

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 353**

5 (SENATORS UNGER, KESSLER (MR. PRESIDENT), BROWNING, LAIRD, KLEMPA AND
6 SNYDER, *original sponsors*)

7 _____
8 [Passed March 10, 2012; in effect ninety days from passage.]
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11
12 AN ACT to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the
13 Code of West Virginia, 1931, as amended, all relating to
14 possession of firearms generally; clarifying what constitutes
15 carrying a handgun concealed in or on a motor vehicle;
16 procedures for obtaining a license to carry a concealed
17 handgun; providing application requirements; requiring
18 investigations of applicants through a national criminal
19 background check system and the West Virginia database;
20 providing definitions; prohibiting certain persons from
21 possessing or receiving firearms; providing exceptions;
22 allowing licenses to be transferable within the state;
23 requiring reporting of new address; and penalties.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §61-7-2, §61-7-4 and §61-7-7 of the Code of West

1 Virginia, 1931, as amended, be amended and reenacted, all to read
2 as follows:

3 **ARTICLE 7. DANGEROUS WEAPONS.**

4 **§61-7-2. Definitions.**

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

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

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

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

1 hunting, fishing, sports or other recreational uses or a knife
2 designed for use as a tool or household implement shall not be
3 included within the term "knife" as defined herein unless such
4 knife is knowingly used or intended to be used to produce serious
5 bodily injury or death.

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

9 (5) "Nunchuka" means a flailing instrument consisting of two
10 or more rigid parts, connected by a chain, cable, rope or other
11 nonrigid, flexible or springy material, constructed in such a
12 manner as to allow the rigid parts to swing freely so that one
13 rigid part may be used as a handle and the other rigid part may be
14 used as the striking end.

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

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

26 (8) "Revolver" means a short firearm having a cylinder of

1 several chambers that are brought successively into line with the
2 barrel to be discharged, designed to be aimed and fired by the use
3 of a single hand.

4 (9) "Deadly weapon" means an instrument which is designed to
5 be used to produce serious bodily injury or death or is readily
6 adaptable to such use. The term "deadly weapon" shall include, but
7 not be limited to, the instruments defined in subdivisions (1)
8 through (8), inclusive, of this section or other deadly weapons of
9 like kind or character which may be easily concealed on or about
10 the person. For the purposes of section one-a, article five,
11 chapter eighteen-a of this code and section eleven-a, article seven
12 of this chapter, in addition to the definition of "knife" set forth
13 in subdivision (3) of this section, the term "deadly weapon" also
14 includes any instrument included within the definition of "knife"
15 with a blade of three and one-half inches or less in length.
16 Additionally, for the purposes of section one-a, article five,
17 chapter eighteen-a of this code and section eleven-a, article seven
18 of this chapter, the term "deadly weapon" includes explosive,
19 chemical, biological and radiological materials. Notwithstanding
20 any other provision of this section, the term "deadly weapon" does
21 not include any item or material owned by the school or county
22 board, intended for curricular use, and used by the student at the
23 time of the alleged offense solely for curricular purposes.

24 (10) "Concealed" means hidden from ordinary observation so as
25 to prevent disclosure or recognition. A deadly weapon is concealed
26 when it is carried on or about the person in such a manner that

1 another person in the ordinary course of events would not be placed
2 on notice that the deadly weapon was being carried. For purposes
3 of concealed handgun licensees, a licensee shall be deemed to be
4 carrying on or about his or her person while in or on a motor
5 vehicle if the firearm is located in a storage area in or on the
6 motor vehicle.

7 (11) "Firearm" means any weapon which will expel a projectile
8 by action of an explosion.

9 (12) "Controlled substance" has the same meaning as is
10 ascribed to that term in subsection (d), section one hundred one,
11 article one, chapter sixty-a of this code.

12 (13) "Drug" has the same meaning as is ascribed to that term
13 in subsection (1), section one hundred one, article one, chapter
14 sixty-a of this code.

15 **§61-7-4. License to carry deadly weapons; how obtained.**

16 (a) Except as provided in subsection (h) of this section, any
17 person desiring to obtain a state license to carry a concealed
18 deadly weapon shall apply to the sheriff of his or her county for
19 the license, and shall pay to the sheriff, at the time of
20 application, a fee of \$75, of which \$15 of that amount shall be
21 deposited in the Courthouse Facilities Improvement Fund created by
22 section six, article twenty-six, chapter twenty-nine of this code.
23 Concealed weapons permits may only be issued for pistols or
24 revolvers. Each applicant shall file with the sheriff a complete
25 application, as prepared by the Superintendent of the West Virginia
26 State Police, in writing, duly verified, which sets forth only the

1 following licensing requirements:

