

**H. B. 4507**

(By Delegates Moye, Pethtel, Williams, Ferro,  
Shaver, Perry, R. Phillips and Hall)

[Introduced February 13, 2012; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §61-7-4 and §61-7-7 of the Code of West  
Virginia, 1931, as amended; and to amend and reenact §61-7A-5  
of said code, all relating to licenses to carry deadly  
weapons; providing application requirements; requiring  
investigations of applications through the National Instant  
Criminal Background Check System; providing definitions;  
prohibiting certain persons from possessing or receiving  
firearms under federal law; providing exceptions; and  
providing process for petitioning to remove firearm-related  
disabilities.

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

That §61-7-4 and §61-7-7 of the Code of West Virginia, 1931,  
as amended, be amended and reenacted; and that §61-7A-5 of said  
code be amended and reenacted, all to read as follows:

**ARTICLE 7. DANGEROUS WEAPONS.**

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

1 (a) Except as provided in subsection (h) of this section, any  
2 person desiring to obtain a state license to carry a concealed  
3 deadly weapon shall apply to the sheriff of his or her county for  
4 the license, and shall pay to the sheriff, at the time of  
5 application, a fee of \$75, of which \$15 of that amount shall be  
6 deposited in the Courthouse Facilities Improvement Fund created by  
7 section six, article twenty-six, chapter twenty-nine of this code.  
8 Concealed weapons permits may only be issued for pistols or  
9 revolvers. Each applicant shall file with the sheriff, a complete  
10 application, as prepared by the Superintendent of the West Virginia  
11 State Police, in writing, duly verified, which sets forth only the  
12 following licensing requirements:

13 (1) The applicant's full name, date of birth, social security  
14 number, ~~and~~ a description of the applicant's physical features, the  
15 applicant's place of birth, the applicant's country of citizenship,  
16 and, if the applicant is not a United States citizen, any alien or  
17 admission number issued by the United States Bureau of Immigration  
18 and Customs enforcement, and any basis, if applicable, for an  
19 exception to the prohibitions of 18 U.S.C. §922 (g) (5) (B);

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

24 (3) That the applicant is twenty-one years of age or older:  
25 *Provided*, That any individual who is less than twenty-one years of

1 age and possesses a properly issued concealed weapons license as of  
2 the effective date of this article shall be licensed to maintain  
3 his or her concealed weapons license notwithstanding the provisions  
4 of this section requiring new applicants to be at least twenty-one  
5 years of age: *Provided, however,* That upon a showing of any  
6 applicant who is eighteen years of age or older that he or she is  
7 required to carry a concealed weapon as a condition for employment,  
8 and presents satisfactory proof to the sheriff thereof, then he or  
9 she shall be issued a license upon meeting all other conditions of  
10 this section. Upon discontinuance of employment that requires the  
11 concealed weapons license, if the individual issued the license is  
12 not yet twenty-one years of age, then the individual issued the  
13 license is no longer eligible and must return his or her license to  
14 the issuing sheriff;

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

19 (A) Residential or court-ordered treatment for alcoholism or  
20 alcohol detoxification or drug treatment; or

21 (B) Two or more convictions for driving while under the  
22 influence or driving while impaired;

23 (5) That the applicant has not been convicted of a felony or  
24 of an act of a misdemeanor crime of violence involving the misuse  
25 of a deadly weapon within the five years immediately preceding the

1 application: Provided, That if the offense is a misdemeanor crime  
2 of domestic violence as defined in 18 U.S.C. §921(a)(33), the  
3 provisions of subdivision six of this section shall control;

4       (6) ~~That the applicant has not been convicted of a~~  
5 ~~misdemeanor offense of assault or battery either under the~~  
6 ~~provisions of section twenty-eight, article two of this chapter or~~  
7 ~~the provisions of subsection (b) or (c), section nine, article two~~  
8 ~~of this chapter in which the victim was a current or former spouse,~~  
9 ~~current or former sexual or intimate partner, person with whom the~~  
10 ~~defendant has a child in common, person with whom the defendant~~  
11 ~~cohabits or has cohabited, a parent or guardian, the defendant's~~  
12 ~~child or ward or a member of the defendant's household at the time~~  
13 ~~of the offense; or a misdemeanor offense with similar essential~~  
14 ~~elements in a jurisdiction other than this state~~ That the applicant  
15 is not prohibited from possessing or receiving a firearm by 18  
16 U.S.C. §922(g) or (n) or by section seven, article seven of this  
17 chapter;

