

H. B. 4513

(By Delegates Householder (By Request), Staggers,
Kump and Romine)

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

A BILL to repeal §8-12-5a of the Code of West Virginia, 1931, as amended; to repeal §20-2-19a of said code; to repeal §61-7-6 and §61-7-6a of said code; to repeal §61-7A-1 and §61-7A-5 of said code; to amend and reenact §2-2-1 of said code; to amend and reenact §5A-4-3 of said code; to amend and reenact §6-3-1 and §6-3-1a of said code; to amend and reenact §7-1-3 of said code; to amend and reenact §7-4-1 of said code; to amend and reenact §7-11-5 of said code; to amend and reenact §7-14E-2 of said code; to amend and reenact §8-12-5 of said code; to amend and reenact §8-29B-5 of said code; to amend and reenact §15-2-24b and §15-2-25 of said code; to amend and reenact §15-5-6 and §15-5-19a of said code; to amend and reenact §17C-2-3 of said code; to amend and reenact §18C-5-2 of said code; to amend and reenact §18C-6-2 of said code; to amend and reenact §18C-7-3 of said code; to amend and reenact §20-1-2 of

1 said code; to amend and reenact §20-2-2a, §20-2-5, §20-2-5c,
2 §20-2-6, §20-2-6a, §20-2-32, §20-2-37, §20-2-421, §20-2-42p,
3 §20-2-46e and §20-2-58 of said code; to amend and reenact
4 §20-7-9 and §20-7-11 of said code; to amend and reenact
5 §24A-7-6 of said code; to amend and reenact §25-1-11c of said
6 code; to amend and reenact §27-3-1 of said code; to amend and
7 reenact §32-4-407 of said code; to amend and reenact §33-41-8
8 of said code; to amend and reenact §44A-2-6 of said code; to
9 amend and reenact §48-27-403, §48-27-502, §48-27-601 and
10 §48-27-1002 of said code; to amend and reenact §49-2B-3 of
11 said code; to amend and reenact §50-1-14 of said code; to
12 amend and reenact §55-18-1 of said code; to amend and reenact
13 §61-5-8 of said code; to amend and reenact §61-6-1a and
14 §61-6-19 of said code; to amend and reenact §61-7-1, §61-7-2,
15 §61-7-3, §61-7-4, §61-7-5, §61-7-7, §61-7-9, §61-7-10,
16 §61-7-11a, §61-7-12 and §61-7-14 of said code; to amend and
17 reenact §61-7A-2, §61-7A-3 and §61-7A-4 of said code; to amend
18 and reenact §61-11-9 of said code; to amend and reenact
19 §62-12-6 of said code; to amend said code by adding thereto a
20 new section, designated §15-2-25a; to amend said code by
21 adding thereto a new section, designated §18C-1-6; to amend
22 said code by adding thereto a new section, designated §27-5-6;
23 to amend said code by adding thereto a new section, designated
24 §30-29-11; to amend said code by adding thereto a new section,

1 designated §48-22-804; to amend said code by adding thereto a
2 new section, designated §55-18-3; to amend said code by adding
3 thereto nine new sections, designated §61-7-11b, §61-7-11c,
4 §61-7-13, §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18,
5 §61-7-19 and §61-7-20; to amend said code by adding thereto a
6 new section, designated §61-11-27; to amend said code by
7 adding thereto two new sections, designated §64-5-1a and
8 §64-5-1b; to amend said code by adding thereto a new section,
9 designated §64-7-3a; to amend said code by adding thereto two
10 new sections, designated §64-10-3a and §64-10-3b; and to amend
11 said code by adding thereto a new article, designated §64-12-1
12 and §64-12-2, all relating to the regulation of firearms and
13 other deadly weapons; providing uniform statutory definition
14 of "business days" for purposes of computation of time;
15 providing that the rights of local conservators of the peace
16 and reserve deputy sheriffs to keep and bear arms as private
17 citizens are neither enlarged nor diminished by virtue of
18 their positions; clarifying various grants of authority to
19 certain state officers and agents to carry firearms and
20 concealed weapons while on duty; codifying common law arrest
21 powers of prosecuting attorneys and assistant prosecuting
22 attorneys; repealing special fees for fingerprinting services
23 for applicants for federal firearm licenses; repealing
24 authority of municipalities to prohibit the carrying of

1 certain weapons; limiting access to records pertaining to
2 licenses to carry concealed weapons, qualified retired
3 law-enforcement officers qualified to carry concealed firearms
4 pursuant to the federal Law Enforcement Officers Safety Act of
5 2004 and licensed hunters, trappers and fishermen; requiring
6 qualifying law-enforcement officers employed by a West
7 Virginia law-enforcement agency to receive certification to
8 carry a concealed firearm nationwide as provided in the
9 federal Law Enforcement Officers Safety Act of 2004;
10 establishing procedure for a retired or medically discharged
11 member of the State Police to appeal a denial of a letter of
12 authorization to carry concealed handguns; providing that
13 certain methods of authorization for retired or medically
14 discharged members of the State Police to carry concealed
15 handguns are cumulative; providing that a letter of
16 authorization for a retired or medically discharged member of
17 the State Police to carry concealed weapons shall be deemed a
18 West Virginia license to carry concealed weapons for the
19 purpose of participating in reciprocity with other states;
20 providing that law-enforcement agencies are neither prohibited
21 from nor required to permit an officer to carry his or her
22 service weapon off-duty; requiring West Virginia
23 law-enforcement agencies to offer access to training and
24 certification for honorably retired officers to be permitted

1 to carry a concealed firearm nationwide as a qualified retired
2 law-enforcement officer as provided in the federal Law
3 Enforcement Officers Safety Act of 2004; establishing program
4 for issuing special qualified retired law-enforcement officer
5 concealed firearm license by the State Police; authorizing
6 legislative rules; providing that special qualified retired
7 law-enforcement officer concealed firearm license is
8 cumulative and supplemental; prohibiting state financial
9 assistance to higher education institutions that infringe upon
10 an individual's right to keep and bear arms as provided by
11 law; expanding prohibition on interference with hunters,
12 trappers and fishermen to include the lawful possession or
13 control of lawfully-taken wildlife; prohibiting certain
14 harassment, intimidation or threats against hunters, trappers
15 or fishermen; providing exemptions to prohibited acts relating
16 to interference with hunters, trappers and fishermen;
17 providing exemption from prohibited acts relating to
18 interference with hunters, trappers and fishermen for
19 constitutionally-protected activities; increasing criminal
20 penalties for interference with hunters, trappers and
21 fishermen; providing civil remedies for unlawful interference
22 with hunters, trappers and fishermen; clarifying that hunting
23 statutes generally do not prohibit the otherwise lawful
24 carrying of handguns for self-defense purposes; exempting

1 persons who are licensed or otherwise authorized to lawfully
2 carry concealed weapons from certain limitations on how
3 firearms may be carried or transported; providing additional
4 lawful means for the transportation of rifles and shotguns in
5 or on vehicles and vessels; clarifying language on Sunday
6 hunting local option election ballots to accurately state the
7 nature of the question propounded; modifying restrictions
8 relating to discharging firearms near residences, parks and
9 certain other public places; consolidating and clarifying
10 certain penalty provisions; requiring notice of a guardianship
11 or conservatorship hearing to include a warning of the
12 potential consequences of the guardianship or conservatorship
13 action on the alleged protected person's ability to lawfully
14 possess firearms; requiring domestic violence protective
15 orders to contain certain warnings about implications of order
16 on legality of firearms possession; clarifying effect of
17 protective orders on legality of firearms possession;
18 prohibiting an adoption agency or entity from making
19 suitability determinations based on, requiring disclosure
20 relating to, or restricting the lawful possession, storage or
21 use of a firearm or ammunition; providing immunity from civil
22 liability for certain firearms safety instructors, course
23 providers, sponsoring organizations and participants;
24 modifying area covered by prohibition on transporting

1 restricted articles on correctional facility premises;
2 prohibiting the taking of lawfully possessed arms and
3 ammunition during a declared state of emergency or riot;
4 repealing prohibition on bringing weapons upon the state
5 Capitol Complex; declaring legislative findings and intent;
6 defining terms; limiting requirement of license to carry
7 concealed weapons to enumerated locations; providing
8 additional exemptions to requirement of license to carry
9 concealed weapons; granting full faith and credit to all
10 qualified out-of-state license or permit to carry concealed
11 weapons held by qualifying out-of-state licensees; requiring
12 certain persons who lawfully carry a concealed weapon without
13 a license to inform the law-enforcement officer and submit to
14 certain requests by the law-enforcement officer when the
15 person is contacted by a law-enforcement officer; providing
16 procedures for ascertaining the existence of a license or
17 other lawful authorization to carry a concealed weapon;
18 establishing certain rebuttable presumptions regarding the
19 existence or absence of evidence of a license or other lawful
20 authorization to carry a concealed weapon; establishing
21 multiple classes of licenses to carry concealed weapons;
22 prescribing eligibility criteria for each class of license;
23 repealing limitation of licenses to carry concealed weapons to
24 pistols and revolvers only; repealing license to carry

1 concealed weapons fee surcharge for Courthouse Facilities
2 Improvement Fund; requiring the inclusion of certain
3 information on applications for licenses to carry concealed
4 weapons; modifying eligibility criteria for licenses to carry
5 concealed weapons; specifying information to be provided in
6 application for license to carry concealed weapons; requiring
7 applicants for licenses to carry concealed weapons to provide
8 specified documentation with application; specifying required
9 components of background investigations of applicants for
10 licenses to carry concealed weapons; requiring background
11 check on applicants for licenses to carry concealed weapons to
12 determine an applicant's eligibility to possess or transport
13 firearms under state and federal law; requiring
14 fingerprint-based state and national criminal and mental
15 health background checks on applicants for Class 1 licenses;
16 establishing a State Police Concealed Weapons License
17 Background Check Administration Fund; source of funds; use of
18 funds; authorizing expenditures from collections; converting
19 county concealed weapons license administration funds to
20 perpetual revolving accounts; repealing authority of sheriff
21 to expend surplus funds in county concealed weapons license
22 administration fund; establishing additional means of
23 fulfilling requirement of demonstrating basic competence with
24 a handgun; prescribing additional requirement for Class 1, 2

1 and 4 licenses of completing certain live fire shooting
2 exercises and passing live fire shooting proficiency test;
3 requiring instructors of live fire shooting proficiency tests
4 to maintain records on students; modifying time limit for
5 sheriffs to act on applications for licenses to carry
6 concealed weapons; conforming requirements for Social Security
7 number solicitations on applications for licenses to carry
8 concealed weapons to Section 7 of the federal Privacy Act of
9 1974; establishing a uniform system of numbering and indexing
10 all licenses to carry concealed weapons throughout the state;
11 specifying the form and contents of licenses to carry
12 concealed weapons; establishing provisions governing the
13 change of a licensee's name or address; modifying the license
14 expiration and renewal cycle; prorating license fees;
15 extending licenses of active-duty members of the Armed Forces
16 while deployed; requiring Commissioner of Motor Vehicles to
17 produce license cards upon request of sheriff; payment of cost
18 of producing license cards; transferring responsibility for
19 preparing license applications and other forms from
20 Superintendent to Attorney General; requiring sheriffs to
21 accept certain methods of payment for fees for licenses to
22 carry concealed weapons; establishing procedure for appealing
23 the suspension or revocation of a license to carry concealed
24 weapons; specifying form of notice of denial, suspension or

1 revocation of a license to carry concealed weapons; specifying
2 whether a license to carry concealed weapons shall be
3 suspended or revoked; establishing optional procedure for
4 reconsidering denial, suspension or revocation of license
5 prior to judicial appeal; closing proceedings and sealing
6 records in judicial appeals of denials, suspension and
7 revocations of licenses to carry concealed weapons; modifying
8 immunity from civil liability for certain acts relative to
9 concealed weapons licensing; declaring licensing statute to be
10 comprehensive and preemptive; requiring courts to determine
11 whether individuals in proceedings resulting in
12 disqualification from licensure are licensed to carry a
13 concealed weapon; requiring court to notify issuing agency
14 upon a licensee becoming disqualified for certain causes from
15 continued licensure to carry concealed weapons; requiring
16 sheriffs to issue notice of license expiration and renewal
17 process; contents of notice; providing criminal penalties for
18 fraudulently obtaining or unlawfully disclosing confidential
19 information about individuals who have applied for or been
20 issued licenses to carry concealed weapons; establishing
21 provisions for the use of an alternate address by certain
22 classes of protected persons; requiring the Attorney General
23 to periodically notify the Attorney General and licensing
24 authority of each state of this state's recognition of

1 qualified out-of-state license or permit to carry concealed
2 weapons held by qualifying out-of-state licensees; requiring
3 the Attorney General to negotiate and execute reciprocity
4 agreements to secure recognition of West Virginia licenses
5 when required by other states as a condition of recognizing
6 West Virginia licenses; requiring the Attorney General and the
7 Superintendent of the State Police to provide certain annual
8 reports to the Legislature; requiring the Attorney General to
9 publish and annually revise a compendium of firearm and use of
10 force laws; providing for the disposition of applications for
11 licenses to carry concealed weapons filed before and pending
12 on the effective date of this act; providing for
13 classification of licenses to carry concealed weapons in
14 effect on the effective date of this act; specifying
15 procedures for upgrading or modifying class of license to
16 carry concealed weapons; establishing emergency license to
17 carry concealed weapons; eligibility criteria; license fee;
18 creating uniform rule concerning the requirement to carry and
19 exhibit license when carrying a concealed weapon for both West
20 Virginia licensees and qualified out-of-state licensees;
21 conforming classes of persons prohibited from possessing
22 firearms to federal law; clarifying conflicting statutory
23 language; prohibiting certain persons from carrying a
24 concealed weapon in a public place; providing additional

1 procedures for relief from weapons disabilities; designating
2 officials authorized to certify the transfer and registration
3 of firearms subject to the National Firearms Act; establishing
4 time limit for designated officials to act on requests for
5 certification; establishing uniform standard for approving or
6 denying requested certifications; providing immunity from
7 civil liability for lawfully performing required
8 certifications; prohibiting licensed firearm dealers from
9 refusing to sell or otherwise transfer a firearm to any person
10 solely on the basis that the person purchased a firearm that
11 was later the subject of a law-enforcement trace request;
12 requiring licensed firearms dealers to perform certain acts
13 incident to firearm sales or transfers; prohibiting the
14 purchase or attempt to purchase a firearm from a firearm
15 dealer by certain persons; increasing criminal penalties for
16 any person other than a law-enforcement officer who knowingly
17 solicits, persuades, encourages or entices any other person to
18 violate firearm sales laws; civil remedies for unlawful denial
19 or delay of firearm sale or transfer; specifying areas subject
20 to prohibition on possession of deadly weapons on school
21 premises; providing exceptions; creating separate offense for
22 possessing deadly weapon in school safety zone with the intent
23 to use the deadly weapon unlawfully or to threaten or endanger
24 another person; providing criminal penalties; reducing

1 criminal penalties for unlawful possession of deadly weapon in
2 school safety zones without the intent to use the deadly
3 weapon unlawfully or to threaten or endanger another person;
4 modifying requirements and procedures for suspending or
5 revoking driver's license of person convicted of or
6 adjudicated a juvenile delinquent for such offenses;
7 prohibiting the possession or conveyance of deadly weapons
8 into certain areas of courthouses and other places where
9 judicial proceedings are held; declaring certain persons
10 exempt; requiring establishment of secure weapon storage areas
11 and posting of signs; providing for the consolidation of
12 required signage and secure weapon storage areas when premises
13 contained within secure restricted access area; providing for
14 the establishment of secure restricted access areas in certain
15 public buildings; procedures for establishment; prohibiting
16 the possession of or conveyance of deadly weapons into secure
17 restricted access areas; providing criminal penalties for
18 possessing or conveying deadly weapons into restricted
19 premises; signage requirements; requiring the provision of
20 secure weapon storage areas at secure restricted access areas
21 for individuals to lawfully store firearms before entering
22 secure restricted access area; providing additional criminal
23 penalties for the use or possession of firearms or other
24 weapons during the commission of specified crimes; exempting

1 certain officers, employees and agents of the United States,
2 this state or a political subdivision of this state from
3 restrictions or prohibitions on possessing weapons imposed by
4 private property owners; requiring all private property owners
5 that have legally restricted or prohibited the possession or
6 carrying of weapons on their premises to give notice of such
7 prohibitions or restrictions by posting specified signs;
8 format of signs; effect of failure to properly post signs
9 indicating such prohibition or restriction; providing immunity
10 from civil liability to private property owners and private
11 employers for certain acts or omissions of individuals
12 licensed to carry concealed weapons or authorized to carry
13 concealed weapons without a license if the private property
14 owner or private employer voluntarily refrains from
15 restricting the possession or carrying of deadly weapons by
16 individuals licensed to carry concealed weapons or authorized
17 to carry concealed weapons without a license; prohibiting a
18 public or private employer from prohibiting a customer,
19 employee or invitee from possessing any legally owned firearm
20 or concealable weapon that is lawfully possessed and locked
21 inside or locked to a private motor vehicle in a parking lot;
22 prohibiting a public or private employer from violating the
23 privacy rights of a customer, employee or invitee by verbal or
24 written inquiry regarding the presence of a firearm or

1 concealable weapon inside or locked to a private motor vehicle
2 in a parking lot or by the search of a private motor vehicle
3 in a parking lot to ascertain the presence of a firearm or
4 concealable weapon within the vehicle; prohibiting actions by
5 a public or private employer against a customer, employee or
6 invitee based upon verbal or written statements concerning
7 possession of a firearm or concealable weapon stored inside a
8 private motor vehicle in a parking lot for lawful purposes;
9 providing conditions under which a search of a private motor
10 vehicle in the parking lot of a public or private employer may
11 be conducted; prohibiting a public or private employer from
12 conditioning employment upon specified licensure status or
13 upon a specified agreement; prohibiting a public or private
14 employer from attempting to prevent or prohibiting any
15 customer, employee or invitee from entering the parking lot of
16 the employer's place of business because the private motor
17 vehicle of a customer, employee or invitee contains a legal
18 firearm or concealable weapon; prohibiting public or private
19 employers from terminating the employment of or otherwise
20 discriminating against an employee, or expelling a customer or
21 invitee, for exercising his or her right to keep and bear arms
22 or for exercising the right of self-defense; providing a
23 condition to the prohibition; providing that such prohibitions
24 apply to all public-sector employers; providing that, when

1 subject to the prohibitions imposed by law, a public or
2 private employer has no duty of care related to the actions
3 prohibited; providing specified immunity from liability for
4 public and private employers; providing nonapplicability of
5 such immunity; providing construction; providing exceptions to
6 certain prohibitions; providing for enforcement of certain
7 prohibitions; providing for the award of reasonable personal
8 costs and losses; providing for the award of court costs and
9 attorney's fees; declaring the provisions of the West Virginia
10 Code to be the sole means by which the keeping and bearing of
11 arms may be regulated; preempting any ordinance, rule, policy
12 or administrative action inconsistent therewith; exceptions;
13 providing for enforcement of prohibition on additional
14 regulation of firearms or concealable weapons; providing rules
15 of construction; prohibiting the registration of firearms or
16 firearm owners; exceptions; compliance period for purging
17 prohibited registries; limiting seizures of concealable
18 weapons; providing remedies for unlawful seizure of
19 concealable weapon; providing civil and criminal penalties for
20 certain acts in violation of an individual's right to keep and
21 bear arms; defining certain acts as *per se* official misconduct
22 for purposes of removing public official from office;
23 establishing regulations for gun buy-back programs;
24 establishing procedures to protect interests of owners of

1 stolen firearms and preserve evidence of certain crimes;
2 requiring certain firearms disposed by a public agency to be
3 offered for sale to licensed firearm dealers by public auction
4 or sealed bids; procedures for public sale of certain
5 firearms; requiring award of court costs and attorney's fees
6 in certain cases; clarifying conflicting statutory language;
7 updating references to licenses to carry concealed weapons in
8 the state central mental health registry law; clarifying the
9 permissible use of records in the central state mental health
10 registry; establishing statute of limitations for prosecuting
11 certain crimes; authorizing the set aside and expungement of
12 certain criminal convictions involving misdemeanor crimes of
13 domestic violence; defining eligible offenses; form and
14 contents of petition; filing fee; service and notice
15 requirements; prosecutor, victim and state agency opposition
16 to petition; court procedure for hearing and ruling upon the
17 petition; presumptions and burdens of proof; establishing
18 procedures for expunging records; effects of set aside and
19 expungement; and repealing or revising various archaic
20 language.