2 (1) The applicant's full name, date of birth, Social Security
3 number, a description of the applicant's physical features, the
4 applicant's place of birth, the applicant's country of citizenship
5 and, if the applicant is not a United States citizen, any alien or
6 admission number issued by the United States Bureau of Immigration
7 and Customs enforcement, and any basis, if applicable, for an
8 exception to the prohibitions of 18 U. S. C. §922(g)(5)(B);

9 (2) That, on the date the application is made, the applicant
10 is a bona fide resident of this state and of the county in which
11 the application is made and has a valid driver's license or other
12 state-issued photo identification showing the residence;

13 (3) That the applicant is twenty-one years of age or older:
14 *Provided*, That any individual who is less than twenty-one years of
15 age and possesses a properly issued concealed weapons license as of
16 the effective date of this article shall be licensed to maintain
17 his or her concealed weapons license notwithstanding the provisions
18 of this section requiring new applicants to be at least twenty-one
19 years of age: *Provided, however*, That upon a showing of any
20 applicant who is eighteen years of age or older that he or she is
21 required to carry a concealed weapon as a condition for employment,
22 and presents satisfactory proof to the sheriff thereof, then he or
23 she shall be issued a license upon meeting all other conditions of
24 this section. Upon discontinuance of employment that requires the
25 concealed weapons license, if the individual issued the license is
26 not yet twenty-one years of age, then the individual issued the

1 license is no longer eligible and must return his or her license to
2 the issuing sheriff;

3 (4) That the applicant is not addicted to alcohol, a
4 controlled substance or a drug and is not an unlawful user thereof
5 as evidenced by either of the following within the three years
6 immediately prior to the application:

7 (A) Residential or court-ordered treatment for alcoholism or
8 alcohol detoxification or drug treatment; or

9 (B) Two or more convictions for driving while under the
10 influence or driving while impaired;

11 (5) That the applicant has not been convicted of a felony or
12 of an act of a misdemeanor crime of violence involving the misuse
13 of a deadly weapon within the five years immediately preceding the
14 application;

15 (6) That the applicant has not been convicted of a misdemeanor
16 crime of domestic violence as defined in 18 U. S. C. §921(a)(33),
17 or a misdemeanor offense of assault or battery either under the
18 provisions of section twenty-eight, article two of this chapter or
19 the provisions of subsection (b) or (c), section nine, article two
20 of this chapter in which the victim was a current or former spouse,
21 current or former sexual or intimate partner, person with whom the
22 defendant cohabits or has cohabited, a parent or guardian, the
23 defendant's child or ward or a member of the defendant's household
24 at the time of the offense, or a misdemeanor offense with similar
25 essential elements in a jurisdiction other than this state;

26

1 (7) That the applicant is not under indictment for a felony
2 offense or is not currently serving a sentence of confinement,
3 parole, probation or other court-ordered supervision imposed by a
4 court of any jurisdiction or is the subject of an emergency or
5 temporary domestic violence protective order or is the subject of
6 a final domestic violence protective order entered by a court of
7 any jurisdiction;

8 (8) That the applicant has not been adjudicated to be mentally
9 incompetent. If the applicant has been adjudicated mentally
10 incompetent the applicant must provide a court order reflecting
11 that the applicant is no longer under such disability;

12 (9) That the applicant has qualified under the minimum
13 requirements set forth in subsection (d) of this section for
14 handling and firing the weapon: *Provided*, That this requirement
15 shall be waived in the case of a renewal applicant who has
16 previously qualified; and

17 (10) That the applicant authorizes the sheriff of the county,
18 or his or her designee, to conduct an investigation relative to the
19 information contained in the application.

20 (b) For both initial and renewal applications, the sheriff
21 shall conduct an investigation including a nationwide criminal
22 background check consisting of checking the National Instant
23 Criminal Background Check System and the West Virginia criminal
24 history record responses in order to verify that the information
25 required in subsection (a) of this section is true and correct.

26 (c) \$60 of the application fee and any fees for replacement of

1 lost or stolen licenses received by the sheriff shall be deposited
2 by the sheriff into a Concealed Weapons License Administration
3 Fund. The fund shall be administered by the sheriff and shall take
4 the form of an interest-bearing account with any interest earned to
5 be compounded to the fund. Any funds deposited in this Concealed
6 Weapon License Administration Fund are to be expended by the
7 sheriff to pay for the costs associated with issuing concealed
8 weapons licenses. Any surplus in the fund on hand at the end of
9 each fiscal year may be expended for other law-enforcement purposes
10 or operating needs of the sheriff's office, as the sheriff may
11 consider appropriate.