18       (7) That the applicant is not under indictment for a felony  
19 offense or is not currently serving a sentence of confinement,  
20 parole, probation or other court-ordered supervision imposed by a  
21 court of any jurisdiction or is the subject of an emergency or  
22 temporary domestic violence protective order or is the subject of  
23 a final domestic violence protective order entered by a court of  
24 any jurisdiction;

25       (8) ~~That the applicant is physically and mentally competent to~~

1 ~~carry the weapon;~~

2       ~~(9)~~ (8) That the applicant has not been adjudicated to be  
3 mentally incompetent. If the applicant has been adjudicated  
4 mentally incompetent the applicant must provide a court order or  
5 other evidence that the applicant is no longer under such  
6 disability;

7       ~~(10)~~ (9) That the applicant has qualified under the minimum  
8 requirements set forth in subsection (d) of this section for  
9 handling and firing the weapon: *Provided*, That this requirement  
10 shall be waived in the case of a renewal applicant who has  
11 previously qualified; and

12       ~~(11)~~ (10) That the applicant authorizes the sheriff of the  
13 county, or his or her designee, to conduct an investigation  
14 relative to the information contained in the application.

15       (b) For both initial and renewal applications, the sheriff  
16 shall conduct an investigation including ~~a nationwide criminal~~  
17 ~~background check~~ an inquiry through the National Instant Criminal  
18 Background Check System, in order to verify that the information  
19 required in ~~subdivisions (1), (2), (3), (5), (6), (8) and (9),~~  
20 subsection (a) of this section is true and correct.

21       (c) Sixty dollars of the application fee and any fees for  
22 replacement of lost or stolen licenses received by the sheriff  
23 shall be deposited by the sheriff into a Concealed Weapons License  
24 Administration Fund. The fund shall be administered by the sheriff  
25 and shall take the form of an interest bearing account with any

1 interest earned to be compounded to the fund. Any funds deposited  
2 in this Concealed Weapon License Administration Fund are to be  
3 expended by the sheriff to pay for the costs associated with  
4 issuing concealed weapons licenses. Any surplus in the fund on  
5 hand at the end of each fiscal year may be expended for other  
6 law-enforcement purposes or operating needs of the sheriff's  
7 office, as the sheriff may consider appropriate.

8 (d) All persons applying for a license must complete a  
9 training course in handling and firing a handgun. The successful  
10 completion of any of the following courses fulfills this training  
11 requirement:

12 (1) Any official National Rifle Association handgun safety or  
13 training course;

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

19 (3) Any handgun training or safety course or class conducted  
20 by a handgun instructor certified as such by the state or by the  
21 National Rifle Association;

22 (4) Any handgun training or safety course or class conducted  
23 by any branch of the United States Military, Reserve or National  
24 Guard.

25 A photocopy of a certificate of completion of any of the

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

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

13 (f) ~~If the information in the application is found to be true~~  
14 ~~and correct,~~ The sheriff shall issue a license unless he or she  
15 determines that the application is incomplete, that it contains  
16 statements that are materially false or incorrect, or that  
17 applicant does not meet the requirements set forth in this section.

18 The sheriff shall issue, reissue or deny the license within  
19 forty-five days after the application is filed if all required  
20 background checks authorized by this section are completed.

21 (g) Before any approved license shall be issued or become  
22 effective, the applicant shall pay to the sheriff a fee in the  
23 amount of \$15 which the sheriff shall forward to the Superintendent  
24 of the West Virginia State Police within thirty days of receipt.  
25 The license shall be valid for five years throughout the state,

1 unless sooner revoked.

2       (h) All persons holding a current and valid concealed weapons  
3 license as of December 16, 1995, shall continue to hold a valid  
4 concealed weapons license until his or her license expires or is  
5 revoked as provided in this article: *Provided*, That all  
6 reapplication fees shall be waived for applications received by  
7 January 1, 1997, for any person holding a current and valid  
8 concealed weapons license as of December 16, 1995, which contains  
9 use restrictions placed upon the license as a condition of issuance  
10 by the issuing circuit court. Any licenses reissued pursuant to  
11 this subsection will be issued for the time period of the original  
12 license.

