
 45 agency, community college, college, university, or private or
 46 public institution or organization or firearms training school,
 47 utilizing instructors certified by the national rifle association
 48 or the Idaho state police;

49 ~~(d)~~ iv) Completion of any law enforcement firearms safety or train-
 50 ing course or class offered for security guards, investigators,

1 special deputies, or any division or subdivision of a law enforce-
2 ment agency or security enforcement agency;

3 (ev) Presents evidence or equivalent experience with a firearm
4 through participation in organized shooting competition or mili-
5 tary service;

6 (fvi) Is licensed or has been licensed to carry a firearm in this
7 state or a county or municipality, unless the license has been re-
8 voked for cause; or

9 (gvii) Completion of any firearms training or training or safety
10 course or class conducted by a state certified or national rifle
11 association certified firearms instructor.

12 ~~(14) A person carrying a concealed weapon in violation of the provisions~~
13 ~~of this section shall be guilty of a misdemeanor.~~

14 (15k) The sheriff of the county where the license was issued or the sher-
15 iff of the county where the person resides shall have the power to revoke
16 a license subsequent to a hearing in accordance with the provisions of
17 chapter 52, title 67, Idaho Code, for any of the following reasons:

18 (ai) Fraud or intentional misrepresentation in the obtaining of a
19 license;

20 (bii) Misuse of a license, including lending or giving a license
21 to another person, duplicating a license or using a license with
22 the intent to unlawfully cause harm to a person or property;

23 (eiii) The doing of an act or existence of a condition which would
24 have been grounds for the denial of the license by the sheriff;

25 (div) The violation of any of the terms of this section; or

26 (ev) The applicant is adjudicated guilty of or receives a withheld
27 judgment for a crime which would have disqualified him from ini-
28 tially receiving a license.

29 (16l) A person twenty-one (21) years of age or older issued a license
30 to carry a concealed weapon is exempt from any requirement to undergo
31 a records check at the time of purchase or transfer of a firearm from
32 a federally licensed firearms dealer. However, a temporary emergency
33 license issued under subsection (5) of this section shall not exempt
34 the holder of the license from any records check requirement. Tempo-
35 rary emergency licenses shall be easily distinguishable from regular
36 licenses.

37 (17m) The attorney general is authorized to negotiate reciprocal agree-
38 ments with other states related to the recognition of licenses to carry
39 concealed weapons. The Idaho state police shall keep a copy and main-
40 tain a record of all such agreements, which shall be made available to
41 the public.

42 (4) Penalty. Any person who violates any of the provisions of this sec-
43 tion shall be guilty of a misdemeanor.

44 (185) The provisions of this section are hereby declared to be severable
45 and if any provision of this section or the application of such provision to
46 any person or circumstance is declared invalid for any reason, such declara-
47 tion shall not affect the validity of remaining portions of this section.

48 SECTION 3. That Section [18-3302C](#), Idaho Code, be, and the same is hereby
49 repealed.

1 SECTION 4. That Section 18-3302D, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 18-3302D. POSSESSING WEAPONS OR FIREARMS ON SCHOOL PROPERTY.

4 (1) (a) It shall be unlawful and is a misdemeanor for any person to pos-
5 sess a firearm or other deadly or dangerous weapon while on the property
6 of a school or in those portions of any building, stadium or other struc-
7 ture on school grounds which, at the time of the violation, were being
8 used for an activity sponsored by or through a school in this state or
9 while riding school provided transportation.

10 (b) The provisions of this section regarding the possession of a
11 firearm or other deadly or dangerous weapon on school property shall
12 also apply to students of schools while attending or participating in
13 any school sponsored activity, program or event regardless of location.

14 (2) Definitions. As used in this section:

15 (a) "Deadly or dangerous weapon" means any weapon as defined in 18
16 U.S.C. section 930;

17 (b) "Firearm" means any firearm as defined in 18 U.S.C. section 921;

18 (c) "Minor" means a person under the age of eighteen (18) years;

19 (d) "Possess" means to bring an object, or to cause it to be brought,
20 onto the property of a public or private elementary or secondary school,
21 or onto a vehicle being used for school provided transportation, or to
22 exercise dominion and control over an object located anywhere on such
23 property or vehicle. For purposes of subsection (1) (b) of this section,
24 "possess" shall also mean to bring an object onto the site of a school
25 sponsored activity, program or event, regardless of location, or to ex-
26 ercise dominion and control over an object located anywhere on such a
27 site;

28 (e) "School" means a private or public elementary or secondary school.

29 (3) Right to search students or minors. For purposes of enforcing the
30 provisions of this section, employees of a school district shall have the
31 right to search all students or minors, including their belongings and lock-
32 ers, that are reasonably believed to be in violation of the provisions of
33 this section, or applicable school rule or district policy, regarding the
34 possessing of a firearm or other deadly or dangerous weapon.

35 (4) The provisions of this section shall not apply to the following per-
36 sons:

37 (a) A peace officer;

38 (b) A person who lawfully possesses a firearm or deadly or dangerous
39 weapon as an appropriate part of a program, an event, activity or other
40 circumstance approved by the board of trustees or governing board;

41 (c) A person or persons complying with the provisions of section
42 19-202A, Idaho Code;

43 (d) Any adult over eighteen (18) years of age and not enrolled in a pub-
44 lic or private elementary or secondary school who has lawful possession
45 of a firearm or other deadly or dangerous weapon, secured and locked in
46 his vehicle in an unobtrusive, nonthreatening manner;

47 (e) A person who lawfully possesses a firearm or other danger-
48 ous weapon in a private vehicle while delivering minor children, stu-
49 dents or school employees to and from school or a school activity;

1 ~~(f) Notwithstanding the provisions of section 18-3302C, Idaho Code, a~~
2 person or an employee of the school or school district who is authorized
3 to carry a firearm with the permission of the board of trustees of the
4 school district or the governing board.

5 (5) Penalties. Persons who are found guilty of violating the provi-
6 sions of this section may be sentenced to a jail term of not more than one
7 (1) year or fined an amount not in excess of one thousand dollars (\$1,000) or
8 both. If a violator is a student and under the age of eighteen (18) years,
9 the court may place the violator on probation and suspend the juvenile deten-
10 tion or fine or both as long as the violator is enrolled in a program of study
11 recognized by the court that, upon successful completion, will grant the vi-
12 olator a general equivalency diploma (GED) or a high school diploma or other
13 educational program authorized by the court. Upon successful completion of
14 the terms imposed by the court, the court shall discharge the offender from
15 serving the remainder of the sentence. If the violator does not complete, is
16 suspended from, or otherwise withdraws from the program of study imposed by
17 the court, the court, upon receiving such information, shall order the vio-
18 lator to commence serving the sentence provided for in this section.