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

22 That §8-12-5a of the Code of West Virginia, 1931, as amended,
23 be repealed; that §20-2-19a of said code be repealed; that §61-7-6
24 and §61-7-6a of said code be repealed; that §61-7A-1 and §61-7A-5

1 of said code be repealed; that §2-2-1 of said code be amended and
2 reenacted; that §5A-4-3 of said code be amended and reenacted; that
3 §6-3-1 and §6-3-1a of said code be amended and reenacted; that
4 §7-1-3 of said code be amended and reenacted; that §7-4-1 of said
5 code be amended and reenacted; that §7-11-5 of said code be amended
6 and reenacted; that §7-14E-2 of said code be amended and reenacted;
7 that §8-12-5 of said code be amended and reenacted; that §8-29B-5
8 of said code be amended and reenacted; that §15-2-24b and §15-2-25
9 of said code be amended and reenacted; that §15-5-6 and §15-5-19a
10 of said code be amended and reenacted; that §17C-2-3 of said code
11 be amended and reenacted; that §18C-5-2 of said code be amended and
12 reenacted; that §18C-6-2 of said code be amended and reenacted;
13 that §18C-7-3 of said code be amended and reenacted; that §20-1-2
14 of said code be amended and reenacted; that §20-2-2a, §20-2-5,
15 §20-2-5c, §20-2-6, §20-2-6a, §20-2-32, §20-2-37, §20-2-42l,
16 §20-2-42p, §20-2-46e and §20-2-58 of said code be amended and
17 reenacted; that §20-7-9 and §20-7-11 of said code be amended and
18 reenacted; that §24A-7-6 of said code be amended and reenacted;
19 that §25-1-11c of said code be amended and reenacted; that §27-3-1
20 of said code be amended and reenacted; that §32-4-407 of said code
21 be amended and reenacted; that §33-41-8 of said code be amended and
22 reenacted; that §44A-2-6 of said code be amended and reenacted;
23 that §48-27-403, §48-27-502, §48-27-601 and §48-27-1002 of said
24 code be amended and reenacted; that §49-2B-3 of said code be

1 amended and reenacted; that §50-1-14 of said code be amended and
2 reenacted; that §55-18-1 of said code be amended and reenacted;
3 that §61-5-8 of said code be amended and reenacted; that §61-6-1a
4 and §61-6-19 of said code be amended and reenacted; that §61-7-1,
5 §61-7-2, §61-7-3, §61-7-4, §61-7-5, §61-7-7, §61-7-9, §61-7-10,
6 §61-7-11a, §61-7-12 and §61-7-14 of said code be amended and
7 reenacted; that §61-7A-2, §61-7A-3 and §61-7A-4 of said code be
8 amended and reenacted; that §61-11-9 of said code be amended and
9 reenacted; that §62-12-6 of said code be amended and reenacted;
10 that said code be amended by adding thereto a new section,
11 designated §15-2-25a; that said code be amended by adding thereto
12 a new section, designated §18C-1-6; that said code be amended by
13 adding thereto a new section, designated §27-5-6; that said code be
14 amended by adding thereto a new section, designated §30-29-11; that
15 said code be amended by adding thereto a new section, designated
16 §48-22-804; that said code be amended by adding thereto a new
17 section, designated §55-18-3; that said code be amended by adding
18 thereto nine new sections, designated §61-7-11b, §61-7-11c,
19 §61-7-13, §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18,
20 §61-7-19 and §61-7-20; that said code be amended by adding thereto
21 a new section, designated §61-11-27; that said code be amended by
22 adding thereto two new sections, designated §64-5-1a and §64-5-1b;
23 that said code be amended by adding thereto a new section,
24 designated §64-7-3a; that said code be amended by adding thereto

1 two new sections, designated §64-10-3a and §64-10-3b; and that said
2 code be amended by adding thereto a new article, designated
3 §64-12-1 and §64-12-2, all to read as follows:

4 **CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS AND**
5 **LEGAL CAPACITY.**

6 **ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF**
7 **STATUTES; DEFINITIONS.**

8 **§2-2-1. Legal holidays; official acts or court proceedings.**

9 (a) The following days are legal holidays:

10 (1) The first day of January is "New Year's Day";

11 (2) The third Monday of January is "Martin Luther King's
12 Birthday";

13 (3) The third Monday of February is "Presidents' Day";

14 (4) The last Monday in May is "Memorial Day";

15 (5) The twentieth day of June is "West Virginia Day";

16 (6) The fourth day of July is "Independence Day";

17 (7) The first Monday of September is "Labor Day";

18 (8) The second Monday of October is "Columbus Day";

19 (9) The eleventh day of November is "Veterans' Day";

20 (10) The fourth Thursday of November is "Thanksgiving Day";

21 (11) The day after Thanksgiving Day is "Lincoln's Day";

22 (12) The twenty-fifth day of December is "Christmas Day";

23 (13) Any day on which a general, primary or special election

1 is held is a holiday throughout the state, a political subdivision
2 of the state, a district or an incorporated city, town or village
3 in which the election is conducted;

4 (14) General election day on even years shall be designated
5 Susan B. Anthony Day, in accordance with the provisions of
6 subsection (b), section one-a of this article; and

7 (15) Any day proclaimed or ordered by the Governor or the
8 President of the United States as a day of special observance or
9 Thanksgiving, or a day for the general cessation of business, is a
10 holiday.

11 (b) If a holiday otherwise described in subsection (a) of this
12 section falls on a Sunday, then the following Monday is the legal
13 holiday. If a holiday otherwise described in subsection (a) of this
14 section falls on a Saturday, then the preceding Friday is the legal
15 holiday: *Provided*, That this subsection (b) shall not apply to
16 subdivisions (13), (14) and (15), subsection (a) of this section.

17 (c) Any day or part thereof designated by the Governor as time
18 off, without charge against accrued annual leave, for state
19 employees statewide may also be time off for county employees if
20 the county commission elects to designate the day or part thereof
21 as time off, without charge against accrued annual leave for county
22 employees. Any entire or part statewide day off designated by the
23 Governor may, for all courts, be treated as if it were a legal
24 holiday.

1 (d) In computing any period of time prescribed by any
2 applicable provision of this code or any legislative rule or other
3 administrative rule or regulation promulgated pursuant to the
4 provisions of this code, the day of the act, event, default or
5 omission from which the applicable period begins to run is not
6 included. The last day of the period so computed is included,
7 unless it is a Saturday, a Sunday, a legal holiday or a designated
8 day off in which event the prescribed period of time runs until the
9 end of the next day that is not a Saturday, Sunday, legal holiday
10 or designated day off.

11 (e) If any applicable provision of this code or any
12 legislative rule or other administrative rule or regulation
13 promulgated pursuant to the provisions of this code designates a
14 particular date on, before or after which an act, event, default or
15 omission is required or allowed to occur, and if the particular
16 date designated falls on a Saturday, Sunday, legal holiday or
17 designated day off, then the date on which the act, event, default
18 or omission is required or allowed to occur is the next day that is
19 not a Saturday, Sunday, legal holiday or designated day off.

20 (f) In computing any period of time prescribed by any
21 applicable provision of this code or any legislative rule or other
22 administrative rule or regulation promulgated pursuant to the
23 provisions of this code governing when an act, event, default or
24 omission is required or allowed to occur, when the applicable

1 statute or rule specifies that the prescribed amount of time is
2 measured in "business days," only those days that are not a
3 Saturday, Sunday, legal holiday or designated day off, shall be
4 included in the computation of the applicable time period. When the
5 applicable statute or rule does not specifically provide that the
6 applicable time period is measured in "business days," the
7 applicable time period shall be measured in calendar days and
8 Saturdays, Sundays, legal holidays and designated days off shall be
9 excluded from the applicable time period only as otherwise provided
10 in this article.

11 ~~(f)~~ (g) With regard to the courts of this state, the
12 computation of periods of time, the specific dates or days when an
13 act, event, default or omission is required or allowed to occur and
14 the relationship of those time periods and dates to Saturdays,
15 Sundays, legal holidays, or days designated as weather or other
16 emergency days pursuant to section two of this article are governed
17 by rules promulgated by the Supreme Court of Appeals.

18 ~~(g)~~ (h) The provisions of this section do not increase or
19 diminish the legal school holidays provided in section two, article
20 five, chapter eighteen-a of this code.

21 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

22 **ARTICLE 4. GENERAL SERVICES DIVISION.**

23 **§5A-4-3. Security officers; appointment; oath; powers and duties**

1 **generally, etc.**

2 (a) In addition to the other powers given and assigned to the
3 secretary in this chapter, ~~he is hereby authorized to~~ the secretary
4 may appoint bona fide residents of this state to act as security
5 officers upon any premises owned or leased by the State of West
6 Virginia and under the jurisdiction of the secretary, subject to
7 the conditions and restrictions ~~hereinafter~~ imposed in this
8 section. Before entering upon the performance of his or her duties
9 as ~~such a~~ security officer under this section, ~~each~~ the person ~~so~~
10 ~~appointed~~ shall qualify ~~therefor~~ in the same manner as is required
11 of county officers by taking and filing an oath of office as
12 required by article one, chapter six of this code. ~~No such person~~
13 ~~shall have authority to carry a gun or any other dangerous weapon~~
14 ~~until he shall have obtained a license therefor in the manner~~
15 ~~prescribed by section two, article seven, chapter sixty-one of this~~
16 ~~code.~~

17 ~~It shall be the duty of~~ (b) Any person ~~so~~ appointed and
18 qualified ~~to~~ as a security officer pursuant to subsection (a) of
19 this section shall preserve law and order on any premises under the
20 jurisdiction of the secretary to which he ~~may be~~ or she is assigned
21 by the secretary. For this purpose, ~~he~~ the security officer shall,
22 as to offenses committed on such premises, have and may exercise
23 all the powers and authority and shall be subject to all the
24 responsibilities of a ~~deputy sheriff of the county~~ law-enforcement

1 officer as defined in section one, article twenty-nine, chapter
 2 thirty of this code. The assignment of security officers to any
 3 premises under the jurisdiction of the secretary ~~shall~~ does not be
 4 ~~deemed to supersede in any way or limit~~ the authority or duty of
 5 other ~~peace~~ law-enforcement officers to preserve law and order on
 6 ~~such any~~ premises to which the secretary assigns a security officer
 7 pursuant to this section.

8 (c) The secretary may at his or her pleasure revoke the
 9 authority of any ~~such~~ security officer appointed pursuant to this
 10 section by filing a notice ~~to that effect of revocation~~ in the
 11 office of the clerk of the county commission of each county in
 12 which ~~his~~ the security officer's oath of office was filed. ~~and in~~
 13 ~~the case of officers licensed to carry a gun or other dangerous~~
 14 ~~weapon, by notifying the clerk of the circuit court of the county~~
 15 ~~in which the license therefor was granted~~

16 **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

17 **ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.**

18 **§6-3-1. Appointment of deputies and local conservators of the**
 19 **peace; powers and duties; compensation; vacating**
 20 **appointment of deputy sheriff; removal of**
 21 **conservators.**

22 (a) (1) The clerk of the Supreme Court of Appeals, or ~~of~~ any
 23 circuit ~~criminal, common pleas, intermediate or county~~ magistrate

1 court ~~or of any tribunal established by law in lieu thereof,~~ may,
2 with the consent of the court, ~~or such tribunal,~~ duly entered of
3 record, appoint any person or persons his or her deputy or
4 deputies.

5 (2) A sheriff, surveyor of lands, clerk of the county
6 commission or assessor may, with the consent of the county ~~court~~
7 commission or tribunal established by law in lieu of a county
8 commission, duly entered of record, appoint any person or persons
9 his or her deputy or deputies.

10 (3) A sheriff may, when in the opinion of the judge of the
11 circuit court the public interest requires it, ~~may, with the assent~~
12 ~~of said court, duly entered of record,~~ appoint any person or
13 persons his or her deputy or deputies to perform any temporary
14 service or duty.

15 (4) Each deputy ~~so appointed~~ shall take the same oath of
16 office required of his or her principal, and may, during his or her
17 continuance in office, perform and discharge any of the official
18 duties of his or her principal, and any default or misfeasance in
19 office of the deputy shall constitute a breach of the conditions of
20 the official bond of his or her principal.

21 (5) A sheriff in any county in which there are more than four
22 deputies shall devote his or her full time to the performance of
23 the services or duties required by law of such sheriff, and ~~he~~
24 shall not receive any compensation or reimbursement, directly or

1 indirectly, from any person, firm or corporation for the
2 performance of any private or public services or duties. ~~Provided,~~
3 ~~That~~ However, any ~~such~~ sheriff may retain or make any investment
4 and receive income therefrom, unless ~~such~~ the investment is
5 otherwise prohibited by law or will impair ~~his~~ the sheriff's
6 independence of judgment in the exercise of, or might reasonably
7 tend to conflict with the proper discharge of, the services or
8 duties of ~~his~~ the office of sheriff. A sheriff in any county in
9 which there are four or fewer deputies, or a deputy sheriff in any
10 county ~~irrespective~~ regardless of the number of deputies, need not
11 devote his or her full time to the services or duties of his or her
12 office as sheriff or his or her employment as deputy sheriff, as
13 the case may be; but any such sheriff or deputy sheriff shall not
14 engage in any business or transaction, accept other employment or
15 make any investment which is otherwise prohibited by law or which
16 will impair his or her independence of judgment in the exercise of,
17 or might reasonably tend to conflict with the proper discharge of,
18 the services or duties of ~~his~~ the office as sheriff or his or her
19 employment as deputy sheriff, as the case may be. A sheriff and his
20 or her deputies in any county, ~~irrespective~~ regardless of the
21 number of deputies, shall receive for the performance of their
22 public services and duties no compensation or remuneration except
23 such as may be regularly provided and paid out of public funds to
24 the amount and in the manner provided by law. No sheriff or deputy

1 sheriff in any county, ~~irrespective~~ regardless of the number of
2 deputies, may receive, directly or indirectly, any gift or donation
3 from any person, firm or corporation.

4 (6) Except as ~~hereinafter~~ expressly provided by subsection (b)
5 of this section, no sheriff ~~shall~~ may appoint or continue the
6 appointment of any deputy contrary to the provisions ~~hereof~~ of this
7 section. Any sheriff or deputy sheriff who ~~shall violate~~ violates
8 any ~~of the provisions~~ provision of this section ~~shall be~~ is guilty
9 of a misdemeanor and, upon conviction thereof, shall be fined not
10 less than \$500 nor more than \$5,000, ~~or~~ confined in jail for not ~~to~~
11 ~~exceed~~ more than one year, or both. ~~in the discretion of the court~~

12 (7) Circuit courts shall have jurisdiction in equity and
13 mandamus, and the Supreme Court of Appeals shall have jurisdiction
14 in mandamus, upon the filing of a petition by the prosecuting
15 attorney, the Attorney General, or any three or more citizens of
16 the county, to require any sheriff and the county ~~court~~ commission
17 to vacate the appointment of any deputy, the appointment of which
18 is made or continued in violation of the provisions ~~hereof~~ of this
19 subsection. Any such proceeding may be instituted and prosecuted by
20 the Attorney General either in the circuit court of Kanawha County
21 or in the county for which such appointment was made.

22 (b) (1) Any resident or group of residents of any
23 unincorporated community ~~as hereinafter defined~~, may petition the
24 sheriff for the appointment of a local conservator of the peace and

1 ~~such~~ the sheriff, when in his or her opinion the public interests
2 require it, may with the assent of ~~said~~ the county ~~court~~ commission
3 and the judge of the circuit court duly entered of record, either
4 in term or vacation of any such court, appoint any person or
5 persons a local conservator or conservators of the peace to perform
6 the duties of a conservator of the peace outside of any
7 ~~incorporated city, town or village~~ municipality. No person shall
8 be appointed ~~such~~ local conservator of the peace who has not been
9 a bona fide resident and taxpayer of the county for at least one
10 year prior to his or her appointment. ~~Such~~ A local conservator of
11 the peace during his or her continuance in office, may perform and
12 discharge any of the official duties of the sheriff, subject
13 ~~nevertheless~~ to the provisions of this section. No local
14 conservator ~~so appointed~~ shall be subject to the direction or
15 control of any person other than ~~his principal~~ the appointing
16 sheriff and ~~he~~ a local conservator shall not perform any services
17 or duties, either private or public, except the duties required by
18 law of conservators of the peace pursuant to the provisions ~~hereof~~
19 of this subsection, for any person, firm, or corporation. No ~~such~~
20 local conservator shall be entitled to collect or receive any fees
21 provided by law to be paid to the sheriff or to a deputy sheriff,
22 but all fees provided by law for the sheriff, when such duties and
23 services are rendered by such local conservator, shall be paid to
24 the sheriff as regular collections of the sheriff's office. The

1 local conservator shall be paid for the public services ~~performed~~
2 ~~by him~~ the local conservator performs a salary of not less than \$75
3 per month out of the county treasury from a fund to be paid into
4 such treasury by a resident or the residents of the community for
5 which ~~he~~ the local conservator is appointed, for the sole purpose
6 of compensating ~~such~~ the local conservator or conservators and no
7 ~~such~~ local conservator ~~shall~~ may receive any other compensation,
8 directly or indirectly, from any person, firm, or corporation, for
9 any private or public service, except the salary payable to ~~him~~ the
10 local conservator for his or her public services and duties and
11 from such fund, except that ~~he~~ the local conservator shall be
12 entitled to witness and mileage fees when a witness in ~~a~~ any court
13 ~~of record~~ proceeding. Each local conservator ~~so appointed~~ shall
14 take the same oath of office required of ~~his principal~~ the
15 appointing sheriff and any default or misfeasance in the office of
16 ~~such~~ the local conservator shall constitute a breach of the
17 conditions of the official bond of ~~his principal~~ the appointing
18 sheriff.

19 (2) When the sheriff ~~shall have been~~ is petitioned for the
20 appointment of a local conservator and ~~has determined~~ determines
21 that the appointment is proper, ~~he~~ the sheriff shall select the
22 person whom ~~he~~ the sheriff proposes to have appointed ~~such~~ a local
23 conservator and shall notify the county ~~court~~ commission of the
24 community for which ~~such~~ the local conservator is to be appointed

1 and the name of the person proposed for ~~such~~ the appointment. The
2 county ~~court~~ commission shall thereupon cause notice that the
3 sheriff has recommended the appointment of the person named as
4 conservator for the community named to be published as a Class II
5 legal advertisement in compliance with the provisions of article
6 three, chapter fifty-nine of this code, and the publication area
7 ~~for such publication~~ shall be the county. The notice shall
8 designate a day not less than five days after the date of the last
9 publication when the county ~~court~~ commission will act upon the
10 petition and recommendation. Neither the county ~~court~~ commission
11 nor the judge of the circuit court ~~shall~~ may assent and approve the
12 appointment of ~~such~~ a local conservator until ~~such~~ after the
13 required publication has been made. The costs of the publication
14 shall be paid by the person or persons petitioning for the
15 appointment of the conservator.

16 No local conservator ~~shall~~ may be appointed ~~except it be made~~
17 ~~to appear to the satisfaction of~~ unless the county ~~court~~ commission
18 and the judge of the circuit court find that because of the lack of
19 sufficient funds, the geographical location of the unincorporated
20 community for which ~~such~~ the conservator is to be appointed, or
21 other good reason, the sheriff and ~~his regular~~ the sheriff's
22 ~~deputies and the constables of the county~~ are not sufficient to
23 afford proper local policing of ~~such~~ the community and that the
24 person or persons moving for the appointment of ~~such~~ the local

1 conservator have made satisfactory arrangements to compensate ~~him~~
2 the local conservator for his or her services as ~~such~~ a local
3 conservator of the peace.

4 (3) ~~Such~~ A local conservator of the peace shall have all the
5 powers and duties of a regularly appointed deputy sheriff except
6 that ~~he~~ a local conservator of the peace shall not execute any
7 civil process except such process as may be necessary to bring
8 parties before the court in any civil action ~~at law or suit in~~
9 ~~equity~~ and subpoenas for witnesses within the unincorporated
10 community for which he or she is appointed and within a distance of
11 one mile outside the boundaries thereof, except as hereinafter
12 expressly provided, ~~but he~~ and shall not participate in any strike,
13 unemployment boycott, or other industrial or labor dispute, nor
14 serve any court process of any character relating thereto. ~~He~~ A
15 local conservator of the peace shall act ~~as such local conservator~~
16 only in the unincorporated community for which he or she is
17 appointed, and within a distance of one mile from the boundaries
18 thereof as fixed by the county ~~court~~ commission: *Provided,*
19 ~~however,~~ That the authority of one local conservator shall not
20 extend into any other unincorporated community for which another
21 local conservator is appointed and acting, except as otherwise
22 expressly provided by subdivision (6) of this subsection, except
23 that in fresh pursuit ~~he~~ a local conservator may effect arrests
24 anywhere in the county. ~~He~~ A local conservator may also exercise

1 the powers of a regularly appointed deputy sheriff anywhere in the
2 county when required to guard or assist in guarding a payroll, or
3 any other property of value in transit to or from the
4 unincorporated community for which ~~he~~ the local conservator is
5 appointed. Any person arrested by ~~such~~ a local conservator shall,
6 with all convenient speed, be turned over to the sheriff or ~~one of~~
7 ~~his regular deputies, or to a regular constable of the county to be~~
8 ~~dealt with according to law,~~ a deputy sheriff and ~~his~~ the local
9 conservator's authority for that purpose shall be coextensive with
10 the county.

11 (4) Any local conservator appointed to perform the duties of
12 conservator of the peace shall be a public officer and the payment,
13 or contribution to the payment of compensation of ~~such~~ the local
14 conservator shall not constitute the person, firm or corporation
15 making such payment or contribution the employer of ~~such~~ the local
16 conservator and no person, firm or corporation paying, or
17 contributing to the payment of compensation to ~~such~~ the local
18 conservator shall be ~~answerable in law or in equity~~ liable in any
19 civil action for any damages to person or property resulting from
20 any official act or omission of ~~such~~ any local conservator.