13       (i) Each license shall contain the full name and address of  
14 the licensee and a space upon which the signature of the licensee  
15 shall be signed with pen and ink. The issuing sheriff shall sign  
16 and attach his or her seal to all license cards. The sheriff shall  
17 provide to each new licensee a duplicate license card, in size  
18 similar to other state identification cards and licenses, suitable  
19 for carrying in a wallet, and the license card is considered a  
20 license for the purposes of this section.

21       (j) The Superintendent of the West Virginia State Police shall  
22 prepare uniform applications for licenses and license cards showing  
23 that the license has been granted and shall do any other act  
24 required to be done to protect the state and see to the enforcement  
25 of this section.



1           (k) If an application is denied, the specific reasons for the  
2 denial shall be stated by the sheriff denying the application. Any  
3 person denied a license may file, in the circuit court of the  
4 county in which the application was made, a petition seeking review  
5 of the denial. The petition shall be filed within thirty days of  
6 the denial. The court shall then determine whether the applicant  
7 is entitled to the issuance of a license under the criteria set  
8 forth in this section. The applicant may be represented by  
9 counsel, but in no case may the court be required to appoint  
10 counsel for an applicant. The final order of the court shall  
11 include the court's findings of fact and conclusions of law. If  
12 the final order upholds the denial, the applicant may file an  
13 appeal in accordance with the Rules of Appellate Procedure of the  
14 Supreme Court of Appeals.

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

19           (m) The sheriff shall, immediately after the license is  
20 granted as aforesaid, furnish the Superintendent of the West  
21 Virginia State Police a certified copy of the approved application.  
22 The sheriff shall furnish to the Superintendent of the West  
23 Virginia State Police at any time so requested a certified list of  
24 all licenses issued in the county. The Superintendent of the West  
25 Virginia State Police shall maintain a registry of all persons who

1 have been issued concealed weapons licenses.

2       (n) Except when subject to an exception under section six,  
3 article seven of this chapter, all licensees must carry with them  
4 a state-issued photo identification card with the concealed weapons  
5 license whenever the licensee is carrying a concealed weapon. Any  
6 licensee who, in violation of this subsection, fails to have in his  
7 or her possession a state-issued photo identification card and a  
8 current concealed weapons license while carrying a concealed weapon  
9 is guilty of a misdemeanor and, upon conviction thereof, shall be  
10 fined not less than \$50 or more than \$200 for each offense.

11       (o) The sheriff shall deny any application or revoke any  
12 existing license upon determination that any of the licensing  
13 application requirements established in this section have been  
14 violated by the licensee.

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

19       (q) Notwithstanding the provisions of subsection (a) of this  
20 section, with respect to application by a former law-enforcement  
21 officer honorably retired from agencies governed by article  
22 fourteen, chapter seven of this code; article fourteen, chapter  
23 eight of this code; article two, chapter fifteen of this code; and  
24 article seven, chapter twenty of this code, an honorably retired  
25 officer is exempt from payment of fees and costs as otherwise

1 required by this section. ~~and the application of the honorably~~  
2 ~~retired officer shall be granted without proof or inquiry by the~~  
3 ~~sheriff as to those requirements set forth in subdivision (9),~~  
4 ~~subsection (a) of this section, if the officer meets the remainder~~  
5 ~~of the requirements of this section and has the approval of the~~  
6 ~~appropriate chief law enforcement officer.~~

7 (r) Except as restricted or prohibited by the provisions of  
8 this article or as otherwise prohibited by law, the issuance of a  
9 concealed weapon permit issued in accordance with the provisions of  
10 this section authorizes the holder of the permit to carry a  
11 concealed pistol or revolver on the lands or waters of this state.