12 (d) All persons applying for a license must complete a
13 training course in handling and firing a handgun. The successful
14 completion of any of the following courses fulfills this training
15 requirement:

16 (1) Any official National Rifle Association handgun safety or
17 training course;

18 (2) Any handgun safety or training course or class available
19 to the general public offered by an official law-enforcement
20 organization, community college, junior college, college or private
21 or public institution or organization or handgun training school
22 utilizing instructors duly certified by the institution;

23 (3) Any handgun training or safety course or class conducted
24 by a handgun instructor certified as such by the state or by the
25 National Rifle Association;

26 (4) Any handgun training or safety course or class conducted

1 by any branch of the United States Military, Reserve or National
2 Guard.

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

10 (e) All concealed weapons license applications must be
11 notarized by a notary public duly licensed under article four,
12 chapter twenty-nine of this code. Falsification of any portion of
13 the application constitutes false swearing and is punishable under
14 the provisions of section two, article five, chapter sixty-one of
15 this code.

16 (f) The sheriff shall issue a license unless he or she
17 determines that the application is incomplete, that it contains
18 statements that are materially false or incorrect or that applicant
19 otherwise does not meet the requirements set forth in this section.
20 The sheriff shall issue, reissue or deny the license within
21 forty-five days after the application is filed if all required
22 background checks authorized by this section are completed.

23 (g) Before any approved license shall be issued or become
24 effective, the applicant shall pay to the sheriff a fee in the
25 amount of \$25 which the sheriff shall forward to the Superintendent
26 of the West Virginia State Police within thirty days of receipt.

1 The license shall be valid for five years throughout the state,
2 unless sooner revoked.

3 (h) Each license shall contain the full name and address of
4 the licensee and a space upon which the signature of the licensee
5 shall be signed with pen and ink. The issuing sheriff shall sign
6 and attach his or her seal to all license cards. The sheriff shall
7 provide to each new licensee a duplicate license card, in size
8 similar to other state identification cards and licenses, suitable
9 for carrying in a wallet, and the license card is considered a
10 license for the purposes of this section.

11 (i) The Superintendent of the West Virginia State Police shall
12 prepare uniform applications for licenses and license cards showing
13 that the license has been granted and shall do any other act
14 required to be done to protect the state and see to the enforcement
15 of this section.

16 (j) If an application is denied, the specific reasons for the
17 denial shall be stated by the sheriff denying the application. Any
18 person denied a license may file, in the circuit court of the
19 county in which the application was made, a petition seeking review
20 of the denial. The petition shall be filed within thirty days of
21 the denial. The court shall then determine whether the applicant
22 is entitled to the issuance of a license under the criteria set
23 forth in this section. The applicant may be represented by
24 counsel, but in no case may the court be required to appoint
25 counsel for an applicant. The final order of the court shall
26 include the court's findings of fact and conclusions of law. If

1 the final order upholds the denial, the applicant may file an
2 appeal in accordance with the Rules of Appellate Procedure of the
3 Supreme Court of Appeals.

4 (k) If a license is lost or destroyed, the person to whom the
5 license was issued may obtain a duplicate or substitute license for
6 a fee of \$5 by filing a notarized statement with the sheriff
7 indicating that the license has been lost or destroyed.

8 (l) Whenever any person after applying for and receiving a
9 concealed handgun license moves from the address named in the
10 application to another county within the state, the license remains
11 valid for the remainder of the five years: *Provided*, That the
12 licensee within twenty days thereafter notifies the sheriff in the
13 new county of residence in writing of the old and new addresses.

14 (m) The sheriff shall, immediately after the license is
15 granted as aforesaid, furnish the Superintendent of the West
16 Virginia State Police a certified copy of the approved application.
17 The sheriff shall furnish to the Superintendent of the West
18 Virginia State Police at any time so requested a certified list of
19 all licenses issued in the county. The Superintendent of the West
20 Virginia State Police shall maintain a registry of all persons who
21 have been issued concealed weapons licenses.

22 (n) Except when subject to an exception under section six,
23 article seven of this chapter, all licensees must carry with them
24 a state-issued photo identification card with the concealed weapons
25 license whenever the licensee is carrying a concealed weapon. Any
26 licensee who, in violation of this subsection, fails to have in his

1 or her possession a state-issued photo identification card and a
2 current concealed weapons license while carrying a concealed weapon
3 is guilty of a misdemeanor and, upon conviction thereof, shall be
4 fined not less than \$50 or more than \$200 for each offense.

5 (o) The sheriff shall deny any application or revoke any
6 existing license upon determination that any of the licensing
7 application requirements established in this section have been
8 violated by the licensee.

9 (p) A person who is engaged in the receipt, review or in the
10 issuance or revocation of a concealed weapon license does not incur
11 any civil liability as the result of the lawful performance of his
12 or her duties under this article.

13 (q) Notwithstanding the provisions of subsection (a) of this
14 section, with respect to application by a former law-enforcement
15 officer honorably retired from agencies governed by article
16 fourteen, chapter seven of this code; article fourteen, chapter
17 eight of this code; article two, chapter fifteen of this code; and
18 article seven, chapter twenty of this code, an honorably retired
19 officer is exempt from payment of fees and costs as otherwise
20 required by this section.