21 (5) ~~No person appointed such~~ The appointment of a local
22 conservator ~~shall thereby be entitled to carry weapons, but such~~
23 ~~local conservator may carry weapons when he shall be duly licensed~~
24 ~~and shall have given bond as provided by section two, article~~

1 ~~seven, chapter sixty-one of the Code of West Virginia, 1931~~ does
2 not enlarge or diminish the local conservator's right to keep and
3 bear arms in the same manner as the local conservator may otherwise
4 lawfully do so as a private citizen.

5 (6) Not more than one local conservator of the peace shall be
6 appointed, to perform the duties of conservator of the peace, for
7 each two thousand five hundred inhabitants of the county as
8 ascertained by the last regular decennial census after deducting
9 the number of inhabitants of the county residing in ~~the~~
10 ~~incorporated cities, towns and villages in such county~~
11 municipalities. Not more than one local conservator shall be
12 appointed for any unincorporated community unless the population
13 ~~thereof~~ of the community exceeds one thousand five hundred people,
14 ~~and in such~~ which case not more than two conservators ~~shall~~ may be
15 appointed for ~~such~~ the community.

16 (7) ~~The phrase~~ In this section, "unincorporated community"
17 ~~within the meaning of this section shall mean~~ means any center of
18 population ~~wherein~~ outside a municipality in which fifty or more
19 persons reside within an area of not more than one square mile.

20 (8) The county ~~court~~ commission and the judge of the circuit
21 court in approving the appointment of a local conservator shall
22 enter of record an order making ~~such~~ the appointment and shall show
23 ~~therein~~ in the order the necessity for the appointment, the person
24 or persons on whose motion the appointment is made, the arrangement

1 for the payment of compensation to such local conservator, the
2 unincorporated community or communities, for which the appointment
3 is made, including the general boundary of each unincorporated
4 community for which ~~he~~ the local conservator is appointed.

5 (9) No local conservator ~~shall~~ may act as an election official
6 or remain in, about or near any voting place or place of political
7 convention, further than is necessary for ~~him~~ the local conservator
8 to promptly ~~cast his~~ vote and retire from the voting place.

9 (10) Any local conservator ~~violating any of the provisions of~~
10 ~~subdivisions~~ who violates subdivision (3) ~~and or~~ (9) of this
11 subsection ~~shall be~~ is guilty of a misdemeanor and, upon conviction
12 thereof, shall be fined not less than \$50 nor more than \$300, ~~or be~~
13 confined in ~~the county~~ jail for not more than six months, or both.
14 ~~in the discretion of the court; and it shall be the duty of The~~
15 sheriff and the county ~~court to forthwith~~ commission shall
16 immediately revoke ~~his~~ the appointment ~~irrespective of a local~~
17 conservator who violates subdivision (3) or (9) of this subsection
18 regardless of any criminal prosecution. A proceeding in mandamus or
19 injunction shall lie in the circuit court and a proceeding in
20 mandamus shall lie in the Supreme Court of Appeals at the instance
21 of the prosecuting attorney, the Attorney General, or of any three
22 or more citizens of the community for which ~~such~~ the conservator is
23 appointed, to require the performance of ~~such~~ this duty by the
24 sheriff and the county ~~court~~ commission.

1 (11) ~~Such~~ A local conservator shall serve ~~during~~ at the joint
 2 will and pleasure of the sheriff and the county ~~court~~ commission
 3 and ~~his~~ the local conservator's appointment may be revoked by order
 4 entered of record by the county ~~court either with or~~ commission
 5 without ~~the assignment of cause. therefor~~

6 A local conservator may be removed by the judge of the circuit
 7 court, either in term or vacation, for drunkenness, gross
 8 immorality, incompetence, neglect of duty, or other good cause,
 9 upon the petition of three or more residents of the community for
 10 which ~~he~~ the local conservator has been appointed. The petition
 11 shall set forth the cause or causes for which ~~such~~ the removal of
 12 the local conservator is ~~asked~~ demanded and shall show that demand
 13 for removal has been made of the sheriff and the county ~~court~~
 14 commission and that the sheriff and the county ~~court~~ commission
 15 have failed to remove the local conservator. At least three copies
 16 of the petition shall be filed, and upon the filing of the petition
 17 the judge shall fix a time and place for a hearing thereon, which
 18 time shall not be less than ten days after the filing of the
 19 petition, and shall cause a copy thereof to be served upon the
 20 sheriff and ~~such~~ the local conservator at least ten days before the
 21 hearing thereon.

22 **§6-3-1a. Deputy sheriff's reserve; purpose; appointment and**
 23 **qualifications of members; duties; attire; training;**
 24 **oath; bond; not employee of sheriff or county**

1 **commission for certain purposes; limitation on**
2 **liability.**

3 (a) The sheriff of any county may, for the purposes
4 ~~hereinafter set forth~~ specified in this section, designate and
5 appoint a deputy sheriffs' reserve, hereinafter referred to as
6 "reserve" or "reserves." A reserve may not be designated or created
7 without the prior approval of the county commission for the
8 establishment of the reserve.

9 (b) Each sheriff may appoint as members of the reserve bona
10 fide citizens of the county who are of good moral character and who
11 have not been convicted of a felony or other crime involving moral
12 turpitude. Any ~~person so appointed~~ member of the reserve shall
13 serve at the will and pleasure of the sheriff and is not subject to
14 the provisions of article fourteen, chapter seven of this code. A
15 member of the reserve may not engage in any political activity or
16 campaign involving the office of sheriff or from which activity or
17 campaign the sheriff or ~~candidates therefor~~ any candidate for the
18 office of the sheriff appointing the member would directly benefit.

19 (c) ~~Members of the reserves shall not serve as law-enforcement~~
20 ~~officers, nor carry firearms, but may carry other weapons provided~~
21 ~~that the sheriff certifies in writing to the county commission that~~
22 ~~the reserve has met the special training requirements for the~~
23 ~~weapon as established by the Governor's committee on crime,~~
24 ~~delinquency and corrections. The Governor's committee on crime,~~

1 ~~delinquency and corrections is authorized to promulgate legislative~~
2 ~~rules and emergency rules pursuant to the provisions of article~~
3 ~~three, chapter twenty nine a of this code to establish appropriate~~
4 ~~training standards. The sheriff may provide the reserves ~~may be~~
5 ~~provided with~~ radio and other electronic communication equipment
6 for the purpose of maintaining contact with the sheriff's
7 department or other law-enforcement agencies.~~

8 (d) The duties of the reserves shall be limited to crowd
9 control or traffic control and direction within the county. In
10 addition, the reserves may perform such other duties of a
11 nonlaw-enforcement nature as are designated by the sheriff or by a
12 deputy sheriff designated and appointed by the sheriff for that
13 purpose: *Provided*, That a member of the reserves may not aid or
14 assist any law-enforcement officer in enforcing the statutes and
15 laws of this state in any labor trouble or dispute between employer
16 and employee.

17 ~~(d)~~ (e) Members of the reserves may be uniformed; however, if
18 ~~so~~ uniformed, the uniforms shall clearly differentiate ~~these~~
19 members of the reserves from other law-enforcement deputy sheriffs.

20 ~~(e)~~ (f) After appointment to the reserves but prior to service
21 each member of the reserves shall receive appropriate training and
22 instruction in their functions and authority as well as the
23 limitations of authority. In addition, each member of the reserves
24 shall annually receive in-service training.

1 ~~(f)~~ (g) Each member of the reserve shall take the same oath as
2 prescribed by section five, article IV of the Constitution of ~~the~~
3 this state, ~~of West Virginia~~ but the taking of the oath does not
4 ~~serve to~~ make the member a public officer.

5 ~~(g)~~ (h) The county commission of each county shall provide for
6 the bonding and liability insurance of each member of the reserve.

7 ~~(h)~~ (I) A member of the reserve is not an employee of either
8 the sheriff or ~~of the county commission for any purpose or purposes,~~
9 ~~including, but not limited to,~~ the purposes of workers'
10 compensation, civil service, unemployment compensation, public
11 employees retirement, public employees insurance or ~~for~~ any other
12 purpose. A member of the reserves may not receive any compensation
13 or pay for any services performed as a member nor may a member use
14 the designated uniform for any other similar work performed. A
15 member of the reserves is not a law-enforcement officer within the
16 meaning of section one, article twenty-nine, chapter thirty of this
17 code, and is not authorized by virtue of his or her appointment as
18 a member of the reserves to carry a concealed weapon without a
19 license. This section does not enlarge or diminish the right of a
20 member of the reserves to keep and bear arms in the same manner as
21 he or she may otherwise lawfully do so as a private citizen.

22 ~~(I)~~ (j) Neither the county commission nor the sheriff is liable
23 for any of the acts of any member of the reserves except in the case
24 of gross negligence on the part of the county commission or sheriff

1 in the appointment of the member or in the case of gross negligence
2 on the part of either the sheriff or any of his or her deputies in
3 directing any action on the part of the member.

4 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

5 **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

6 **§7-1-3. Jurisdiction, powers and duties.**

7 The county commissions, through their clerks, shall have the
8 custody of all deeds and other papers presented for record in their
9 counties and the same shall be preserved therein, or otherwise
10 disposed of as now is, or may be prescribed by law. ~~They~~ The county
11 commissions shall have jurisdiction in all matters of probate, the
12 appointment and qualification of personal representatives,
13 guardians, committees, curators and the settlement of their accounts
14 and in all matters relating to apprentices. ~~They~~ The county
15 commissions shall also, under the rules as now are or may be
16 prescribed by law, have the superintendence and administration of
17 the internal police and fiscal affairs of their counties, including
18 the establishment and regulation of roads, ways, streets, avenues,
19 drives and the like, and the naming or renaming thereof, in
20 cooperation with local postal authorities, the Division of Highways
21 and the directors of county emergency communications centers, to
22 assure uniform, nonduplicative conversion of all rural routes to
23 city-type addressing on a permanent basis, bridges, public landings,
24 ferries and mills, with authority to lay and disburse the county

1 levies. ~~They~~ The county commissions shall, in all cases of contest,
2 judge of the election, qualification and returns of their own
3 members, and of all county and district officers, subject to appeal
4 as prescribed by law. The tribunals as have been heretofore
5 established by the Legislature under and by virtue of section
6 thirty-four, article VIII of the Constitution of 1,872, for police
7 and fiscal purposes, shall, until otherwise provided by law, remain
8 and continue as at present constituted in the counties in which they
9 have been respectively established, and shall be and act as to
10 police and fiscal matters in lieu of the county commission herein
11 mentioned, until otherwise provided by law. And until otherwise
12 provided by law, the clerk as is mentioned in section twenty-six of
13 said article, as amended, shall exercise any powers and discharge
14 any duties heretofore conferred on, or required of, any court or
15 tribunal established for judicial purposes under said section, or
16 the clerk of the court or tribunal, respectively, respecting the
17 recording and preservation of deeds and other papers presented for
18 record, matters of probate, the appointment and qualification of
19 personal representatives, guardians, committees, curators and the
20 settlement of their accounts and in all matters relating to
21 apprentices. ~~The county commission may not limit the right of any~~
22 ~~person to purchase, possess, transfer, own, carry, transport, sell~~
23 ~~or store any revolver, pistol, rifle or shotgun or any ammunition~~
24 ~~or ammunition components to be used therewith nor to so regulate the~~

1 ~~keeping of gunpowder so as to, directly or indirectly, prohibit the~~
 2 ~~ownership of the ammunition: *Provided,* That no provision in this~~
 3 ~~section may be construed to limit the authority of a county to~~
 4 ~~restrict the commercial use of real estate in designated areas~~
 5 ~~through planning or zoning ordinances.~~

6 **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

7 **§7-4-1. Duties of prosecuting attorney; further duties upon**
 8 **request of Attorney General.**

9 ~~It shall be the duty of~~ (a) The prosecuting attorney to shall
 10 attend to the criminal business of the state in the county in which
 11 ~~he~~ the prosecuting attorney is elected and qualified. ~~and~~ When ~~he~~
 12 the prosecuting attorney has information of the violation of any
 13 penal law committed within ~~such~~ the county served by the prosecuting
 14 attorney, ~~he~~ the prosecuting attorney shall institute and prosecute
 15 all necessary and proper proceedings against the offender and may
 16 ~~in such case~~ issue or cause to be issued a summons for any witness
 17 ~~he may deem~~ the prosecuting attorney considers material. Every
 18 public officer shall give ~~him~~ the prosecuting attorney information
 19 of the violation of any penal law committed within ~~his~~ the county
 20 served by the prosecuting attorney. ~~It shall also be the duty of~~

21 (b) A prosecuting attorney shall be a conservator of the peace
 22 within the county he or she serves and may arrest any person without
 23 a warrant for committing in his or her presence a misdemeanor that

1 constitutes a breach of the peace or any felony.

2 (c) The prosecuting attorney ~~to~~ shall attend to civil ~~suits~~
3 actions in ~~such the~~ county served by the prosecuting attorney in
4 which the state or any department, commission, ~~or board thereof, or~~
5 other instrumentality of the state is interested, and ~~to~~ advise,
6 attend to, bring, prosecute or defend, as the case may be, all
7 matters, actions, suits and proceedings in which ~~such the~~ county or
8 ~~any the~~ county board of education is interested.

9 ~~It shall be the duty of~~ (d) The prosecuting attorney ~~to~~ shall
10 keep his or her office open in the charge of a responsible person
11 during the hours polls are open on general, primary and special
12 county-wide election days, and the prosecuting attorney ~~or his~~ and
13 assistant prosecuting attorneys, if any, shall be available for the
14 purpose of advising election officials. ~~It shall be the further duty~~
15 ~~of~~

16 (e) The prosecuting attorney, when requested by the Attorney
17 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in
18 performing, in the county ~~in which he is elected~~ served by the
19 prosecuting attorney, any legal duties required to be performed by
20 the Attorney General, and which are not inconsistent with the duties
21 of the prosecuting attorney as the legal representative of ~~such the~~
22 county. ~~It shall also be the duty of~~

23 (f) The prosecuting attorney, when requested by the Attorney
24 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in

1 performing any legal duties required to be performed by the Attorney
 2 General, in any county other than ~~that~~ the county in which such
 3 prosecuting attorney is elected and qualified, and for the
 4 performance of any such duties in any county other than ~~that in~~
 5 ~~which such~~ the county served by the prosecuting attorney, ~~is elected~~
 6 ~~he~~ the prosecuting attorney shall be paid his or her actual
 7 expenses.

8 (g) Upon the request of the Attorney General, the prosecuting
 9 attorney shall make a written report of the state and condition of
 10 ~~the several causes~~ all cases in which the state is a party, pending
 11 in ~~his~~ the county served by the prosecuting attorney, and upon any
 12 matters referred to ~~him~~ the prosecuting attorney by the Attorney
 13 General as provided by law.

14 **ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

15 **§7-11-5. General powers of commission; rules and regulations;**
 16 **misdemeanor offenses; park police authorized.**

17 ~~The~~ (a) Each county parks and recreation commission shall have
 18 the necessary powers and authority to manage and control all public
 19 parks and recreational properties and facilities owned by the county
 20 or commission and used as a part of such public parks and recreation
 21 system, including the ~~right~~ power to promulgate rules and
 22 regulations concerning the management and control of such parks and
 23 recreational properties and facilities and to enforce any ~~such~~ rules
 24 ~~and regulations so~~ promulgated pursuant to this section.

1 ~~The~~ (b) Each county parks and recreation commission shall ~~also~~
2 have plenary power and authority to prepare and submit to the county
3 ~~court~~ commission for adoption rules ~~and regulations~~ regulating the
4 use of any parks and recreational properties and facilities under
5 the control of the Parks and Recreation Commission and prohibiting
6 any type of use of or activities in connection with any such
7 properties or facilities, and any such rules ~~and regulations~~, if so
8 adopted, shall be duly entered of record in the order book of the
9 county ~~court~~ commission. ~~The violation of~~ Any person who violates
10 any ~~such rule and regulation so~~ adopted by the county ~~court~~ shall
11 ~~constitute~~ commission under this subsection is guilty of a
12 misdemeanor and, ~~any person convicted of any such violation upon~~
13 conviction thereof, shall be ~~punished by a fine of~~ fined not less
14 than \$5 nor more than \$100, ~~or by imprisonment~~ confined in jail for
15 ~~a period not exceeding~~ not more than thirty days, or by both. ~~such~~
16 ~~fine and imprisonment. Justices of the peace of the county shall~~
17 ~~have concurrent jurisdiction with the circuit court and other courts~~
18 ~~of record (having criminal jurisdiction) of any misdemeanor offenses~~
19 ~~arising under this article.~~ The violation of any such rule ~~and~~
20 ~~regulation~~ which also constitutes the violation of any state law or
21 municipal ordinance may be prosecuted and punished as a violation
22 of such state law or municipal ordinance rather than under the
23 provisions of this section. To enforce any such rules, ~~and~~
24 ~~regulations~~ to protect and preserve all properties and facilities

1 under the control of the Parks and Recreation Commission and to
2 preserve law and order in connection therewith, the Parks and
3 Recreation Commission shall have plenary power and authority to
4 provide in its bylaws procedures for the appointment, supervision
5 and discharge of one or more park police officers. Whenever any such
6 appointment is made, a copy of the order of appointment shall be
7 filed by the commission with the county ~~court~~ commission.

8 (c) In any area under the jurisdiction and control of the Parks
9 and Recreation Commission, or in connection with any properties or
10 facilities under the jurisdiction and control of the Parks and
11 Recreation Commission, or in pursuit of one or more individuals
12 therefrom, any park police officer ~~so appointed~~ shall have all of
13 the power and authority ~~which that~~ a regularly appointed deputy
14 ~~sheriff of such county~~ law-enforcement officer, as defined in
15 section one, article twenty-nine, chapter thirty of this code, has
16 in enforcing the criminal laws of the state. ~~Notwithstanding any~~
17 ~~provisions of this code to the contrary, park police officers~~
18 ~~appointed as aforesaid shall not be required to obtain a state~~
19 ~~license to carry a weapon, as required by the provisions of section~~
20 ~~two, article seven, chapter sixty one of this code. When any such~~
21 ~~commission has purchased one or more policies of public liability~~
22 ~~insurance providing the commission and its officers, agents and~~
23 ~~employees insurance coverage for legal liability of said commission~~
24 ~~and its officers, agents and employees for bodily injury, personal~~

1 ~~injury or damage (including, but not limited to, false arrest and~~
 2 ~~false imprisonment) and property damage, and affording said~~
 3 ~~commission and its officers, agents and employees insurance coverage~~
 4 ~~against any and all legal liability arising from, growing out of,~~
 5 ~~by reason of or in any way connected with, any acts or omissions of~~
 6 ~~said commission, or its officers, agents or employees in the~~
 7 ~~performance of their official duties, and so long as the coverage~~
 8 ~~aforesaid remains in full force and effect as to such park police~~
 9 ~~officers, then the bond specified in section five, article seven of~~
 10 ~~said chapter sixty-one shall not be required as to such park police~~
 11 ~~officers.~~

12 **ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICATION OF FEE TO**
 13 **DEPUTY SHERIFF'S RETIREMENT SYSTEM.**

14 **§7-14E-2. Statewide uniform fees for reports generated by**
 15 **sheriff's offices; dedication of fees.**

16 (a) The county commission of each county ~~in this state~~ shall
 17 set a uniform fee for obtaining ~~certain~~ traffic accident reports,
 18 criminal investigation reports, incident reports and property
 19 reports ~~This fee shall be set at a minimum of~~ not less than \$10 for
 20 ~~each report, with a maximum of~~ nor more than \$20 for each report.
 21 Ten dollars of the charge for each report shall be deposited into
 22 the Deputy Sheriff Retirement Fund created in section six, article
 23 fourteen-d of this chapter. ~~The reports for which a charge may be~~

1 ~~made are traffic accident reports, criminal investigation reports,~~
2 ~~incident reports and property reports.~~

3 (b) All sheriff's offices in this state shall collect a fee of
4 \$5 for performing the following services: Adult private employment
5 fingerprinting; ~~fingerprinting for federal firearm permits;~~ motor
6 vehicle number identification; adult identification cards; and
7 photo-identification cards. Upon collection, these fees shall be
8 deposited into the Deputy Sheriff Retirement Fund created in section
9 six, article fourteen-d of this chapter.

10 (c) All sheriff's offices in this state shall collect a fee of
11 \$5 for each nongovernmental background investigation report. Upon
12 collection, these fees shall be deposited into the Deputy Sheriff
13 Retirement Fund created in section six, article fourteen-d of this
14 chapter.

15 (d) No charge may be made under this section for any report or
16 reports made to governmental agencies.

17 (e) The fees specified in this section do not apply to any
18 license to carry concealed weapons pursuant to section four or five,
19 article seven, chapter sixty-one of this code.