12 (s) For purposes of this subsection, "misdemeanor crime of  
13 violence" means any of the following offenses at the misdemeanor  
14 level, or a substantially similar offense committed in another  
15 jurisdiction:

16 (1) Involuntary manslaughter, in violation of section five,  
17 article two of this chapter;

18 (2) Assault or battery, in violation of section nine, article  
19 two of this chapter;

20 (3) Stalking or harassment, in violation of section nine-a,  
21 article two of this chapter;

22 (4) Assault or battery upon a governmental representative,  
23 health care provider, or emergency service personnel, in violation  
24 of section ten-b, article two of this chapter;

25 (5) Unlawfully shooting at another, in violation of section

1 eleven, article two of this chapter;

2 (6) Attempted extortion by threats, in violation of section  
3 thirteen, article two of this chapter;

4 (7) Unlawful restraint, in violation of section fourteen-g,  
5 article two of this chapter;

6 (8) Assault or battery upon a school employee, in violation of  
7 section fifteen, article two of this chapter;

8 (9) Assault or battery upon an athletic official, in violation  
9 of section fifteen-a, article two of this chapter;

10 (10) Injury to passenger by person in charge of public  
11 conveyance or boat, in violation of section sixteen, article two of  
12 this chapter;

13 (11) Assault or battery upon a driver, conductor, motorman,  
14 captain, pilot or other person in charge of any vehicle used for  
15 public conveyance, in violation of section sixteen-a, article two  
16 of this chapter;

17 (12) Brandishing a deadly weapon, in violation of section,  
18 eleven, article seven of this chapter;

19 (13) Sexual abuse in the second degree, in violation of  
20 section eight, article eight-b of this chapter; and

21 (14) Sexual abuse in the third degree, in violation of section  
22 nine, article eight-b of this chapter.

23 **§61-7-7. Persons prohibited from possessing or receiving firearms;**  
24 **classifications; reinstatement of rights to receive and**  
25 **possess; offenses; penalties.**

1 (a) Except as provided in subsection (b) of this section, no  
2 person may possess a firearm in this state if the person is  
3 prohibited from possessing or receiving a firearm by 18 U.S.C.  
4 §922(g) or (n).

5 (b) The prohibitions of subsection (a) of this section, do not  
6 apply to a person who, in the jurisdiction in which the event  
7 occurred that led to the prohibition, has been relieved of the  
8 prohibition as follows:

9 (1) In the case of a conviction, the conviction has been  
10 expunged or set aside, or the person has received a pardon or has  
11 had the person's civil rights restored, unless the expungement or  
12 pardon or restoration of rights expressly provides that the person  
13 may not ship, transport, possess or receive firearms; or

14 (2) In the case of the person having been adjudicated as a  
15 mental defective or committed to a mental institution, the person's  
16 rights have been restored in accordance with the NICS Improvement  
17 Amendments Act of 2007, Pub. L. 110-180, or with a state  
18 restoration procedure that complies therewith.

19 (c) The provisions of this section shall be construed in  
20 harmony with the provisions and implementing regulations of, and  
21 the federal case law interpreting, the Gun Control Act of 1968, 18  
22 U.S.C. §921 et seq., and the NICS Improvement Amendments Act of  
23 2007, Pub. L. 110-180.

24 (d) In the event of a prohibition arising from a person being  
25 adjudicated as a mental defective or committed to a mental

1 institution pursuant to the provisions of chapter twenty-seven of  
2 this code, the mental hygiene commissioner or circuit judge shall  
3 make a determination of an appropriate public or private individual  
4 or entity to act as conservator for any firearms in the person's  
5 possession and shall enter an order under which the person shall  
6 relinquish and the conservator shall take possession of the  
7 property. In the event the person's rights are restored in  
8 accordance with subdivision (2) of subsection (b) of this section,  
9 the court shall order that the property be returned to the person,  
10 unless the person has transferred title to the property in the  
11 interim.

12 (e) Except as provided in subsection (f) of this section, any  
13 person who violates the provisions of this subsection is guilty of  
14 a misdemeanor and, upon conviction thereof, shall be fined not less  
15 than \$100 nor more than \$1,000 or confined in jail for not less  
16 than ninety days nor more than one year, or both fined and  
17 confined.

18 (f) Notwithstanding the provisions of subsection (e) of this  
19 section, any person:

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

23 (2) Who has been convicted in this state or any other  
24 jurisdiction of a felony controlled substance offense involving a  
25 Schedule I controlled substance other than marijuana, a Schedule II

1 or a Schedule III controlled substance as such are defined in  
2 sections two hundred four, two hundred five and two hundred six,  
3 article two, chapter sixty-a of this code, and who possesses a  
4 firearm as such is defined in section two of this article is guilty  
5 of a felony and, upon conviction thereof, shall be confined in a  
6 state correctional facility for not more than five years or fined  
7 not more than \$5,000, or both fined and confined. The provisions  
8 of subsection (g) of this section do not apply to persons convicted  
9 of offenses referred to in this subsection or to persons convicted  
10 of a violation of this subsection.