21 (r) Except as restricted or prohibited by the provisions of
22 this article or as otherwise prohibited by law, the issuance of a
23 concealed weapon permit issued in accordance with the provisions of
24 this section authorizes the holder of the permit to carry a
25 concealed pistol or revolver on the lands or waters of this state.

26 **§61-7-7. Persons prohibited from possessing firearms;**

1 **classifications; reinstatement of rights to possess; offenses;**
2 **penalties.**

3 (a) Except as provided in this section, no person shall
4 possess a firearm, as such is defined in section two of this
5 article, who:

6 (1) Has been convicted in any court of a crime punishable by
7 imprisonment for a term exceeding one year;

8 (2) Is habitually addicted to alcohol;

9 (3) Is an unlawful user of or habitually addicted to any
10 controlled substance;

11 (4) Has been adjudicated as a mental defective or who has been
12 involuntarily committed to a mental institution pursuant to the
13 provisions of chapter twenty-seven of this code: *Provided*, That
14 once an individual has been adjudicated as a mental defective or
15 involuntarily committed to a mental institution, he or she shall be
16 duly notified that they are to immediately surrender any firearms
17 in their ownership or possession: *Provided, however*, That the
18 mental hygiene commissioner or circuit judge shall first make a
19 determination of the appropriate public or private individual or
20 entity to act as conservator for the surrendered property;

21 (5) Is an alien illegally or unlawfully in the United States;

22 (6) Has been discharged from the armed forces under
23 dishonorable conditions;

24 (7) Is subject to a domestic violence protective order that:

25 (A) Was issued after a hearing of which such person received

1 actual notice and at which such person had an opportunity to
2 participate;

3 (B) Restrains such person from harassing, stalking or
4 threatening an intimate partner of such person or child of such
5 intimate partner or person, or engaging in other conduct that would
6 place an intimate partner in reasonable fear of bodily injury to
7 the partner or child; and

8 (C) (i) Includes a finding that such person represents a
9 credible threat to the physical safety of such intimate partner or
10 child; or

11 (ii) By its terms explicitly prohibits the use, attempted use
12 or threatened use of physical force against such intimate partner
13 or child that would reasonably be expected to cause bodily injury;
14 or

15 (8) Has been convicted of a misdemeanor offense of assault or
16 battery either under the provisions of section twenty-eight,
17 article two of this chapter or the provisions of subsection (b) or
18 (c), section nine of said article or a federal or state statute
19 with the same essential elements in which the victim was a current
20 or former spouse, current or former sexual or intimate partner,
21 person with whom the defendant has a child in common, person with
22 whom the defendant cohabits or has cohabited, a parent or guardian,
23 the defendant's child or ward or a member of the defendant's
24 household at the time of the offense or has been convicted in any
25 court of any jurisdiction of a comparable misdemeanor crime of
26 domestic violence.

1 Any person who violates the provisions of this subsection
2 shall be guilty of a misdemeanor and, upon conviction thereof,
3 shall be fined not less than \$100 nor more than \$1,000 or confined
4 in the county jail for not less than ninety days nor more than one
5 year, or both.

6 (b) Notwithstanding the provisions of subsection (a) of this
7 section, any person:

8 (1) Who has been convicted in this state or any other
9 jurisdiction of a felony crime of violence against the person of
10 another or of a felony sexual offense; or

11 (2) Who has been convicted in this state or any other
12 jurisdiction of a felony controlled substance offense involving a
13 Schedule I controlled substance other than marijuana, a Schedule II
14 or a Schedule III controlled substance as such are defined in
15 sections two hundred four, two hundred five and two hundred six,
16 article two, chapter sixty-a of this code and who possesses a
17 firearm as such is defined in section two of this article shall be
18 guilty of a felony and, upon conviction thereof, shall be confined
19 in a state correctional facility for not more than five years or
20 fined not more than \$5,000, or both. The provisions of subsection
21 (c) of this section shall not apply to persons convicted of
22 offenses referred to in this subsection or to persons convicted of
23 a violation of this subsection.

24 (c) Any person prohibited from possessing a firearm by the
25 provisions of subsection (a) of this section may petition the
26 circuit court of the county in which he or she resides to regain

1 the ability to possess a firearm and if the court finds by clear
2 and convincing evidence that the person is competent and capable of
3 exercising the responsibility concomitant with the possession of a
4 firearm, the court may enter an order allowing the person to
5 possess a firearm if such possession would not violate any federal
6 law: *Provided*, That a person prohibited from possessing a firearm
7 by the provisions of subdivision (4), subsection (a) of this
8 section may petition to regain the ability to possess a firearm in
9 accordance with the provisions of section five, article seven-a of
10 this chapter.