20 ~~(e)~~ (f) Any county commission which fails to make any payment
21 due the Deputy Sheriff Retirement Fund by the fifteenth day
22 following the end of each calendar month in which a fee or other
23 contribution is received by the county's sheriff may be required to
24 pay the actuarial rate of interest lost on the total amount owed for

1 each day the payment is delinquent. Accrual of the loss of earnings
2 owed by the delinquent county commission commences after the
3 fifteenth day following the end of the calendar month in which the
4 fee or other contribution is due and continues until receipt of the
5 delinquent amount. Interest compounds daily and the minimum
6 surcharge is \$50.

7 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

8 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
9 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
10 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
11 **MUNICIPALITIES.**

12 **§8-12-5. General powers of every municipality and the governing**
13 **body thereof.**

14 In addition to the powers and authority granted by: (I) The
15 Constitution of this state; (ii) other provisions of this chapter;
16 (iii) other general law; and (iv) any charter, and to the extent not
17 inconsistent or in conflict with any of the foregoing except special
18 legislative charters, every municipality and the governing body
19 thereof shall have plenary power and authority therein by ordinance
20 or resolution, as the case may require, and by appropriate action
21 based thereon:

22 (1) To lay off, establish, construct, open, alter, curb,
23 recurb, pave or repave and keep in good repair, or vacate,

1 discontinue and close, streets, avenues, roads, alleys, ways,
2 sidewalks, drains and gutters, for the use of the public, and to
3 improve and light the same, and have them kept free from
4 obstructions on or over them which have not been authorized pursuant
5 to the succeeding provisions of this subdivision; and, subject to
6 such terms and conditions as the governing body shall prescribe, to
7 permit, without in any way limiting the power and authority granted
8 by the provisions of article sixteen of this chapter, any person to
9 construct and maintain a passageway, building or other structure
10 overhanging or crossing the airspace above a public street, avenue,
11 road, alley, way, sidewalk or crosswalk, but before any permission
12 for any person to construct and maintain a passageway, building or
13 other structure overhanging or crossing any airspace is granted, a
14 public hearing thereon shall be held by the governing body after
15 publication of a notice of the date, time, place and purpose of the
16 public hearing has been published as a Class I legal advertisement
17 in compliance with the provisions of article three, chapter
18 fifty-nine of this code and the publication area for the publication
19 shall be the municipality: *Provided*, That any permit so granted
20 shall automatically cease and terminate in the event of abandonment
21 and nonuse thereof for the purposes intended for a period of ninety
22 days, and all rights therein or thereto shall revert to the
23 municipality for its use and benefit;

24 (2) To provide for the opening and excavation of streets,

1 avenues, roads, alleys, ways, sidewalks, crosswalks and public
2 places belonging to the municipality and regulate the conditions
3 under which any such opening may be made;

4 (3) To prevent by proper penalties the throwing, depositing or
5 permitting to remain on any street, avenue, road, alley, way,
6 sidewalk, square or other public place any glass, scrap iron, nails,
7 tacks, wire, other litter or any offensive matter or anything likely
8 to injure the feet of individuals or animals or the tires of
9 vehicles;

10 (4) To regulate the use of streets, avenues, roads, alleys,
11 ways, sidewalks, crosswalks and public places belonging to the
12 municipality, including the naming or renaming thereof, and to
13 consult with local postal authorities, the Division of Highways and
14 the directors of county emergency communications centers to assure
15 uniform, nonduplicative addressing on a permanent basis;

16 (5) To regulate the width of streets, avenues and roads, and,
17 subject to the provisions of article eighteen of this chapter, to
18 order the sidewalks, footways and crosswalks to be paved, repaved,
19 curbed or recurbed and kept in good order, free and clean, by the
20 owners or occupants thereof or of the real property next adjacent
21 thereto;

22 (6) To establish, construct, alter, operate and maintain, or
23 discontinue, bridges, tunnels and ferries and approaches thereto;

24 (7) To provide for the construction and maintenance of water

1 drains, the drainage of swamps or marshlands and drainage systems;

2 (8) To provide for the construction, maintenance and covering
3 over of watercourses;

4 (9) To control and administer the waterfront and waterways of
5 the municipality and to acquire, establish, construct, operate and
6 maintain and regulate flood control works, wharves and public
7 landings, warehouses and all adjuncts and facilities for navigation
8 and commerce and the utilization of the waterfront and waterways and
9 adjacent property;

10 (10) To prohibit the accumulation and require the disposal of
11 garbage, refuse, debris, wastes, ashes, trash and other similar
12 accumulations whether on private or public property: *Provided,*
13 *That,* in the event the municipality annexes an area which has been
14 receiving solid waste collection services from a certificated solid
15 waste motor carrier, the municipality and the solid waste motor
16 carrier may negotiate an agreement for continuation of the private
17 solid waste motor carrier services for a period of time, not to
18 exceed three years, during which time the certificated solid waste
19 motor carrier may continue to provide exclusive solid waste
20 collection services in the annexed territory;

21 (11) To construct, establish, acquire, equip, maintain and
22 operate incinerator plants and equipment and all other facilities
23 for the efficient removal and destruction of garbage, refuse,
24 wastes, ashes, trash and other similar matters;

1 (12) To regulate or prohibit the purchase or sale of articles
2 intended for human use or consumption which are unfit for use or
3 consumption, or which may be contaminated or otherwise unsanitary;

4 (13) To prevent injury or annoyance to the public or
5 individuals from anything dangerous, offensive or unwholesome;

6 (14) To regulate the keeping of gunpowder and other
7 combustibles. However, any regulation of the keeping of gunpowder
8 pursuant to this subdivision may not act, directly or indirectly,
9 to prohibit the otherwise lawful ownership, possession, control or
10 storage of gunpowder or ammunition for any firearm;

11 (15) To regulate or prohibit the outdoor discharge of firearms,
12 other than (I) the discharge of a firearm by a law-enforcement
13 officer acting in the course of performance of his or her official
14 duties; (ii) the discharge of a firearm by a wildlife damage control
15 agent licensed pursuant to section fifty-a, article two, chapter
16 twenty of this code, acting in the course of killing or attempting
17 to kill nuisance wildlife as authorized by that section; (iii) the
18 discharge of a firearm for the specific purpose of killing nuisance
19 wildlife as authorized by a permit issued pursuant to section
20 fifteen, article two, chapter twenty of this code; or (iv) the
21 discharge of a firearm at an established shooting range, and to
22 arrest, convict and punish any individual for knowingly and
23 willfully discharging a firearm in violation of the applicable
24 restriction or prohibition. It is a defense to a charge of knowingly

1 and willfully discharging a firearm in violation of a municipal
2 ordinance under this subdivision that the defendant discharged the
3 firearm under circumstances in which the defendant was justified or
4 excused under the laws of this state in using deadly force in
5 self-defense or the defense of other persons or property;

6 ~~(15 (16) To make regulations guarding against danger or damage~~
7 ~~by fire;~~

8 ~~(16) To arrest, convict and punish any individual for carrying~~
9 ~~about his or her person any revolver or other pistol, dirk, bowie~~
10 ~~knife, razor, slingshot, billy, metallic or other false knuckles or~~
11 ~~any other dangerous or other deadly weapon of like kind or~~
12 ~~character;~~

13 (17) To arrest, convict and punish any person for importing,
14 printing, publishing, selling or distributing any pornographic
15 publications;

16 (18) To arrest, convict and punish any person for keeping a
17 house of ill fame, or for letting to another person any house or
18 other building for the purpose of being used or kept as a house of
19 ill fame, or for knowingly permitting any house owned by him or her
20 or under his or her control to be kept or used as a house of ill
21 fame, or for loafing, boarding or loitering in a house of ill fame,
22 or frequenting same;

23 (19) To prevent and suppress conduct and practices which are
24 immoral, disorderly, lewd, obscene and indecent;

1 (20) To prevent the illegal sale of intoxicating liquors,
2 drinks, mixtures and preparations;

3 (21) To arrest, convict and punish any individual for driving
4 or operating a motor vehicle while intoxicated or under the
5 influence of liquor, drugs or narcotics;

6 (22) To arrest, convict and punish any person for gambling or
7 keeping any gaming tables, commonly called "A, B, C," or "E, O,"
8 table or faro bank or keno table, or table of like kind, under any
9 denomination, whether the gaming table be played with cards, dice
10 or otherwise, or any person who shall be a partner or concerned in
11 interest, in keeping or exhibiting the table or bank, or keeping or
12 maintaining any gaming house or place, or betting or gambling for
13 money or anything of value;

14 (23) To provide for the elimination of hazards to public health
15 and safety and to abate or cause to be abated anything which in the
16 opinion of a majority of the governing body is a public nuisance;

17 (24) To license, or for good cause to refuse to license in a
18 particular case, or in its discretion to prohibit in all cases, the
19 operation of pool and billiard rooms and the maintaining for hire
20 of pool and billiard tables notwithstanding the general law as to
21 state licenses for any such business and the provisions of section
22 four, article thirteen of this chapter; and when the municipality,
23 in the exercise of its discretion, refuses to grant a license to
24 operate a pool or billiard room, mandamus may not lie to compel the

1 municipality to grant the license unless it shall clearly appear
2 that the refusal of the municipality to grant a license is
3 discriminatory or arbitrary; and in the event that the municipality
4 determines to license any business, the municipality has plenary
5 power and authority and it shall be the duty of its governing body
6 to make and enforce reasonable ordinances regulating the licensing
7 and operation of the businesses;

8 (25) To protect places of divine worship and to preserve peace
9 and order in and about the premises where held;

10 (26) To regulate or prohibit the keeping of animals or fowls
11 and to provide for the impounding, sale or destruction of animals
12 or fowls kept contrary to law or found running at large;

13 (27) To arrest, convict and punish any person for cruelly,
14 unnecessarily or needlessly beating, torturing, mutilating, killing,
15 or overloading or overdriving or willfully depriving of necessary
16 sustenance any domestic animal;

17 (28) To provide for the regular building of houses or other
18 structures, for the making of division fences by the owners of
19 adjacent premises and for the drainage of lots by proper drains and
20 ditches;

21 (29) To provide for the protection and conservation of shade
22 or ornamental trees, whether on public or private property, and for
23 the removal of trees or limbs of trees in a dangerous condition;

24 (30) To prohibit with or without zoning the location of

1 occupied house trailers or mobile homes in certain residential
2 areas;

3 (31) To regulate the location and placing of signs, billboards,
4 posters and similar advertising;

5 (32) To erect, establish, construct, acquire, improve, maintain
6 and operate a gas system, a waterworks system, an electric system
7 or sewer system and sewage treatment and disposal system, or any
8 combination of the foregoing (subject to all of the pertinent
9 provisions of articles nineteen and twenty of this chapter and
10 particularly to the limitations or qualifications on the right of
11 eminent domain set forth in articles nineteen and twenty of this
12 chapter), within or without the corporate limits of the
13 municipality, except that the municipality may not erect any system
14 partly without the corporate limits of the municipality to serve
15 persons already obtaining service from an existing system of the
16 character proposed and where the system is by the municipality
17 erected, or has heretofore been so erected, partly within and partly
18 without the corporate limits of the municipality, the municipality
19 has the right to lay and collect charges for service rendered to
20 those served within and those served without the corporate limits
21 of the municipality and to prevent injury to the system or the
22 pollution of the water thereof and its maintenance in a healthful
23 condition for public use within the corporate limits of the
24 municipality;

1 (33) To acquire watersheds, water and riparian rights, plant
2 sites, rights-of-way and any and all other property and
3 appurtenances necessary, appropriate, useful, convenient or
4 incidental to any system, waterworks or sewage treatment and
5 disposal works, as aforesaid, subject to all of the pertinent
6 provisions of articles nineteen and twenty of this chapter;

7 (34) To establish, construct, acquire, maintain and operate and
8 regulate markets and prescribe the time of holding the same;

9 (35) To regulate and provide for the weighing of articles sold
10 or for sale;

11 (36) To establish, construct, acquire, maintain and operate
12 public buildings, municipal buildings or city halls, auditoriums,
13 arenas, jails, juvenile detention centers or homes, motor vehicle
14 parking lots or any other public works;

15 (37) To establish, construct, acquire, provide, equip, maintain
16 and operate recreational parks, playgrounds and other recreational
17 facilities for public use and in this connection also to proceed in
18 accordance with the provisions of article two, chapter ten of this
19 code;

20 (38) To establish, construct, acquire, maintain and operate a
21 public library or museum or both for public use;

22 (39) To provide for the appointment and financial support of
23 a library board in accordance with the provisions of article one,
24 chapter ten of this code;

1 (40) To establish and maintain a public health unit in
2 accordance with the provisions of section two, article two, chapter
3 sixteen of this code, which ~~unit~~ shall exercise its powers and
4 perform its duties subject to the supervision and control of the
5 West Virginia Board of Health and State Bureau for Public Health;

6 (41) To establish, construct, acquire, maintain and operate
7 hospitals, sanitarium and dispensaries;

8 (42) To acquire, by purchase, condemnation or otherwise, land
9 within or near the corporate limits of the municipality for
10 providing and maintaining proper places for the burial of the dead
11 and to maintain and operate the same and regulate interments therein
12 upon terms and conditions as to price and otherwise as may be
13 determined by the governing body and, in order to carry into effect
14 the authority, the governing body may acquire any cemetery or
15 cemeteries already established;

16 (43) To exercise general police jurisdiction over any territory
17 without the corporate limits owned by the municipality or over which
18 it has a right-of-way;

19 (44) To protect and promote the public morals, safety, health,
20 welfare and good order;

21 (45) To adopt rules for the transaction of business and the
22 government and regulation of its governing body;

23 (46) Except as otherwise provided, to require and take bonds
24 from any officers, when considered necessary, payable to the

1 municipality, in its corporate name, with such sureties and in a
2 penalty as the governing body may see fit, conditioned upon the
3 faithful discharge of their duties;

4 (47) To require and take from the employees and contractors
5 such bonds in a penalty, with such sureties and with such
6 conditions, as the governing body may see fit;

7 (48) To investigate and inquire into all matters of concern to
8 the municipality or its inhabitants;

9 (49) To establish, construct, require, maintain and operate
10 such instrumentalities, other than free public schools, for the
11 instruction, enlightenment, improvement, entertainment, recreation
12 and welfare of the municipality's inhabitants as the governing body
13 may consider necessary or appropriate for the public interest;

14 (50) To create, maintain and operate a system for the
15 enumeration, identification and registration, or either, of the
16 inhabitants of the municipality and visitors thereto, or the classes
17 thereof as may be considered advisable;

18 (51) To require owners, residents or occupants of factory-built
19 homes situated in a factory-built rental home community with at
20 least ten factory-built homes, to visibly post the specific numeric
21 portion of the address of each factory-built home on the immediate
22 premises of the factory-built home of sufficient size to be visible
23 from the adjoining street. ~~Provided, That in the event~~ However, if
24 no numeric or other specific designation of an address exists for

1 a factory-built home subject to the authorization granted by this
2 subdivision, the municipality ~~has the authority to~~ may provide a
3 numeric or other specific designation of an address for the
4 factory-built home and require that it be posted in accordance with
5 the authority otherwise granted by this section;

6 (52) To appropriate and expend not exceeding \$0.25 per capita
7 per annum for advertising the municipality and the entertainment of
8 visitors;

9 (53) To conduct programs to improve community relations and
10 public relations generally and to expend municipal revenue for such
11 purposes;

12 (54) To reimburse applicants for employment by the municipality
13 for travel and other reasonable and necessary expenses actually
14 incurred by the applicants in traveling to and from the municipality
15 to be interviewed;

16 (55) To provide revenue for the municipality and appropriate
17 the same to its expenses;

18 (56) To create and maintain an employee benefits fund which may
19 not exceed one tenth of one percent of the annual payroll budget for
20 general employee benefits and which is set up for the purpose of
21 stimulating and encouraging employees to develop and implement
22 cost-saving ideas and programs and to expend moneys from the fund
23 for these purposes;

24 (57) To enter into reciprocal agreements with governmental

1 subdivisions or agencies of any state sharing a common border for
2 the protection of people and property from fire and for emergency
3 medical services and for the reciprocal use of equipment and
4 personnel for these purposes;

5 (58) To provide penalties for the offenses and violations of
6 law mentioned in this section, subject to the provisions of section
7 one, article eleven of this chapter, and such penalties may not
8 exceed any penalties provided in this chapter and chapter sixty-one
9 of this code for like offenses and violations; and

10 (59) To participate in a purchasing card program for local
11 governments authorized and administered by the State Auditor as an
12 alternative payment method.

13 **ARTICLE 29B. AIRPORT SECURITY.**

14 **§8-29B-5. Jurisdiction of airport police officers.**

15 (a) In any area under the jurisdiction and control of the
16 airport operator, or in connection with the airport, or in pursuit
17 of one or more individuals therefrom, any airport police officer
18 shall have:

19 (1) All of the power and authority which a ~~regularly appointed~~
20 ~~deputy sheriff of a county in this state~~ law-enforcement officer,
21 as defined in section one, article twenty-nine, chapter thirty of
22 this code, has in enforcing the criminal laws of this state;

23 (2) Full power and authority to enforce ~~any and~~ all federal
24 laws and rules and regulations relating to airports, air passengers,

1 baggage inspection, the screening of air passengers and other
2 airport security measures;

3 (3) Full power and authority to enforce any and all rules and
4 regulations promulgated by the airport operator; and

5 (4) The power to search persons, packages, containers and
6 baggage. ~~and the power to arrest persons:—Provided, That the~~
7 ~~foregoing provisions of this section shall under no circumstances~~
8 ~~whatever~~

9 (b) Nothing in subsection (a) of this section may be construed
10 ~~as in any way limiting to limit the power and or~~ authority of a
11 ~~municipal police~~ any other law-enforcement officer, ~~or deputy~~
12 ~~sheriff as defined in section one, article twenty-nine, chapter~~
13 thirty of this code, who has been assigned to serve as an airport
14 police officer which he or she has by virtue of his ~~being a~~
15 ~~municipal police~~ or her position as a law-enforcement officer. ~~or~~
16 ~~deputy sheriff and under no circumstances whatever shall~~

17 (c) The assignment or appointment or designation of one or more
18 airport police officers at an airport ~~be deemed in any way to~~
19 pursuant to this section does not supersede or limit the power and
20 authority of other ~~peace~~ law-enforcement officers to preserve law
21 and order at ~~such the~~ airport.

22 ~~Consistent with the provisions of section five, article seven,~~
23 ~~chapter sixty-one of this code, any municipal police officer or~~
24 ~~deputy sheriff assigned as an airport police officer pursuant to the~~

1 ~~provisions of subsection (b), section four of this article, and~~
2 ~~(notwithstanding any provision of this code to the contrary) any~~
3 ~~person appointed or designated as an airport police officer pursuant~~
4 ~~to the provisions of subsection (c), section four of this article,~~
5 ~~shall not be required to obtain a state license to carry a deadly~~
6 ~~weapon, as provided for in section two, article seven of said~~
7 ~~chapter sixty one. Any municipal police officer or deputy sheriff~~
8 ~~assigned as an airport police officer pursuant to the provisions of~~
9 ~~subsection (b), section four of this article shall not be required~~
10 ~~to furnish any bond under section five, article seven of said~~
11 ~~chapter sixty one other than the bond furnished thereunder as such~~
12 ~~municipal police officer or deputy sheriff. When one or more~~
13 ~~policies of public liability insurance are obtained providing~~
14 ~~insurance coverage for legal liability of an airport police officer~~
15 ~~for bodily injury, personal injury or damage (including, but not~~
16 ~~limited to, false arrest and false imprisonment) and property~~
17 ~~damage, and affording said airport police officer insurance coverage~~
18 ~~against any and all legal liability arising from, growing out of,~~
19 ~~or by reason of or in any way connected with, any acts or omissions~~
20 ~~of said airport police officer in the performance of his official~~
21 ~~duties, and so long as the coverage aforesaid remains in full force~~
22 ~~and effect as to such airport police officer, then the bond~~
23 ~~specified in section five, article seven of said chapter sixty one~~
24 ~~shall not be required as to such airport police officer; otherwise~~

1 ~~such bond shall be required and must be furnished.~~

2 **CHAPTER 15. PUBLIC SAFETY.**

3 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

4 **§15-2-24b. Fees for adult private employment fingerprinting**
5 **services; dedication of fees.**

6 In addition to any fees that may be established or collected
7 by the State Police under any other provision of this article or
8 rule promulgated pursuant thereto, the State Police shall collect
9 a fee of \$20 for performing adult private employment fingerprinting
10 ~~or fingerprinting for federal firearm permits: Provided, That all~~
11 except when performed for or on behalf of state entities. are exempt
12 ~~from the fee~~ Fees collected pursuant to this section shall be
13 deposited into the West Virginia State Police Retirement System and
14 shall be in addition to employer percent-of-payroll contribution.

15 **§15-2-25. Rules generally; carrying of weapons upon retirement or**
16 **medical discharge.**

17 (a) Subject to the written approval of the Governor and the
18 provisions of this article, the superintendent may make and
19 promulgate proper rules for the government, discipline and control
20 of the West Virginia State Police and shall also cause to be
21 established proper rules for the examinations of all applicants for
22 appointment thereto. The members of the West Virginia State Police
23 shall be permitted to carry arms and weapons and no license may be

1 required for the privilege.