11 (g) Except for those persons described under subsection (f) of  
12 this section, any person prohibited from possessing a firearm by  
13 the provisions of subsection (a) of this section, because of a  
14 conviction that occurred in this state may petition the circuit  
15 court of the county in which he or she resides to regain the  
16 ability to receive and possess a firearm. If the court finds by  
17 clear and convincing evidence that the person is competent and  
18 capable of exercising the responsibility concomitant with the  
19 receipt and possession of a firearm, the court may enter an order  
20 allowing the person to receive and possess a firearm if the receipt  
21 and possession would not violate any federal law: *Provided, That*  
22 a person prohibited from receiving or possessing a firearm because  
23 the person has been adjudicated a mental defective or committed to  
24 a mental institution is not eligible to petition under this  
25 subsection but may petition for a restoration of firearms rights in

1 accordance with the provisions of section five, article seven-a of  
2 this chapter.

3 **ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS**  
4 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**  
5 **CONDITION TO THE NATIONAL INSTANT CRIMINAL**  
6 **BACKGROUND CHECK SYSTEM; LEGISLATIVE FINDINGS;**  
7 **DEFINITIONS; REPORTING REQUIREMENTS; REINSTATEMENT**  
8 **OF RIGHTS PROCEDURES.**

9 **§61-7A-5. Petition to remove firearm-related disabilities.**

10 (a) A person who is subject to the disabilities of 18 U.S.C.  
11 §922(d)(4) and (g)(4) or of section seven, article seven of this  
12 chapter by virtue solely of having been adjudicated as a mental  
13 defective in a proceeding under the laws of this state or having  
14 been committed to a mental institution pursuant to chapter  
15 twenty-seven of this code may petition the circuit court of the  
16 county of his or her residence to remove all such disabilities. A  
17 copy of the petition for relief shall be served upon the attorney  
18 for the state who appeared in the underlying case. The attorney  
19 may, as he or she deems appropriate, represent the interests of the  
20 state in the restoration proceedings.

21 (b) The court shall receive and consider evidence in a closed  
22 proceeding, including evidence offered by the petitioner,  
23 concerning:

24 (1) The circumstances regarding the firearm disabilities from



1 which relief is sought;

2 (2) The petitioner's mental health and criminal history  
3 records, if any;

4 (3) The petitioner's reputation, developed at a minimum  
5 through character witness statements, testimony or other character  
6 evidence; and

7 (4) Changes in the petitioner's condition or circumstances  
8 since the original adjudication or commitment relevant to the  
9 relief sought.

10 The court shall grant the petition for relief if it finds by  
11 a preponderance of the evidence or clear and convincing evidence  
12 that the petitioner will not be likely to act in a manner dangerous  
13 to public safety and that the granting of the relief would not be  
14 contrary to the public interest. A record shall be kept of the  
15 proceedings, but it shall remain confidential and be disclosed only  
16 to a court in the event of an appeal. The petitioner may appeal a  
17 denial of the requested relief, and review on appeal shall be de  
18 novo.

19 (c) The circuit clerk of each county shall provide the  
20 Superintendent of the West Virginia State Police or his or her  
21 designee with a certified copy of any order entered pursuant to the  
22 provisions of this section. If the order removes the petitioner's  
23 firearm-related disabilities, petitioner's name shall within five  
24 business days of when the order was received be removed from the  
25 Central State Mental Health Registry. The superintendent shall

1 within ten business days of receiving the order inform the Federal  
2 Bureau of Investigation or other federal entity operating the  
3 National Instant Criminal Background Check System that the basis  
4 for the record being made available no longer applies.

5 (d) A person may petition for relief under this section not  
6 more than once every two years and, in the case of a person who was  
7 committed to a mental institution, not before the person has been  
8 discharged from the commitment.

NOTE: The purpose of this bill is to allow individuals with a valid Concealed Carry Permit to be exempt from the National Instant Criminal Background Check System (NICS) when purchasing a firearm. It would further conform state law to federal law.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§61-7-7 and §61-7A-5 have been completely rewritten, therefore both sections have been completely underscored.