2 **(b)** Upon retirement or medical discharge from the West Virginia
3 State Police and with the written consent of the superintendent, any
4 retired or medically discharged member who is not prohibited by
5 federal law or section seven, article seven, chapter sixty-one of
6 this code from possessing or transporting firearms or carrying a
7 concealed weapon in a public place may carry ~~a handgun~~ concealed
8 weapons without a license for the life of the member following
9 retirement or medical discharge ~~notwithstanding the provisions of~~
10 as if the member was licensed to carry concealed weapons pursuant
11 to section four, article seven, chapter sixty-one of this code.
12 ~~Provided, That~~ However, the superintendent's written ~~letter of~~
13 ~~consent~~ authorization to carry ~~a handgun~~ concealed weapons without
14 a license pursuant to this subsection may not last for more than
15 five years at a time and a retired or medically discharged member
16 who wishes to continue to carry ~~a handgun~~ concealed weapons without
17 a license pursuant to this subsection beyond five years ~~of~~ after the
18 date of his or her initial retirement or medical discharge ~~must~~
19 shall request and obtain a renewal of the superintendent's written
20 ~~permission~~ authorization to carry ~~a handgun~~ concealed weapons
21 without a license pursuant to this subsection at least once every
22 five years. A retired or medically discharged member desiring to
23 carry a handgun after retirement or medical discharge ~~must~~ pursuant
24 to this section shall provide his or her own handgun. Upon request,

1 each member shall be presented with a ~~letter~~ certificate of
2 authorization signed by the superintendent authorizing the retired
3 or medically discharged member to carry ~~a handgun~~ concealed weapons
4 without a license pursuant to this subsection. The ~~written~~
5 certificate of authorization shall be shall be carried by the
6 retired or medically discharged member at all times that he or she
7 ~~has a handgun on~~ carries about his or her person a concealed weapon
8 pursuant to this subsection. The superintendent may not issue a
9 ~~letter~~ certificate of authorization under this subsection to any
10 retired or medically discharged member who is prohibited by federal
11 law or section seven, article seven, chapter sixty-one of this code,
12 from possessing or transporting firearms or carrying a concealed
13 weapon in a public place, who is no longer employed by the State
14 Police due to a mental disability or who ~~the superintendent has~~
15 ~~reason to believe~~ is mentally incapacitated to the extent ~~it would~~
16 ~~present a threat of physical harm to one or more persons for the~~
17 member is unable to carry a concealed weapon without creating a
18 manifest threat of physical harm to other persons. The
19 ~~superintendent may revoke the authority at any time without cause~~
20 ~~and without recourse. Conviction of the retired or medically~~
21 ~~discharged member for the commission of any felony or for a~~
22 ~~misdemeanor involving the improper or illegal use of a firearm shall~~
23 ~~cause this authority to terminate immediately without a hearing or~~
24 ~~other recourse and without any action on the part of the~~

1 ~~superintendent.~~ The superintendent may not withhold, deny or revoke
2 any certificate of authorization under this subsection if the
3 retired or medically discharged member is qualified for the
4 authorization. The superintendent shall promulgate a legislative
5 rule in accordance with the provisions of chapter twenty-nine-a of
6 this code, which ~~rule~~ shall prescribe requirements necessary for the
7 issuance and continuance of the authority herein granted and
8 procedures for appealing a denial or revocation of a certificate of
9 authorization to carry concealed weapons under this subsection in
10 accordance with subsection (f) of this section.

11 (c) In addition to any certificate of authorization under
12 subsection (b) of this section, the superintendent shall make
13 available to all eligible retired or medically discharged members
14 of the State Police a program for periodic qualification and
15 certification to carry concealed firearms nationwide under 18 U.S.C.
16 §926C if that retired or medically discharged member is otherwise
17 a qualified retired law-enforcement officer as that term is defined
18 in 18 U.S.C. §926C, which shall reasonably accommodate any physical
19 disability of the retired or medically-discharged member. The
20 superintendent may not charge a retired or medically-discharged
21 member a fee for the periodic qualification and certification.
22 However, a retired or medically-discharged member who wishes to
23 qualify shall provide at his or her own expense a suitable firearm
24 and the ammunition actually expended in the qualification. A

1 retired or medically discharged member of the State Police who
2 qualifies for both a certificate of authorization under subsection
3 (b) of this section and qualification and certification as a
4 qualified retired law-enforcement officer under 18 U.S.C. §926C,
5 shall be entitled to both and the corresponding rights, benefits,
6 privileges and immunities appertaining to each.

7 (d) Before issuing, renewing or reinstating any certificate of
8 authorization under subsection (b) of this section or a
9 certification as a qualified retired law-enforcement officer under
10 subsection (c) of this section, the superintendent shall conduct an
11 investigation which shall verify that the retired or medically
12 discharged member of the State Police is not prohibited by federal
13 law or section seven, article seven, chapter sixty-one of this code,
14 from possessing or transporting firearms or carrying a concealed
15 weapon in a public place. This investigation shall conform to the
16 requirements of 18 U.S.C. §922 (t) (3) (A), 27 C.F.R. §478.102 (d) (1)
17 or other applicable federal law for qualifying certificates of
18 authorization issued under subsection (b) of this section and
19 certifications issued under subsection (c) of this section as an
20 alternative to the National Instant Criminal Background Check System
21 or other similar required background check for a resident of this
22 state to purchase a firearm through a licensed firearms dealer
23 within this state, including a background check conducted through
24 the National Instant Criminal Background Check System and, if the

1 retired or medically discharged member is not a citizen of the
2 United States, a federal Immigration Alien Query.

3 (e) Each certificate of authority under subsection (b) of this
4 section or certification under subsection (c) of this section,
5 issued on or after the effective date of the amendments to this
6 section enacted during the 2011 Regular Session of the Legislature,
7 shall be no larger than three and three-eighths inches wide by two
8 and one-eighth inches long, shall be made of a hard, laminated
9 material suitable for carrying in a wallet, similar to a driver's
10 license, and shall contain the retired or medically discharged
11 member's name, address, signature and full-face color photograph,
12 the superintendent's signature or a facsimile thereof affixed by any
13 person authorized to act on the superintendent's behalf pursuant to
14 section five, article two, chapter two of this code, the dates of
15 issue and expiration, the words "Qualified Retired Law Enforcement
16 Officer under 18 U.S.C. §926C" in conspicuous type in the case of
17 a certification under subsection (c) of this section and other
18 information the superintendent considers appropriate.

19 (f) Any denial, suspension, revocation or other termination by
20 the superintendent of a retired or medically discharged member's
21 certificate of authority under subsection (b) of this section or
22 certification as a qualified retired law-enforcement officer under
23 subsection (c) of this section, is subject to article five, chapter
24 twenty-nine-a of this code.

1 (g) The superintendent shall revoke any certificate of
2 authorization issued under subsection (b) of this section or
3 certification as a qualified retired law-enforcement officer issued
4 under subsection (c) of this section if the person to whom the
5 certificate or certification was issued becomes prohibited under
6 federal law or section seven, article seven, chapter sixty-one of
7 this code, from possessing or transporting firearms or carrying a
8 concealed weapon in a public place. The superintendent shall
9 immediately notify the person of the revocation in writing,
10 delivered either by personal service or certified mail, return
11 receipt requested. The person shall immediately surrender the
12 revoked certificate or certification to the superintendent if served
13 in person with the notice or within five business days if served by
14 certified mail.

15 (h) Any person to whom a certificate of authorization has been
16 issued under subsection (b) of this section or certification as a
17 qualified retired law-enforcement officer has been issued under
18 subsection (c) of this section, who becomes ineligible to continue
19 holding the certificate or certification shall immediately surrender
20 the certificate or certification to the superintendent regardless
21 of whether the superintendent discovers the disqualification and
22 initiates revocation proceedings under subsection (g) of this
23 section.

24 (I) Any person who knowingly and willfully fails to surrender

1 a revoked certificate or certification, as required by subsection
2 (g) of this section, or knowingly and willfully fails to surrender
3 a certificate or certification the person has become ineligible to
4 continue holding, as required by subsection (h) of this section, is
5 guilty of a misdemeanor and, upon conviction thereof, shall be fined
6 not more than \$1,000, confined in jail for not more than six months,
7 or both fined and confined.

8 (j) The superintendent shall reinstate a certificate of
9 authorization under subsection (b) of this section or certification
10 as a qualified retired law-enforcement officer under subsection (c)
11 of this section that was revoked pursuant to subsection (g) of this
12 section or surrendered pursuant to subsection (h) of this section
13 if the person to whom the revoked or surrendered certificate or
14 certification was issued subsequently ceases to be prohibited by
15 federal law or section seven, article seven, chapter sixty-one of
16 this code, from possessing or transporting firearms or carrying a
17 concealed weapon in a public place and fulfills all other
18 requirements to receive the applicable certificate of authorization
19 under subsection (b) of this section or certification as a qualified
20 retired law-enforcement officer under subsection (c) of this
21 section.

22 (k) (1) Notwithstanding any provision of this code or other law
23 of this state to the contrary, except as otherwise provided in this
24 subsection, the names, addresses and other personally-identifying

1 information of retired or medically discharged members of the State
2 Police who apply for or have been issued a certificate of authority
3 under subsection (b) of this section or certification as a qualified
4 retired law-enforcement officer under subsection (c) of this
5 section, are confidential, are not public records and may be copied
6 or inspected only by:

7 (A) The person to whom the record pertains;

8 (B) The duly qualified conservator or guardian of a person to
9 whom the record pertains;

10 (C) The duly qualified personal representative of a deceased
11 person to whom the record pertains, or, if a personal representative
12 has not qualified, the next of kin of a deceased person to whom the
13 record pertains;

14 (D) An attorney, attorney-in-fact or other agent or
15 representative acting pursuant to a written power of attorney or
16 other written authorization signed by the person to whom the record
17 pertains;

18 (E) A duly authorized representative of a law-enforcement
19 agency for any official purpose or any other agency or
20 instrumentality of federal, state or local government seeking the
21 record in the ordinary course of performing its official duties for
22 an official purpose; or

23 (F) By any licensed firearm dealer within this state from which
24 a retired or medically discharged member proposes purchasing a

1 firearm, for the purpose of verifying the validity of the
2 certificate of authorization issued under subsection (b) of this
3 section or certification as a qualified retired law-enforcement
4 officer issued under subsection (c) of this section; or

5 (G) (I) A person authorized by an order of any court, based upon
6 a finding of the court that the information is sufficiently
7 necessary to a proceeding before the court to substantially outweigh
8 the importance of maintaining the confidentiality established by
9 this subsection, to copy or inspect information protected by this
10 subsection.

11 (ii) Before any court may grant access to any records pursuant
12 to this paragraph, the court shall order the moving party to give
13 each affected applicant or licensee notice of the proceedings, the
14 request for confidential records under this paragraph and the
15 opportunity of affected persons to confidentially intervene and
16 object to the request by directing the superintendent to print and
17 mail by first-class mail to each affected person, the costs for
18 which the moving party shall prepay in full to the superintendent,
19 and perform this notification in a manner not inconsistent with the
20 confidentiality provisions of this subsection.

21 (2) Any person who knowingly misrepresents his or her identity
22 to obtain any information whose disclosure is restricted by
23 subdivision (1) of this subsection, knowingly makes a false
24 statement to obtain any information whose disclosure is restricted

1 by subdivision (1) of this subsection, knowingly and willfully
2 misrepresents his or her authority to obtain any information whose
3 disclosure is restricted by subdivision (1) of this subsection or
4 knowingly and willfully discloses any information whose disclosure
5 is restricted by subdivision (1) of this subsection in violation of
6 subdivision (1) of this subsection, is guilty of a felony and, upon
7 conviction thereof, shall be imprisoned for not less than one year
8 nor more than ten years, fined not more than \$10,000, or both fined
9 and imprisoned.

10 (3) This subsection does not prohibit disclosure or publication
11 of statistical summaries, abstracts or other records containing
12 information in an aggregate or statistical form that does not
13 disclose any personally-identifying information protected from
14 public disclosure under this subsection.

15 (4) (A) The superintendent shall furnish to a any nonprofit
16 firearm-related or hunting-related educational or issue-advocacy
17 organization exempt from federal income taxation under §501(c) of
18 the Internal Revenue Code that has not obtained records pursuant to
19 this subdivision within the immediate preceding six months, a
20 current list of the names, mailing addresses, telephone numbers,
21 e-mail addresses and county of residence if a resident of this
22 state, of all retired or medically discharged member of the State
23 Police who have applied for or been issued a certificate of
24 authority under subsection (b) of this section or certification as

1 a qualified retired law-enforcement officer under subsection (c) of
2 this section, in a commonly-used electronic database format
3 acceptable to the requesting organization.

4 (B) The superintendent shall furnish to the state executive
5 committee of any political party, as defined in section eight,
6 article one, chapter three of this code, that has not obtained
7 records pursuant to this subdivision within the immediate preceding
8 six months, a current list of the names, birthdates, mailing
9 addresses, telephone numbers, e-mail addresses and county of
10 residence of all retired or medically discharged members of the
11 State Police who reside in this state and have applied for or been
12 issued a certificate of authority under subsection (b) of this
13 section or certification as a qualified retired law-enforcement
14 officer under subsection (c) of this section, in a commonly-used
15 electronic database format acceptable to the committee.

16 (C) Personally-identifying information other than the
17 information described in paragraph (A) or (B) of this subdivision,
18 as applicable, may not be disclosed pursuant to this subdivision.

19 (D) The superintendent shall create and maintain an electronic
20 database of all information described in paragraphs (A) and (B) of
21 this subdivision for the purpose of promptly responding to requests
22 for such information. The superintendent may charge any entity
23 requesting information pursuant to paragraph (A) or (B) of this
24 subdivision, a reasonable fee, not to exceed the actual marginal

1 cost incurred in fulfilling the request, which may not include any
2 portion of overhead or other fixed costs incurred in creating or
3 maintaining the database required by this paragraph.

4 (E) Before any personally-identifying information of any
5 individual retired or medically discharged member of the State
6 Police who has applied for or been issued a certificate of authority
7 under subsection (b) of this section or certification as a qualified
8 retired law-enforcement officer under subsection (c) of this
9 section, may disclosed pursuant to this subdivision, the person
10 obtaining the information shall complete and verify under oath a
11 notarized request form prescribed by the Attorney General, which
12 shall be a public record, and file the request form at the
13 headquarters of the State Police in person or by certified mail,
14 return receipt requested. The superintendent shall maintain a record
15 of requests fulfilled under this subdivision for at least five years
16 and not more than seven years. The superintendent shall, upon
17 request of any individual retired or medically discharged member of
18 the State Police who has applied for or been issued a certificate
19 of authority under subsection (b) of this section or certification
20 as a qualified retired law-enforcement officer under subsection (c)
21 of this section, notify the retired or medically discharged member
22 of all organizations to which the person's personally-identifying
23 information have been disclosed pursuant to this subdivision during
24 the period for which the superintendent maintains those records and

1 provide a copy of all requests for disclosure made to the
2 superintendent pursuant to this subdivision.

3 (l) The superintendent and any employee or agent thereof shall
4 be immune from civil liability resulting from the lawful performance
5 of his or her duties under subsections (b) through (k) of this
6 section.

7 (m) A certificate of authority under subsection (b) of this
8 section and certification as a qualified retired law-enforcement
9 officer under subsection (c) of this section are cumulative and
10 supplemental to one another and to any license to carry concealed
11 weapons under section four, article seven, chapter sixty-one of this
12 code or authorization under federal law or the laws of this state
13 to carry a concealed weapon without a license. Subsections (b)
14 through (l) of this section are supplemental and additional to
15 existing rights to bear arms, and nothing in subsections (b) through
16 (l) of this section may be construed to impair or diminish those
17 rights.

18 **§15-2-25a. Certification to carry concealed firearm by qualified**
19 **retired law-enforcement officers.**

20 (a) Not later than September 1, 2011, the superintendent shall
21 establish a program for qualifying and certifying any person who is
22 eligible for qualification and certification to carry concealed
23 firearms as a qualified retired law-enforcement officer pursuant to
24 18 U.S.C. §926C. The superintendent shall propose rules for

1 legislative approval in accordance with the provisions of article
2 three, chapter twenty-nine-a of this code to implement this program
3 and shall initially promulgate emergency rules pursuant to
4 provisions of section fifteen, article three, chapter twenty-nine-a
5 of this code.

6 (b) The rules promulgated pursuant to subsection (a) of this
7 section shall:

8 (1) Make all necessary provisions to create a program open to
9 all residents of this state entitled by virtue of past employment
10 to be considered qualified retired law-enforcement officers within
11 the meaning of 18 U.S.C. §926C and who elect to become so certified
12 are, in fact, promptly qualified and certified so as to obtain all
13 rights, benefits, privileges and immunities of 18 U.S.C. §926C, on
14 a uniform, nondiscretionary basis;

15 (2) Provide that the required qualification shall be offered
16 at least once quarterly in each county of this state in which a
17 State Police troop headquarters is located and in any other counties
18 of this state designated by the superintendent;

19 (3) Provide that the opportunities for qualification and
20 certification shall be advertised on the official Internet website
21 of the West Virginia State Police, by mail to appropriate private
22 organizations in contact with retired law-enforcement officers and
23 by publication in the State Register;

24 (4) Provide that the certificate issued to a qualified

1 law-enforcement officer under this program shall be no larger than
2 three and three-eighths inches wide by two and one-eighth inches
3 long and shall be made of a hard, laminated material suitable for
4 carrying in a wallet, similar to a driver's license, and shall
5 contain the words "Qualified Retired Law-Enforcement Officer under
6 18 U.S.C. §926C" in conspicuous type;

7 (5) Provide that all documents a qualified retired
8 law-enforcement officer is required to file with the superintendent
9 under this section may be filed by mailing them to the headquarters
10 of the State Police, by delivering them in person to the
11 headquarters of the State Police or any troop headquarters or
12 detachment or by any other method the superintendent may authorize;

13 (6) Provide that the provisions of article five, chapter
14 twenty-nine-a of this code apply to any denial, suspension or
15 revocation of any certification under the program;

16 (7) Provide that any person who wishes to qualify under this
17 program shall provide, at his or her own expense, a suitable firearm
18 and ammunition actually expended in the qualification; and

19 (8) Provide that qualification under this program shall
20 reasonably accommodate any physical disability of an applicant.

21 (c) The rules promulgated pursuant to subsection (a) of this
22 section may establish a periodic qualification fee of not more than
23 \$25 per applicant. There is hereby created in the State Treasury
24 a special revenue revolving fund known as the State Police Qualified

1 Retired Law-Enforcement Officer Certification Fund, which shall be
2 an interest-bearing account. The fee authorized under this
3 subsection shall be deposited into this fund. This fund may be
4 expended solely for the purpose of defraying the costs incurred by
5 the State Police in administering the program established pursuant
6 to this section.

7 (d) Before issuing, renewing or reinstating any certificate
8 under this section, the superintendent shall conduct an
9 investigation which shall verify that the applicant is a qualified
10 law-enforcement officer and is not prohibited by federal law or
11 section seven, article seven, chapter sixty-one of this code, from
12 possessing or transporting firearms or carrying a concealed weapon
13 in a public place. This investigation shall conform to the
14 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
15 or other applicable federal law for qualifying certificates issued
16 pursuant to this section as an alternative to the National Instant
17 Criminal Background Check System or other similar required
18 background check for a resident of this state to purchase a firearm
19 through a licensed firearms dealer within this state, including a
20 background check conducted through the National Instant Criminal
21 Background Check System and, if the applicant is not a citizen of
22 the United States, a federal Immigration Alien Query.

23 (e) The superintendent shall revoke any certification as a
24 qualified retired law-enforcement officer under this section if the

1 person to whom the certification was issued becomes prohibited by
2 federal law or section seven, article seven, chapter sixty-one of
3 this code, from possessing or transporting firearms or carrying a
4 concealed weapon in a public place. The superintendent shall
5 immediately notify the person of the revocation in writing,
6 delivered either by personal service or certified mail, return
7 receipt requested. The person shall immediately surrender the
8 revoked certification to the superintendent if served in person with
9 the notice or within five business days if served by certified mail.

10 (f) Any person who has been issued a certification as a
11 qualified retired law-enforcement officer under this section and
12 becomes ineligible to continue holding the certification shall
13 immediately surrender the certification to the superintendent
14 regardless of whether the superintendent discovers the
15 disqualification and initiates revocation proceedings under
16 subsection (e) of this section.

17 (g) Any person who knowingly and willfully fails to surrender
18 a revoked certification, as required by subsection (e) of this
19 section, or knowingly and willfully fails to surrender a
20 certification the person has become ineligible to continue holding,
21 as required by subsection (f) of this section, is guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined not more
23 than \$1,000, confined in jail for not more than six months, or both
24 fined and confined.

1 (h) The superintendent shall reinstate a certification as a
2 qualified retired law-enforcement officer under this section that
3 was revoked pursuant to subsection (e) of this section or
4 surrendered pursuant to subsection (f) of this section if the person
5 to whom the revoked or surrendered certification was issued
6 subsequently ceases to be prohibited by federal law or section
7 seven, article seven, chapter sixty-one of this code, from
8 possessing or transporting firearms or carrying a concealed weapon
9 in a public place and fulfills all other requirements to receive the
10 certification under this section.

11 (I) (1) Notwithstanding any provision of this code or other law
12 of this state to the contrary, except as otherwise provided by this
13 subsection, the names, addresses and other personally-identifying
14 information of qualified retired law-enforcement officers who apply
15 for or have been issued a certificate of qualification under this
16 section or otherwise participates in a program under this section,
17 shall be confidential, are not public records and may be copied or
18 inspected only by:

19 (A) The person to whom the record pertains;

20 (B) The duly qualified conservator or guardian of a person to
21 whom the record pertains;

22 (C) The duly qualified personal representative of a deceased
23 person to whom the record pertains or, if a personal representative
24 has not qualified, the next of kin of a deceased person to whom the

1 record pertains;

2 (D) An attorney, attorney-in-fact or other agent or
3 representative acting pursuant to a written power of attorney or
4 other written authorization signed by the person to whom the record
5 pertains;

6 (E) A duly authorized representative of a law-enforcement
7 agency for any official purpose or any other agency or
8 instrumentality of federal, state or local government seeking the
9 record in the ordinary course of performing its official duties for
10 an official purpose; or

11 (F) By any licensed firearm dealer within this state from which
12 a qualified retired law-enforcement officer who presents a
13 certificate under this section proposes purchasing a firearm, for
14 the purpose of verifying the validity of the certificate; or

15 (G) (I) A person authorized by an order of any court, based
16 upon a finding of the court that the information is sufficiently
17 necessary to a proceeding before the court to substantially outweigh
18 the importance of maintaining the confidentiality established by
19 this subsection, to copy or inspect information protected by this
20 subsection.

21 (ii) Before any court may grant access to any records pursuant
22 to this paragraph, the court shall order the moving party to give
23 each affected person notice of the proceedings, the request for
24 confidential records under this paragraph and the opportunity of

1 affected persons to confidentially intervene and object to the
2 request by directing the superintendent to print and mail by
3 first-class mail to each affected person, the costs for which the
4 moving party shall prepay in full to the superintendent, and perform
5 this notification in a manner not inconsistent with the
6 confidentiality provisions of this subsection.

7 (2) Any person who knowingly misrepresents his or her identity
8 to obtain any information whose disclosure is restricted by
9 subdivision (1) of this subsection, knowingly makes a false
10 statement to obtain any information whose disclosure is restricted
11 by subdivision (1) of this subsection, knowingly and willfully
12 misrepresents his or her authority to obtain any information whose
13 disclosure is restricted by subdivision (1) of this subsection or
14 knowingly and willfully discloses any information whose disclosure
15 is restricted by subdivision (1) of this subsection in violation of
16 subdivision (1) of this subsection, is guilty of a felony and, upon
17 conviction thereof, shall be imprisoned for not less than one year
18 nor more than ten years, fined not more than \$10,000, or both fined
19 and imprisoned.

20 (3) This subsection does not prohibit disclosure or publication
21 of statistical summaries, abstracts or other records containing
22 information in an aggregate or statistical form that does not
23 disclose any personally-identifying information protected from
24 public disclosure under this subsection.

1 (4) (A) The superintendent shall furnish to any nonprofit
2 firearm-related or hunting-related educational or issue-advocacy
3 organization exempt from federal income taxation under §501(c) of
4 the Internal Revenue Code that has not obtained records pursuant to
5 this subdivision within the immediate preceding six months, a
6 current list of the names, mailing addresses, telephone numbers,
7 e-mail addresses and county of residence if a resident of this
8 state, of all qualified retired law-enforcement officers who have
9 applied for or been issued a certificate of qualification under this
10 section, in a commonly-used electronic database format acceptable
11 to the requesting organization.

12 (B) The superintendent shall furnish to the state executive
13 committee of any political party, as defined in section eight,
14 article one, chapter three of this code, that has not obtained
15 records pursuant to this subdivision within the immediate preceding
16 six months, a current list of the names, birthdates, mailing
17 addresses, telephone numbers, e-mail addresses and county of
18 residence of all qualified retired law-enforcement officers who
19 reside in this state and have applied for or been issued a
20 certificate of qualification under this section, in a commonly-used
21 electronic database format acceptable to the requesting committee.

22 (C) Personally-identifying information other than the
23 information described in paragraph (A) or (B) of this subdivision,
24 as applicable, may not be disclosed pursuant to this subdivision.

1 (D) The superintendent shall create and maintain an electronic
2 database of all information described in paragraphs (A) and (B) of
3 this subdivision for the purpose of promptly responding to requests
4 for such information. The superintendent may charge any entity
5 requesting information pursuant to paragraph (A) or (B) of this
6 subdivision, a reasonable fee, not to exceed the actual marginal
7 cost incurred in fulfilling the request, which may not include any
8 portion of overhead or other fixed costs incurred in creating or
9 maintaining the database required by this paragraph.

10 (E) Whenever personally-identifying information of any
11 qualified retired law-enforcement officers who have applied for or
12 been issued a certificate of qualification under this section is
13 disclosed pursuant to this subdivision, the person obtaining the
14 information shall complete and verify under oath a notarized request
15 form prescribed by the Attorney General, which shall be a public
16 record, and file the request form at the headquarters of the State
17 Police in person or by certified mail, return receipt requested.
18 The superintendent shall maintain a record of requests fulfilled
19 under this subdivision for at least five years and not more than
20 seven years. The superintendent shall, upon request of any
21 qualified retired law-enforcement officer who has applied for or
22 been issued a certificate of qualification under this section,
23 notify the qualified retired law-enforcement officer of all
24 organizations to which the person's personally-identifying

1 information have been disclosed pursuant to this subdivision during
2 the period for which the superintendent maintains those records and
3 provide a copy of all requests for disclosure made to the
4 superintendent pursuant to this subdivision.

5 (j) The superintendent and any employee or agent thereof shall
6 be immune from civil liability resulting from the lawful performance
7 of his or her duties under this section and the rules promulgated
8 pursuant to this section.

9 (k) A certification as a qualified retired law-enforcement
10 officer under this section is cumulative and supplemental to any
11 license to carry concealed weapons under section four, article
12 seven, chapter sixty-one of this code or authorization under federal
13 law or the laws of this state to carry a concealed weapon without
14 a license. This section is supplemental and additional to existing
15 rights to bear arms, and nothing in this section may be construed
16 to impair or diminish those rights.

17 (l) For the purposes of this section and the rules promulgated
18 pursuant to this section, the definitions specified in 18 U.S.C.
19 §926C shall apply.

20 **ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

21 **§15-5-6. Emergency powers of Governor.**

22 ~~The provisions of this section shall be operative only during~~
23 ~~the existence of a state of emergency.~~

24 (a) The existence of a state of emergency may be proclaimed by

1 ~~the Governor, by proclamation, or by concurrent resolution of the~~
 2 Legislature, by concurrent resolution, may proclaim the existence
 3 of a state of emergency if the Governor in ~~such~~ his or her
 4 proclamation, or the Legislature in ~~such~~ its concurrent resolution,
 5 finds that:

6 (1) (A) An attack upon the United States has occurred or is
 7 anticipated in the immediate future; or ~~that~~

8 (B) A natural or man-made disaster of major proportions has
 9 actually occurred or is imminent within the state; and ~~that~~

10 (2) The safety and welfare of the inhabitants of this state
 11 require an invocation of the provisions of this section.

12 (b) Any ~~such~~ state of emergency, whether proclaimed by the
 13 Governor or by the Legislature, shall terminate upon the
 14 proclamation of the termination ~~thereof~~ of the state of emergency
 15 by the Governor, or the passage by the Legislature of a concurrent
 16 resolution terminating ~~such~~ the state of emergency.

17 ~~So long as such~~ (c) During a state of emergency exists that is
 18 proclaimed pursuant to subsection (a) of this section, the Governor
 19 shall have and may exercise the following additional emergency
 20 powers:

21 ~~(a)~~ (1) To enforce all laws, rules and regulations relating to
 22 the provision of emergency services and to assume direct operational
 23 control of any or all emergency service forces and helpers in the
 24 state;

1 ~~(b)~~ (2) To sell, lend, lease, give, transfer or deliver
2 materials or perform functions relating to emergency services on
3 ~~such~~ terms and conditions ~~as he or she shall prescribe and~~
4 prescribed by the Governor, without regard to the limitations of any
5 existing law, and to account to the State Treasurer for any funds
6 received for ~~such~~ the property;

7 ~~(c)~~ (3) To procure materials and facilities for emergency
8 services by purchase, condemnation under the provisions of chapter
9 fifty-four of this code or seizure pending institution of
10 condemnation proceedings within thirty days from the seizing thereof
11 and to construct, lease, transport, store, maintain, renovate or
12 distribute such materials and facilities. Compensation for property
13 ~~so~~ procured under this subdivision shall be made in the manner
14 provided in chapter fifty-four of this code;

15 ~~(d)~~ (4) To obtain the services of necessary personnel, required
16 during the emergency, and to compensate them for their services from
17 ~~his or her~~ the Governor's contingent funds or ~~such~~ other funds ~~as~~
18 ~~may be~~ available to ~~him or her~~ the Governor;

19 ~~(e)~~ (5) To provide and compel the evacuation of all or part of
20 the population from any stricken or threatened area within the state
21 and to take ~~such steps as are~~ necessary steps for the receipt and
22 care of ~~such~~ evacuees;

23 ~~(f)~~ (6) To control ingress and egress to and from a disaster
24 area, the movement of persons within the area and the occupancy of

1 premises ~~therein~~ in a disaster area;

2 ~~(g)~~ (7) To suspend the provisions of any regulatory statute
3 prescribing the procedures for conduct of state business or the
4 orders, rules or regulations of any state agency, if strict
5 compliance ~~therewith~~ with the applicable regulatory statute would
6 in any way prevent, hinder or delay necessary action in coping with
7 the emergency;

8 ~~(h)~~ (8) To utilize ~~such~~ available resources of the state and
9 ~~of~~ its political subdivisions as ~~are~~ reasonably necessary to cope
10 with the emergency;

11 ~~(i)~~ (9) To suspend or limit the sale, dispensing or
12 transportation of alcoholic beverages, ~~firearms,~~ explosives and
13 combustibles;

14 ~~(j)~~ (10) To make provision for the availability and use of
15 temporary emergency housing; and

16 ~~(k)~~ (11) To perform and exercise ~~such~~ other functions, powers
17 and duties as are necessary to promote and secure the safety and
18 protection of the civilian population.

19 ~~No~~ (d) The Legislature finds and declares that an individual's
20 right to keep and bear arms is especially necessary for the
21 protection of lives and property of law-abiding citizens during
22 emergency situations when law-enforcement and other public safety
23 resources are particularly limited. The powers granted under this
24 section may not be interpreted to authorize the seizure or

1 confiscation of a firearm from a person, unless ~~that firearm is~~
2 ~~unlawfully possessed or unlawfully carried by the person, or the~~
3 person is unlawfully possessing or carrying the firearm or is
4 otherwise engaged in a criminal act; any prohibition or impairment
5 of the otherwise lawful possession, carrying, transportation or
6 storage of privately owned firearms or ammunition; or the suspension
7 of otherwise lawful firearm sales or transfers or any other lawful
8 firearms-related activity conducted by any person possessing a
9 federal firearms license.

10 **§15-5-19a. Possession, carrying, transportation or storage of**
11 **firearms not restricted during a declared state of**
12 **emergency.**

13 (a) The Legislature finds and declares that an individual's
14 right to keep and bear arms is especially necessary for the
15 protection of lives and property of law-abiding citizens during
16 emergency situations when law-enforcement and other public safety
17 resources are particularly limited.

18 ~~No~~ (b) Notwithstanding any provision of this article to the
19 contrary, the powers granted under this article to state or local
20 authorities may not be interpreted to authorize the seizure or
21 confiscation of a firearm from a person during a declared state of
22 emergency, unless ~~that firearm is unlawfully possessed or unlawfully~~
23 ~~carried by the person, or the person is~~ unlawfully possessing or
24 carrying the firearm or is otherwise engaged in a criminal act; any

1 prohibition or impairment of the otherwise lawful possession,
 2 carrying, transportation or storage of privately owned firearms or
 3 ammunition; or the suspension of otherwise lawful firearm sales or
 4 transfers or any other lawful firearms-related activity conducted
 5 by any person possessing a federal firearms license.

6 **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

7 **ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.**

8 **§17C-2-3. Enforcement of chapter; designation and power of special**
 9 **officers; bond of special officers; failure to obey**
 10 **police officer or special officers.**

11 (a) ~~It is the duty of~~ The West Virginia State Police and its
 12 members ~~to~~ shall enforce the provisions of this chapter and other
 13 laws of this state governing the operation of vehicles upon the
 14 streets and highways of this state as defined in section
 15 thirty-five, article one of this chapter or in other designated
 16 places specifically referred to in a given section in this chapter.
 17 ~~and it is the duty of~~ The sheriffs, ~~and~~ their deputies and ~~of the~~
 18 police of municipalities ~~to render to~~ shall assist the West Virginia
 19 State Police ~~assistance~~ in the performance of ~~said~~ these duties as
 20 the Superintendent of the West Virginia State Police may require of
 21 them.

22 (b) The ~~West Virginia~~ Commissioner of Highways ~~is authorized~~
 23 ~~to~~ may designate employees of the ~~West Virginia~~ Division of Highways

1 as special officers to enforce the provisions of this chapter only
2 when special officers are directing traffic upon bridges and the
3 approaches to bridges which are a part of the state road system when
4 any bridge needs special traffic direction and the superintendent
5 of the West Virginia State Police has informed the ~~West Virginia~~
6 Commissioner of Highways that he or she is unable to furnish
7 personnel for traffic direction. The ~~West Virginia~~ Commissioner of
8 Highways may also designate certain employees of the ~~West Virginia~~
9 Division of Highways serving as members of official weighing crews
10 as special officers to enforce the provisions of article seventeen
11 of this chapter. ~~Notwithstanding any provision of this code to the~~
12 ~~contrary,~~ Designated special officers serving as members of official
13 weighing crews may carry ~~handguns~~ concealed weapon without a license
14 in the course of their official duties after meeting specialized
15 qualifications established by the Governor's Committee on Crime,
16 Delinquency and Correction, which ~~qualifications~~ shall include the
17 successful completion of handgun training, including a minimum of
18 four hours' training in handgun safety, paid for by the Division of
19 Highways and comparable to the handgun training provided to
20 law-enforcement officers by the West Virginia State Police.
21 ~~Provided, That~~ However, nothing in this section ~~shall~~ may be
22 construed to include designated special officers authorized by the
23 provisions of this section ~~as~~ within the definition of
24 law-enforcement officers as ~~such are~~ defined in section one, article

1 twenty-nine, chapter thirty of this code. The ~~West Virginia~~
 2 Commissioner of Highways shall provide a blanket bond in the amount
 3 of \$10,000 for all employees designated as special officers ~~as above~~
 4 provided pursuant to this subsection.

5 (c) ~~No~~ A person ~~shall~~ may not willfully fail or refuse to
 6 comply with a lawful order or direction of any police officer or
 7 designated special officer invested by law with authority to direct,
 8 control or regulate traffic.

9 (d) ~~No~~ A person ~~shall~~ may not willfully fail or refuse to
 10 comply with a lawful order or direction of any designated special
 11 officer pursuant to the provisions of subsection (b) of this
 12 section.

13 **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

14 **ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**

15 **§18C-1-6. State-supported higher education institutions required**
 16 **to respect individual's right to keep and bear arms**
 17 **as condition of receiving state financial assistance.**

18 (a) A higher education institution within this state may not
 19 be eligible for any form of financial assistance, direct or
 20 indirect, from this state or any political subdivision of this
 21 state, unless the institution and all its programs and activities
 22 fully comply with the requirements of sections sixteen and
 23 seventeen, article seven, chapter sixty-one of this code.

1 (b) In this section, "program or activity" includes all of the
2 operations of any higher education institution, any part of which
3 is extended direct or indirect financial assistance from this state
4 or any political subdivision of this state.

5 (c) In addition to any other person who may have proper
6 standing, the Attorney General, any citizen or taxpayer of this
7 state or any person whose rights under sections sixteen or
8 seventeen, article seven, chapter sixty-one of this code, have been
9 violated by a higher education institution that has received any
10 form of financial assistance, direct or indirect, from this state
11 or any political subdivision of this state, may bring a civil action
12 in the circuit court of Kanawha County or any county in which any
13 part of the institution is located to enjoin any alleged violations
14 of sections sixteen or seventeen, article seven, chapter sixty-one
15 of this code, enjoin the institution's receipt of any financial
16 assistance, direct or indirect, from this state or any political
17 subdivision of this state, in violation of subsection (a) of this
18 section and obtain any other relief to which the person may be
19 entitled, including without limitation attorney's fees and other
20 costs of litigation pursuant to section twenty, article seven,
21 chapter sixty-one of this code.

22 **ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

23 **§18C-5-2. Definitions.**

24 (a) "Approved institution of higher education" means:

1 (1) A state institution of higher education as defined in
2 section two, article one, chapter eighteen-b of this code;
3 Alderson-Broadus College, Appalachian Bible College, Bethany
4 College, Mountain State University, Davis and Elkins College, Ohio
5 Valley University, Salem International University, the University
6 of Charleston, West Virginia Wesleyan College and Wheeling Jesuit
7 University, all in West Virginia; and

8 (2) Any other regionally or nationally accredited institution
9 of higher education in this state, public or private, approved by
10 the vice chancellor if the institution has been licensed for a
11 minimum of fifteen years subject to the provisions of section nine,
12 article two-b, chapter eighteen-b of this code and section six,
13 article two-b of said chapter.

14 However, this term does not include any institution that does
15 not fully comply with the requirements of subsection (a), section
16 six, article one of this chapter and sections sixteen and seventeen,
17 article seven, chapter sixty-one of this code.

18 (b) "Grant" or "grant program" means a higher education grant
19 or the higher education grant program authorized and established by
20 the provisions of this article.

21 (c) "Senior administrator" and "vice chancellor" mean the Vice
22 Chancellor for Administration, as provided in section two, article
23 four, chapter eighteen-b of this code.

24 **ARTICLE 6. WEST VIRGINIA ENGINEERING, SCIENCE AND TECHNOLOGY**

1 **SCHOLARSHIP PROGRAM.**

2 **§18C-6-2. Definitions.**

3 When used in this article the following terms have the
4 following meanings, unless the context clearly indicates a different
5 meaning:

6 (a) "ABET" means the Accrediting Board for Engineering and
7 Technology.

8 (b) "ABET approved engineering major" means a major approved
9 by ABET's engineering accreditation commission.

10 (c) "ABET approved technology major" means a major approved by
11 ABET's technology accreditation commission.

12 (d) "Eligible institution of higher education" means:

13 (1) A state institution of higher education as defined in
14 section two, article one, chapter eighteen-b of this code; and

15 (2) Alderson-Broaddus College, Appalachian Bible College,
16 Bethany College, the College of West Virginia, Davis and Elkins
17 College, Ohio Valley College, Salem-Teikyo College, the University
18 of Charleston, West Virginia Wesleyan College and Wheeling Jesuit
19 College, all in West Virginia, and any other institution of higher
20 education in this state, public or private, approved by the senior
21 administrator: *Provided*, That if any institution listed in this
22 paragraph subdivision is not regionally accredited or does not fully
23 comply with the requirements of subsection (a), section six, article
24 one of this chapter and sections sixteen and seventeen, article

1 seven, chapter sixty-one of this code, it shall not be included as
2 an eligible institution;

3 (e) "Engineering, science and technology-related field" means
4 any position for which the employer provides a written statement
5 that engineering, science or technology skill, knowledge and
6 ability, as evidenced by the attainment of a certificate, associate
7 or baccalaureate degree in engineering, science or technology, are
8 preferred or required or where an industry-based certification
9 requirement exists.

10 (f) "Industry-based certification" means any special
11 certification required, necessary or deemed preferred for employment
12 in the field.

13 (g) "Science" means a major in biology, chemistry, computer
14 science, physics or mathematics at an eligible institution of higher
15 education or any other major as approved by the higher education
16 governing boards by rule.

17 **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR**
18 **MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP**
19 **PROGRAM.**

20 **§18C-7-3. Definitions.**

21 (a) *General.* -- For the purposes of this article, terms have
22 the meaning ascribed to them in section two, article one of this
23 chapter, unless the context in which the term is used clearly

1 requires a different meaning or a specific definition is provided
2 in this section.

3 (b) *Definitions.* --

4 (1) "Eligible institution" means:

5 (A) A state institution of higher education as defined in
6 section two, article one, chapter eighteen-b of this code;

7 (B) Alderson-Broadus College, Appalachian Bible College,
8 Bethany College, Davis and Elkins College, Mountain State
9 University, Ohio Valley University, the University of Charleston,
10 West Virginia Wesleyan College and Wheeling Jesuit University, all
11 in West Virginia. Any institution listed in this subdivision ceases
12 to be an eligible institution if: ~~it meets either of the following~~
13 ~~conditions~~

14 (I) It loses regional accreditation; ~~or~~

15 (ii) It changes its status as a private, not-for-profit
16 institution; or

17 (iii) It does not fully comply with the requirements of
18 subsection (a), section six, article one of this chapter and
19 sections sixteen and seventeen, article seven, chapter sixty-one of
20 this code; and

21 (C) Any other public or private regionally accredited
22 institution in this state approved by the commission that fully
23 complies with the requirements of subsection (a), section six,
24 article one of this chapter and sections sixteen and seventeen,

1 article seven, chapter sixty-one of this code.

2 (2) "Tuition" means the quarter, semester or term charges
3 imposed by an eligible state institution of higher education and,
4 additionally, all mandatory fees required as a condition of
5 enrollment by all students. For the purposes of this article, the
6 following conditions apply:

7 (A) West Virginia University, Potomac State College and West
8 Virginia University Institute of Technology are considered separate
9 institutions for purposes of determining tuition rates; and

10 (B) The tuition amount paid by undergraduate health sciences
11 students at West Virginia University is considered to be the same
12 as the amount of tuition paid by all other West Virginia University
13 undergraduate students.

14 (3) "Enrolled" means either currently enrolled or in the
15 process of enrolling in an eligible institution.

16 **CHAPTER 20. NATURAL RESOURCES.**

17 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

18 **§20-1-2. Definitions.**

19 As used in this chapter, unless the context clearly requires
20 a different meaning:

21 "Agency" means any branch, department or unit of the state
22 government, however designated or constituted.

23 "Aircraft" has the same meaning as in section one, article
24 two-a, chapter twenty-nine of this code.

1 "Alien" means any person not a citizen of the United States.

2 "Ammunition" means ammunition or cartridge cases, primers,
3 bullets or propellant powder designed for use in any firearm.

4 "Bag limit" or "creel limit" means the maximum number of
5 wildlife which may be taken, caught, killed or possessed by any
6 person.

7 "Big game" means elk, deer, black bears, wild boars and wild
8 turkeys.

9 "Bona fide resident, tenant or lessee" means a person who
10 permanently resides on the land.

11 ~~"Citizen" means any native-born citizen of the United States~~
12 ~~and foreign-born persons who have procured their final~~
13 ~~naturalization papers.~~

14 "Closed season" means the time or period during which it ~~shall~~
15 ~~be~~ is unlawful to take any wildlife as specified and limited by the
16 provisions of this chapter.

17 "Commission" means the Natural Resources Commission.

18 "Commissioner" means a member of the advisory commission of the
19 Natural Resources Commission.

20 "Director" means the Director of the Division of Natural
21 Resources.

22 "Firearm" has the same meaning as in section two, article
23 seven, chapter sixty-one of this code.

24 "Fishing" or "to fish" means the taking, by any means, of fish,

1 minnows, frogs or other amphibians, aquatic turtles and other forms
2 of aquatic life used as fish bait.

3 "Fur-bearing animals" include: (a) The mink; (b) the weasel;
4 (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and
5 civet cat, commonly called polecat; (g) the otter; (h) the red fox;
6 (I) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the
7 raccoon; and (l) the fisher.

8 "Game" means game animals, game birds and game fish. ~~as herein~~
9 ~~defined~~

10 "Game animals" include: (a) The elk; (b) the deer; (c) the
11 cottontail rabbits and hares; (d) the fox squirrels, commonly called
12 red squirrels, and gray squirrels and all their color phases - red,
13 gray, black or albino; (e) the raccoon; (f) the black bear; and (g)
14 the wild boar.

15 "Game birds" include: (a) The anatidae, commonly known as
16 swan, geese, brants and river and sea ducks; (b) the rallidae,
17 commonly known as rails, sora, coots, mudhens and gallinule; (c) the
18 limicolae, commonly known as shorebirds, plover, snipe, woodcock,
19 sandpipers, yellow legs and curlews; (d) the galliformes, commonly
20 known as wild turkey, grouse, pheasants, quails and partridges (both
21 native and foreign species); (e) the columbidae, commonly known as
22 doves; (f) the icteridae, commonly known as blackbirds, redwings and
23 grackle; and (g) the corvidae, commonly known as crows.

24 "Game fish" include: (a) Brook trout; (b) brown trout; (c)

1 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)
2 smallmouth bass; (g) spotted bass; (h) striped bass; (I) chain
3 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock
4 bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all
5 sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue
6 catfish, (u) sauger; and (v) all game fish hybrids.

7 "Handgun" has the same meaning as in section two, article
8 seven, chapter sixty-one of this code.

9 "Hunt" means to pursue, chase ~~catch~~ or take any wild birds or
10 wild animals ~~Provided, That the definition of "hunt" does not~~
11 ~~include an~~ except in any officially sanctioned and properly licensed
12 field trial, water race or wild hunt ~~as long as that field trial is~~
13 ~~not~~ other than a shoot-to-retrieve field trial.

14 "Lands" means land, waters and all other appurtenances
15 connected therewith.

16 "Loaded", with respect to a firearm, has the same meaning as
17 in section two, article seven, chapter sixty-one of this code.

18 "Migratory birds" means any migratory game or nongame birds
19 included in the terms of conventions between the United States and
20 Great Britain and between the United States and United Mexican
21 States, known as the Migratory Bird Treaty Act, 16 U.S.C. §§703
22 through 712, for the protection of migratory birds and game mammals
23 concluded, respectively, August 16, 1916, and February 7, 1936.

24 "Motor vehicle" has the same meaning as in section one, article

1 one, chapter seventeen-a of this code.

2 "Motorboat" has the same meaning as in section one, article
3 one, chapter seventeen-a of this code.

4 "Nonresident" means any person who is ~~a citizen of the United~~
5 ~~States and who has not been a domiciled resident of the State of~~
6 ~~West Virginia for a period of thirty consecutive days immediately~~
7 ~~prior to the date of his or her application for a license or permit~~
8 ~~except any full-time student of any college or university of this~~
9 ~~state, even though he or she is paying a nonresident tuition not a~~
10 resident as defined in this section.

11 "Open season" means the time during which the various species
12 of wildlife may be legally caught, taken, killed or chased in a
13 specified manner, ~~and shall include both the first and the last day~~
14 ~~of the season or period~~ as designated by the director.

15 "Person", ~~except as otherwise defined~~ where specifically
16 provided otherwise elsewhere in this chapter, ~~means the plural~~
17 ~~"persons" and shall include individuals,~~ includes natural persons,
18 partnerships, limited liability companies, corporations or other
19 legal entities.

20 "Personal watercraft" means:

21 (a) A small vessel of less than sixteen feet in length that:

22 (1) Uses an inboard motor powering a water jet pump as its
23 primary source of motive power; and

24 (2) Is designed to be operated by a person sitting, standing

1 or kneeling on the vessel, rather than the conventional manner of
2 sitting or standing inside the vessel; or

3 (b) "Specialty prop-crafts," which are vessels similar in
4 appearance and operation to a vessel described in part (a) of this
5 definition, but which are powered by an outboard motor or
6 propeller-driven motor.

7 "Personally-identifying information" has the same meaning as
8 in section two, article seven, chapter sixty-one of this code.

9 "Preserve" means all duly licensed private game farmlands, or
10 private plants, ponds or areas, where hunting or fishing is
11 permitted under special licenses or seasons other than the regular
12 public hunting or fishing seasons.

13 "Protected birds" means all wild birds ~~not included within the~~
14 ~~definition of~~ other than "game birds" and "unprotected birds".

15 "Resident" means any person who:

16 (a) Is a citizen of the United States and who has been a
17 domiciled resident of the State of West Virginia this state and,
18 except for temporary absences, has resided in this state for a
19 period of not less than thirty consecutive days ~~or more~~ immediately
20 prior to preceding the date of his or her application on which the
21 person applies for any license or permit ~~Provided, That a~~ under this
22 chapter;

23 (b) Is an active duty member of the Armed Forces of the United
24 States ~~who is stationed beyond the territorial limits of~~ whose

1 permanent duty station is located outside this state, but who was
2 a resident of this state at the time of his or her entry into ~~such~~
3 ~~service and any~~ the Armed Forces of the United States; or

4 (c) Is a full-time student of any college or university of
5 higher education institution, as defined in section two, article
6 one, chapter eighteen-b of this code, located within this state,
7 ~~even though he or she is paying~~ including any full-time student of
8 a state institution of higher education, as defined in section two,
9 article one, chapter eighteen-b of this code, who pays a nonresident
10 tuition. ~~shall be considered a resident under the provisions of this~~
11 chapter

12 "Roadside menagerie" means any place of business, other than
13 a commercial game farm, commercial fish preserve, place or pond,
14 where any wild bird, game bird, unprotected bird, game animal or
15 fur-bearing animal is kept in confinement for the attraction and
16 amusement of the people for commercial purposes.

17 "Small game" includes all game animals, ~~fur-bearing~~ fur-bearing
18 animals and game birds except ~~elk, deer, black bears, wild boars and~~
19 ~~wild turkeys~~ big game.

20 "Take" means to ~~hunt,~~ shoot, ~~pursue,~~ lure, kill, destroy,
21 catch, capture, keep in captivity, gig, spear, trap, ensnare, wound
22 or injure any wildlife, or attempt to do so ~~Provided, That the~~
23 definition of "take" does not include an except in any officially
24 sanctioned and properly licensed field trial, water race or wild

1 hunt ~~as long as that field trial is not~~ other than a
2 shoot-to-retrieve field trial.

3 "Unprotected birds" ~~shall~~ include: (a) The English sparrow;
4 (b) the European starling; and (c) the cowbird.

5 "Vehicle" has the same meaning as in section one, article one,
6 chapter seventeen-a of this code.

7 "Vessel" means every description of watercraft, other than a
8 seaplane on the water, used or capable of being used as a means of
9 transportation on water;

10 "Wild animals" means all mammals native to the State of West
11 Virginia occurring either in a natural state or in captivity, except
12 house mice or rats.

13 "Wild birds" ~~shall~~ include all birds other than: (a) Domestic
14 poultry - chickens, ducks, geese, guinea fowl, peafowls and turkeys;
15 (b) psittacidae, commonly called parrots and parakeets; and (c)
16 other foreign cage birds such as the common canary, exotic finches
17 and ring dove. All wild birds, either: (I) Those occurring in a
18 natural state in West Virginia; or (ii) those imported foreign game
19 birds, such as waterfowl, pheasants, partridges, quail and grouse,
20 regardless of how long raised or held in captivity, shall remain
21 wild birds under the meaning of this chapter.

22 "Wildlife" means wild birds, wild animals, game ~~and~~ animals,
23 fur-bearing animals, fish (including minnows), reptiles, amphibians,
24 mollusks, crustaceans and all forms of aquatic life used as fish

1 bait, whether dead or alive.

2 "Wildlife refuge" means any land set aside by action of the
3 Director as an inviolate refuge or sanctuary for the protection of
4 designated forms of wildlife.

5 **ARTICLE 2. WILDLIFE RESOURCES.**

6 **§20-2-2a. Interference with hunters, trappers and fishermen.**

7 (a) Except as otherwise provided by subsection (b) of this
8 section, no person may intentionally:

9 (1) Obstruct or impede the participation of any individual in
10 any lawful activity of incident to hunting, fishing or trapping or
11 the lawful control or possession of lawfully-taken wildlife;

12 (2) Harass, bait, drive or disturb any wild bird or wild animal
13 for the purpose of disrupting the lawful hunting of it;

14 (3) Damage or destroy in any way any lawful hunting blind with
15 the intent to interfere with its usage for hunting; or

16 (4) Harass, intimidate or threaten by any means including, but
17 not limited to, personal or written contact or telephone, e-mail or
18 other electronic communication, any person who is or was engaged in
19 the lawful hunting, fishing or control of fish or wildlife.

20 (b) Subsection (a) of this section does not apply to:

21 (1) Any incidental interference arising from lawful activity
22 by land users or interference by a landowner or members of his or
23 her immediate family arising from activities on his or her own
24 property; or

1 (2) Any constitutionally-protected activity.

2 (c) In addition to any other relief to which a person may be
 3 entitled, the court shall order any person found liable in a civil
 4 action for violating subsection (a) of this section to pay
 5 prevailing plaintiffs treble damages, court costs, attorney's fees
 6 and other reasonable expenses of litigation.

7 **§20-2-5. Unlawful methods of hunting and fishing and other**
 8 **unlawful acts.**

9 (a) Except as authorized by the director or otherwise provided
 10 by the Legislature in another provision of this chapter, it is
 11 unlawful at any time for any person to knowingly:

12 (1) Shoot ~~at~~ or attempt to shoot any wild bird or animal unless
 13 it is ~~plainly visible to him or her~~ in plain sight;

14 (2) Dig out, cut out or smoke out, or in any manner take or
 15 attempt to take, any live wild animal or wild bird out of its den
 16 or place of refuge; ~~except as may be authorized by rules promulgated~~
 17 ~~by the Director or by law~~

18 (3) Make use of, or take advantage of, any artificial light in
 19 hunting, locating or attracting ~~taking, trapping or killing~~ any wild
 20 bird or wild animal, or to attempt to do so, while having in his or
 21 her immediate physical possession ~~or~~ and subject to his or her
 22 actual physical control, or ~~for~~ while any person accompanying him
 23 or her ~~to have~~ has in his or her immediate physical possession ~~or~~
 24 and subject to his or her actual physical control, any ~~firearm,~~

1 ~~whether cased or uncased~~ loaded rifle, loaded shotgun, bow, arrow,
2 or both, or other implement or device, other than a firearm that is
3 not loaded or any handgun, suitable for taking ~~killing or trapping~~
4 a wild bird or animal, ~~Provided, That it is lawful to hunt or take~~
5 except when the person:

6 (A) Hunts raccoon, opossum or skunk by the use of artificial
7 light; ~~subject to the restrictions set forth in this subdivision:~~
8 ~~Provided, however, That it is lawful to hunt or take~~

9 (B) Hunts coyotes by the use of amber- or red-colored
10 artificial light; ~~subject to the restrictions set forth in this~~
11 ~~subdivision. No person is guilty of a violation of this subdivision~~
12 ~~merely because he or she~~ or

13 (C) Looks for, looks at, attracts or makes motionless a wild
14 bird or wild animal with or by the use of an artificial light
15 without taking the wild bird or wild animal, unless ~~at the time he~~
16 ~~or she has in his or her possession a firearm, whether cased or~~
17 ~~uncased~~ the person knowingly:

18 (I) Has in his or her immediate physical possession and subject
19 to his or her actual physical control:

20 (I) A loaded rifle or loaded shotgun, unless the person is
21 licensed to carry concealed weapons pursuant to section four or
22 five, article seven, chapter sixty-one of this code or authorized
23 by subsection (d), section three, article seven, chapter sixty-one
24 of this code, to carry a concealed weapon without a license, or has

1 an affirmative defense under subsection (b) of this section;

2 (II) A bow, arrow, or both; or

3 (III) Any other implement or device, other than firearms,

4 suitable for taking, killing or trapping a wild bird or wild animal;

5 or ~~unless the~~

6 (ii) Uses an artificial light (other than the ~~head lamps~~

7 headlights of an automobile or other land conveyance a motor

8 vehicle) that is attached to, a part of, or used from within or upon

9 ~~an automobile or other land conveyance~~ any motor vehicle;

10 ~~Any person violating the provisions of this subdivision is~~

11 ~~guilty of a misdemeanor and, upon conviction thereof, shall for each~~

12 ~~offense be fined not less than \$100 nor more than \$500 and shall be~~

13 ~~confined in jail for not less than ten days nor more than one~~

14 ~~hundred days;~~

15 (4) ~~Hunt for, take, kill, wound or shoot at wild animals or~~

16 ~~wild birds from an airplane or other airborne conveyance, an~~

17 ~~automobile, or other land conveyance, or from a motor-driven water~~

18 ~~conveyance, except as authorized by rules promulgated by the~~

19 ~~Director~~ any aircraft, motor vehicle or motorboat, except when the

20 person possesses a Class Q permit issued pursuant to section

21 forty-six-e of this article and hunts from a motor vehicle in

22 accordance with the terms of that permit;

23 (5) Take any beaver or muskrat by any means other than by trap;

24 (6) ~~Catch, capture, take or kill by~~ Use any seine, net, bait,

1 trap or snare or like device of any kind to take or facilitate the
2 taking of any wild turkey, ruffed grouse, pheasant or quail;

3 (7) Destroy or attempt to destroy needlessly or willfully the
4 nest or eggs of any wild bird or ~~have in his or her possession~~
5 possess the nest or eggs of any wild bird unless ~~authorized to do~~
6 ~~so under rules promulgated by or under~~ the person possesses a permit
7 issued by the director;

8 (8) ~~Except as provided in section six of this article, And~~
9 willfully carry ~~an uncased or loaded gun~~ about his or her person any
10 rifle or shotgun in any of the woods of this state, or in any place
11 where the discharge of a firearm is prohibited by subdivision (4),
12 subsection (a), section fifty-eight of this article, except ~~during~~
13 ~~the open firearms hunting season for wild animals and nonmigratory~~
14 ~~wild birds within any county of the state, unless he or she has in~~
15 ~~his or her possession a permit, in writing, issued to him or her by~~
16 ~~the Director: Provided, That this section does not prohibit when:~~

17 (A) The rifle or shotgun is not loaded and:

18 (I) Is broken down in a nonfunctioning state;

19 (ii) Is in a closed case, bag, box or other container that has
20 a lid, a cover or a closing mechanism with a zipper, snap or buckle,
21 which lid, cover or closing mechanism must be opened for a person
22 to gain access to the rifle or shotgun; or

23 (iii) Ammunition capable of being discharged from that rifle
24 or shotgun is not readily accessible for immediate use; or

1 (B) The person:

2 (I) Is lawfully hunting during an open firearms hunting season
3 or lawfully hunting or taking of an unprotected species of wild
4 animals, ~~and wild birds and~~ or migratory ~~wild birds; during the open~~
5 ~~season in the open fields, open water and open marshes of the state~~

6 (ii) Possesses a permit issued by the Director;

7 (iii) Is licensed to carry concealed weapons pursuant to
8 section four or five, article seven, chapter sixty-one of this code;
9 or

10 (iv) Is authorized by subsection (d), section three, article
11 seven, chapter sixty-one of this code, to carry a concealed weapon
12 without a license;

13 (9) ~~Have in his or her possession a~~ Possess or transport any
14 ~~crossbow with a nocked bolt a loaded firearm or a firearm from the~~
15 ~~magazine of which all shells and cartridges have not been removed,~~
16 ~~in or on any~~ motor vehicle, ~~or conveyance, or its attachments,~~
17 ~~within the state, except as may otherwise be provided by law or~~
18 ~~regulation. Except as hereinafter provided, between five o'clock~~
19 ~~postmeridian of one day and seven o'clock antemeridian, eastern~~
20 ~~standard time of the day following, any unloaded firearm or~~
21 ~~crossbow, being lawfully carried in accordance with the foregoing~~
22 ~~provisions, may be so carried only when in a case or taken apart and~~
23 ~~securely wrapped. During the period from July 1 to September 30,~~
24 ~~inclusive, of each year, the foregoing requirements relative to~~

1 ~~carrying certain unloaded firearms are permissible only from~~
2 ~~eight-thirty o'clock postmeridian to five o'clock antemeridian,~~
3 ~~eastern standard time: *Provided,* That the time periods for carrying~~
4 ~~unloaded and uncased firearms are extended for one hour after the~~
5 ~~postmeridian times and one hour before the antemeridian times~~
6 ~~established above if a hunter is preparing to or in the process of~~
7 ~~transporting or transferring the firearms to or from a hunting site,~~
8 ~~campsite, home or other place of abode except when the person~~
9 ~~possesses a Class Q permit issued pursuant to section forty-six-e~~
10 ~~of this article and a Class Y permit issued pursuant to section~~
11 ~~forty-two-w of this article and is lawfully hunting with a crossbow~~
12 ~~from a motor vehicle in accordance with the terms of those permits;~~

13 ~~(10) Hunt, catch, take, kill, trap, injure or pursue with~~
14 ~~firearms or other implement by which wildlife may be taken after the~~
15 ~~hour of five o'clock antemeridian on Sunday on private land without~~
16 ~~the written consent of the landowner any wild animals or wild birds~~
17 ~~except when a big game season opens on a Monday, the Sunday prior~~
18 ~~to that opening day will be closed for any taking of wild animals~~
19 ~~or birds after five o'clock antemeridian on that Sunday: *Provided,*~~
20 ~~That traps previously and legally set may be tended after the hour~~
21 ~~of five o'clock antemeridian on Sunday and the person so doing may~~
22 ~~carry only a twenty-two caliber firearm for the purpose of humanely~~
23 ~~dispatching trapped animals. Any person violating the provisions of~~
24 ~~this subdivision is guilty of a misdemeanor and, upon conviction~~

1 ~~thereof, in addition to any fines that may be imposed by this or~~
2 ~~other sections of this code, is subject to a \$100 fine;~~

3 ~~(11) Hunt with firearms or long bow while under the influence~~
4 ~~of intoxicating liquor;~~

5 (10) And willfully possess or transport any rifle or shotgun
6 in or on any motor vehicle, unless:

7 (A) The person is:

8 (I) Licensed to carry concealed weapons pursuant to section
9 four or five, article seven, chapter sixty-one of this code; or

10 (ii) Authorized by subsection (d), section three, article
11 seven, chapter sixty-one of this code, to carry a concealed weapon
12 without a license;

13 (B) The rifle or shotgun is not loaded and is possessed or
14 transported:

15 (I) During the months of July, August or September:

16 (I) Between the hours of four o'clock antemeridian and
17 nine-thirty o'clock postmeridian, if the person is preparing to or
18 in the process of transporting or transferring the rifle or shotgun
19 to or from a hunting site, campsite, home or other place of abode;
20 or

21 (II) Between the hours of five o'clock antemeridian and
22 eight-thirty o'clock postmeridian, if the person is not engaged in
23 an activity described in clause (I) of this subparagraph;

24 (ii) During any month other than July, August or September:

1 (I) Between the hours of six o'clock antemeridian and six
2 o'clock postmeridian, if the person is preparing to or in the
3 process of transporting or transferring the rifle or shotgun to or
4 from a hunting site, campsite, home or other place of abode; or

5 (II) Between the hours of seven o'clock antemeridian and five
6 o'clock postmeridian, if the person is not engaged in an activity
7 described in clause (I) of this subparagraph;

8 (iii) When ammunition capable of being discharged from that
9 rifle or shotgun is not readily accessible for immediate use;

10 (iv) In a closed case, bag, box or other container that has a
11 lid, a cover or a closing mechanism with a zipper, snap or buckle,
12 which lid, cover or closing mechanism must be opened for a person
13 to gain access to the rifle or shotgun;

14 (v) In a compartment that can be reached only by leaving the
15 vehicle;

16 (vi) In plain sight and secured in a rack or holder made for
17 the purpose of holding and securing a firearm; or

18 (vii) In plain sight with the action open or the weapon
19 stripped or, if the rifle or shotgun is of a type on which the
20 action will not stay open or which cannot easily be stripped, in
21 plain sight; or

22 (C) The person possesses a Class Q permit issued pursuant to
23 section forty-six-e of this article and is hunting from a motor
24 vehicle in accordance with the terms of that permit;

1 ~~(12)~~ (11) Hunt ~~catch, take, kill, injure or pursue~~ a wild
2 animal or wild bird with ~~the use of~~ a ferret;

3 ~~(13)~~ (12) Buy raw furs, pelts or skins of fur-bearing animals
4 ~~unless licensed to do so~~ without a license issued by the Director
5 pursuant to section forty-nine of this article or, if licensed under
6 a resident county license or an agent's permit issued to an employee
7 of a resident county licensee, buy raw furs, pelts or skins of
8 fur-bearing animals outside the county or counties specified in the
9 resident county license;

10 ~~(14) Catch,~~ (13) Take ~~kill~~ or attempt to ~~catch, take or kill~~
11 ~~any fish at any time~~ by any means other than by rod, line and hooks
12 with natural or artificial lures, ~~unless otherwise authorized by law~~
13 ~~or rules issued by the Director: Provided, That~~ except when snaring
14 ~~of any species of suckers, carp, fallfish and or~~ creek chubs; shall
15 ~~at all times be lawful~~

16 ~~(15)~~ (14) Employ or hire, or induce or persuade, by the use of
17 money or other things of value or ~~by any~~ other means, any person to
18 hunt ~~take, catch or kill~~ any wild animal or wild bird except those
19 species on which there is no closed season, or to fish for ~~catch,~~
20 ~~take or kill~~ any fish, amphibian or aquatic life ~~which~~ that is
21 protected by the provisions of this chapter or rules of the director
22 or the sale of which is prohibited;

23 ~~(16)~~ (15) Hunt, ~~catch, take, kill, capture, pursue,~~ transport,
24 possess or use any migratory ~~game or nongame~~ birds included in the

1 ~~terms of conventions between the United States and Great Britain and~~
2 ~~between the United States and United Mexican States for the~~
3 ~~protection of migratory birds and wild mammals concluded,~~
4 ~~respectively, August 16, 1916, and February 7, 1936,~~ except during
5 the time and in the manner and numbers prescribed by the federal
6 Migratory Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and regulations
7 made thereunder;

8 ~~(17)~~ (16) Kill, Take catch or have in his or her possession,
9 living or dead, possess any wild bird other than a game protected
10 bird, ~~or~~ expose for sale or transport within or without the state
11 any protected bird ~~except as aforesaid no part of the plumage, skin~~
12 ~~or body of any protected bird may be sold~~ or sell or had in
13 ~~possession for~~ possess for the purpose of sale any protected bird,
14 except mounted or stuffed plumage, skin, bodies or heads of ~~the~~
15 protected birds legally taken and stuffed or mounted, ~~irrespective~~
16 regardless of whether the protected bird is alive or was captured
17 within ~~or without~~ this state; ~~except the English or European sparrow~~
18 ~~(passer domesticus), starling (sturnus vulgaris) and cowbird~~
19 ~~(molothrus ater), which may not be protected and the killing thereof~~
20 ~~at any time is lawful~~

21 ~~(18)~~ (17) Use dynamite or any like explosive or poisonous
22 mixture placed in any waters of the state ~~for the purpose of killing~~
23 ~~or taking~~ to fish; Any person violating the provisions of this
24 ~~subdivision is guilty of a felony and, upon conviction thereof,~~

1 ~~shall be fined not more than five hundred dollars, or imprisoned for~~
 2 ~~not less than six months nor more than three years, or both fined~~
 3 ~~and imprisoned~~

4 ~~(19) have a bow and gun, or have a gun and any arrow or arrows,~~

5 (18) Unless licensed to carry concealed weapons pursuant to
 6 section four or five, article seven, chapter sixty-one of this code
 7 or authorized by subsection (d), section three, article seven,
 8 chapter sixty-one of this code, to carry a concealed weapon without
 9 a license, simultaneously possess in the fields or woods: ~~at the~~
 10 ~~same time~~

11 (A) A bow or any arrow or arrows; and

12 (B) A rifle or shotgun;

13 ~~(20) Have~~ (19) Carry about his or her person a crossbow in the
 14 woods or fields or use a crossbow to hunt ~~for, take or attempt to~~
 15 ~~take~~ any wildlife, unless the person possesses a Class Y permit
 16 issued pursuant to section forty-two-w of this article;

17 ~~(21)~~ (20) Take or attempt to take turkey, bear, elk or deer
 18 with any arrow unless the arrow is equipped with a point having at
 19 least two sharp cutting edges measuring in excess of three fourths
 20 of an inch wide;

21 ~~(22)~~ (21) Take or attempt to take any wildlife with an arrow
 22 having an explosive head or shaft, a poisoned arrow or an arrow
 23 which would affect wildlife by any chemical action;

24 ~~(23)~~ (22) Shoot an arrow across any public highway or from any

1 aircraft, ~~motor-driven watercraft~~ motorboat, ~~motor~~ vehicle or other
2 land conveyance;

3 ~~(24)~~ (23) Permit any dog owned by him or her or under his or
4 her control to chase, pursue or follow upon the track of any wild
5 animal or wild bird, either day or night, between May 1 and ~~the~~
6 August 15 next following: *Provided*, That a person may train dogs
7 ~~may be trained~~ on wild animals and wild birds, except deer and wild
8 turkeys, and hold or conduct field trials ~~may be held or conducted~~
9 on the grounds or lands of the owner or by his or her bona fide
10 tenant or tenants or upon the grounds or lands of another person
11 with his or her written permission or on public lands, at any time:
12 *Provided, however*, That nonresidents may not train dogs in this
13 state at any time except during the legal small game hunting season:
14 *Provided further*, That the person training ~~said~~ dogs ~~does~~ may not
15 ~~have firearms or other implements in his or her possession~~ carry
16 about his or her person during the closed season on wild animals and
17 wild birds, (I) any rifle or shotgun unless the person is licensed
18 to carry concealed weapons pursuant to section four or five, article
19 seven, chapter sixty-one of this code or authorized by subsection
20 (d), section three, article seven, chapter sixty-one of this code,
21 to carry a concealed weapon without a license, or has an affirmative
22 defense under subsection (b) of this section, or (ii) any implement
23 of hunting, other than a firearm, whereby wild animals or wild birds
24 could be taken; ~~or killed~~

1 ~~(25)~~ (24) Conduct or participate in a field trial,
2 shoot-to-retrieve field trial, water race or wild hunt hereafter
3 referred to as trial: *Provided*, That any person, group of persons,
4 club or organization may hold such trial at any time of the year
5 upon obtaining a permit ~~as is provided in~~ pursuant to section
6 fifty-six of this article. The person responsible for obtaining the
7 permit shall prepare and keep an accurate record of the names and
8 addresses of all persons participating in ~~said the~~ the trial, and make
9 ~~same the record~~ the record readily available for inspection by any ~~natural~~
10 ~~resources police officer~~ authorized to enforce the provisions of
11 this chapter upon request;

12 ~~(26)~~ ~~Except as provided in section four of this article,~~
13 (25) Hunt ~~catch, take, kill or attempt to hunt, catch, take or~~
14 ~~kill~~ any wild animal, wild bird or wild fowl except during the open
15 season for that species established by ~~rule of~~ the director; ~~as~~
16 ~~authorized by subdivision (6), section seven, article one of this~~
17 ~~chapter~~

18 ~~(27)~~ ~~Hunting~~ (26) Hunt any wild animal or wild bird on public
19 lands on Sunday after five o'clock antemeridian, ~~is prohibited; and~~
20 except to tend traps previously and legally set;

21 (27) Hunt any wild animal or wild bird after the hour of five
22 o'clock antemeridian on Sunday if the following Monday is the
23 opening day of a big game hunting season in that county or other
24 geographical zone designated by the director for the applicable big

1 game hunting season, except to tend traps previously and legally
2 set;

3 (28) Hunt any wild animal or wild bird after the hour of five
4 o'clock antemeridian on Sunday on private land without the written
5 consent of the landowner, except to tend traps previously and
6 legally set;

7 (29) (A) Hunt ~~catch, take, kill, trap, injure or pursue with~~
8 ~~firearms or other implement which wildlife can be taken,~~ any wild
9 animal or wild bird on private lands on Sunday after the hour of
10 five o'clock antemeridian, except to tend traps previously and
11 legally set. ~~Provided, That the provisions~~

12 (B) (I) Paragraph (A) of this subdivision ~~do~~ does not apply in
13 any county until the county commission of the county holds an
14 election on the question of whether the provisions of paragraph (A)
15 of this subdivision prohibiting hunting on Sunday shall apply within
16 the county and the voters ~~approve the allowance of~~ that county
17 prohibit hunting on private lands on Sunday in the county. The
18 election shall be determined by a vote of the resident voters of the
19 county in which the prohibition on hunting on private lands on
20 Sunday is proposed. ~~to be authorized~~ The county commission of the
21 county in which the prohibition on Sunday hunting on private lands
22 is proposed shall give notice to the public of the election by
23 publication of the notice as a Class II-0 legal advertisement in
24 compliance with the provisions of article three, chapter fifty-nine

1 of this code, and the publication area for the publication shall be
 2 the county in which the election is to be held. The date of the last
 3 publication of the notice shall fall on a date within the period of
 4 the fourteen consecutive days next preceding the election.

5 (ii) On the local option election ballot shall be printed the
 6 following:

7 Section 20-2-5(a)(26) of the West Virginia Code prohibits
 8 hunting on Sunday on all public lands. Section 20-2-5(a)(27)-(28)
 9 of the West Virginia Code prohibits hunting on Sunday on private
 10 lands if the following Monday is the opening day of a big game
 11 (deer, bear, turkey or boar) hunting season or if the hunter does
 12 not have the express written permission of the landowner. In
 13 addition to these restrictions, section 20-2-5(a)(29) of the West
 14 Virginia Code authorizes local option elections within each county
 15 to determine whether hunting on Sunday will be completely prohibited
 16 on private lands.

17 The purpose of this local option election is to determine
 18 whether, in addition to the above limitations on Sunday hunting
 19 contained in Section 20-2-5(a)(26)-(29) of the West Virginia Code,
 20 hunting on private lands on Sunday will be completely prohibited in
 21 _____ County.

22 Shall hunting on private lands on Sunday be ~~authorized~~
 23 prohibited in _____ County?

24 [] Yes [] No

1 (Place a cross mark in the square opposite your choice.)

2 (iii) Any local option election to approve or disapprove of the
3 proposed ~~authorization~~ prohibition of Sunday hunting on private
4 lands within a county shall be in accordance with procedures adopted
5 by the commission. The local option election may be held in
6 conjunction with a primary or general election, or at a special
7 election. Approval shall be by a majority of the voters casting
8 votes on the question of approval or disapproval of a prohibition
9 on Sunday hunting at the election.

10 (iv) If a majority votes ~~against allowing~~ to prohibit Sunday
11 hunting on private lands, no election on the issue may be held for
12 a period of one hundred four weeks. If a majority votes ~~“yes”~~
13 against prohibiting Sunday hunting on private lands, ~~no~~ an election
14 reconsidering the action may not be held for a period of five years.
15 A local option election may thereafter be held if a written petition
16 of qualified voters residing within the county equal to at least
17 five percent of the number of persons who were registered to vote
18 in the next preceding general election is received by the county
19 commission of the county in which ~~Sunday hunting is authorized~~ a new
20 local option election is proposed. The petition may be in any number
21 of counterparts. The election shall take place at the next primary
22 or general election scheduled more than ninety days following
23 receipt by the county commission of the petition required by this
24 ~~subsection: Provided, That~~ subparagraph. However, the issue may not

1 be placed on the ballot until all statutory notice requirements have
2 been met; ~~No local law or regulation providing any penalty,~~
3 ~~disability, restriction, regulation or prohibition of Sunday hunting~~
4 ~~may be enacted, and the provisions of this article preempt all~~
5 ~~regulations, rules, ordinances and laws of any county or~~
6 ~~municipality in conflict with this subdivision~~

7 (30) While tending traps after the hour of five o'clock
8 antemeridian on Sundays as authorized by subdivisions (26) through
9 (28) of this subsection or paragraph (A), subdivision (29) of this
10 subsection, carry about his or her person any rifle or shotgun other
11 than a twenty-two caliber firearm that is carried for the purpose
12 of humanely dispatching trapped animals, unless the person is
13 licensed to carry concealed weapons pursuant to section four or
14 five, article seven, chapter sixty-one of this code or authorized
15 by subsection (d), section three, article seven, chapter sixty-one
16 of this code, to carry a concealed weapon without a license; or

17 ~~(29)~~ (31) Hunt or conduct hunts for a fee where the hunter is
18 not physically present in the same location as the wildlife being
19 hunted within ~~West Virginia~~ this state.

20 (b) It is an affirmative defense to any offense under
21 subdivision (8), (10), (18) or (30), subsection (a) of this section,
22 or any offense under any other subdivision of subsection (a) of this
23 section in which the offense was based primarily upon the
24 possession, carrying, transportation or storage of a firearm, that:

1 (1) The defendant was not prohibited from possessing firearms
2 by 18 U.S.C. §922(q), as it exists as of January 1, 2011, or
3 subsection (a), section seven, article seven, chapter sixty-one of
4 this code; and

5 (2) (A) The defendant carried the weapon for defensive purposes
6 while the defendant was engaged in or was going to or from the
7 defendant's lawful business or occupation, which business or
8 occupation was of a character or was necessarily carried on in a
9 manner or at a time or place as to render the defendant particularly
10 susceptible to criminal attack, such as would justify a prudent
11 person in going armed; or

12 (B) The defendant carried the weapon for defensive purposes
13 while the actor was engaged in a lawful activity and had reasonable
14 cause to fear a criminal attack upon the defendant or any person
15 accompanying the defendant, such as would justify a prudent person
16 in going armed.

17 (c) The Legislature fully occupies and preempts the field of
18 regulation of Sunday hunting. Any rule of the director or county or
19 municipal ordinance, rule, resolution, policy, administrative action
20 or other official act regulating Sunday hunting, except as provided
21 in subdivisions (26) through (30), subsection (a) of this section,
22 is void.

23 (d) In this section, the phrase "rifle or shotgun" means any
24 firearm other than a handgun.

1 **§20-2-5c. Protection of bald eagles and golden eagles; unlawful**
2 **acts; criminal penalties; forfeitures; license**
3 **revocation.**

4 (a) ~~It is unlawful at any time for any~~ Except as otherwise
5 provided by subsection (d) of this section, no person to take, may
6 hunt, possess, transport, import, export or process, sell or offer
7 for sale, buy, barter or trade or offer to buy, barter or trade at
8 any time or in any manner, any bald eagle, also commonly known as
9 the American eagle, or any golden eagle, alive or dead, or any part,
10 nest or egg ~~thereof of the foregoing eagles~~ any bald eagle or golden
11 eagle, or to attempt to do any of these acts.

12 (b) ~~Anyone~~ Except as otherwise provided in subsection (c) of
13 this section, any person who violates ~~the provisions~~ subsection (a)
14 of this section is guilty of a misdemeanor and, upon conviction
15 thereof, shall be fined not less than \$500 nor more than \$5,000, ~~or~~
16 ~~imprisoned~~ confined in ~~the county~~ jail for not less than sixty days
17 nor more than one year, or both fined and imprisoned. One half of
18 any fine imposed shall be paid to any person or persons providing
19 information that leads to the arrest and conviction of ~~anyone~~ any
20 person for a first offense of violating the provisions subsection
21 (a) of this section.

22 (c) For a second or subsequent conviction for a violation of
23 subsection (a) of this section, a person is guilty of a felony and,
24 upon conviction thereof, shall be fined not less than \$5,000 nor

1 more than \$10,000, ~~and imprisoned in the penitentiary~~ a state
2 correctional facility for not less than one year nor more than two
3 years, or both fined and imprisoned. An amount equal to one half
4 of the fine imposed, not exceeding \$2,500, shall be paid to the
5 person or persons providing information that leads to the arrest and
6 conviction of ~~anyone~~ any person for a second or subsequent violation
7 of ~~the provisions~~ subsection (a) of this section.

8 ~~(d) "Take" is defined as including any means to pursue, hunt,~~
9 ~~wound, kill, capture, collect, poison, or molest any bald eagle or~~
10 ~~golden eagle, or any part, nest or egg thereof, or to knowingly and~~
11 ~~willfully destroy the nest or eggs of any such eagles.~~

12 ~~(e) Nothing in (d) This section may be construed to prohibit~~
13 does not apply to the taking hunting, possession or transportation
14 of bald eagles or golden eagles ~~legally under~~ as authorized by the
15 ~~current~~ federal Eagle Protection Act, 16 ~~USC §668a~~ U.S.C. §§668
16 through 668d, as amended, and or the current federal regulations
17 promulgated pursuant to the federal Eagle Protection Act, as
18 amended, 50 CFR 22.1 et seq. C.F.R. Part 22.

19 ~~(f) (e) All wildlife, merchandise, guns firearms,~~ traps, nets
20 and other equipment, vessels, vehicles, aircraft and other means of
21 transportation used in taking, possessing, transporting, importing,
22 exporting, selling or offering for sale, purchasing or bartering or
23 offering to purchase or barter any bald eagle or golden eagle or
24 part, nest, or egg ~~thereof~~ of any bald eagle or golden eagle, or in

1 attempting to do any of these acts in violation of this section,
2 shall be forfeited, at the time of conviction, to the state.

3 ~~(g)~~ (f) Upon conviction of taking, possessing, transporting,
4 importing, exporting or processing, selling or offering for sale,
5 buying, bartering or trading or offering to buy, barter or trade any
6 bald or golden eagle, alive or dead, or any part, nest or egg
7 ~~thereof of the foregoing~~ bald eagles or golden eagles, or of
8 attempting to do any of these acts, the director shall revoke the
9 person's hunting licenses ~~of such person or persons may be revoked~~
10 and ~~such person or persons shall not be issued any~~ issue the person
11 a new hunting licenses for a period of license until ten years from
12 after the date of conviction.

13 **§20-2-6. Carrying firearm on landowner's land not prohibited.**

14 Notwithstanding any ~~other provisions~~ provision of this chapter
15 to the contrary, ~~it shall be lawful for a bona fide resident,~~
16 ~~landowner of this state, any member of said landowner's family and~~
17 ~~any bona fide tenant of said landowner, to~~ or lessee who is not
18 prohibited by federal law or article seven, chapter sixty-one of
19 this code from possessing firearms, may carry an uncased gun a
20 firearm at any time, regardless of whether the bona fide resident,
21 tenant or lessee is accompanied by or without a dog or whether the
22 firearm is loaded or encased, in ~~their~~ the bona fide resident,
23 tenant or lessee's regular pursuits in caring for and looking after
24 ~~such landowner's~~ livestock or poultry on his or her land and on any

1 ~~other lands leased or rented by him~~ the bona fide resident, tenant
 2 or lessee rents or leases for livestock or poultry husbandry
 3 purposes.

4 **§20-2-6a. Carrying handguns not prohibited.**

5 (a) Notwithstanding any provision of this ~~code~~ chapter, rules
 6 established by the director or any county or municipal ordinance,
 7 rule, policy, administrative action or other official act to the
 8 contrary, ~~a~~ except as otherwise provided by federal law or article
 9 seven, chapter sixty-one of this code, any person licensed to carry
 10 ~~a concealed weapon pursuant to the provisions of section four,~~
 11 ~~article seven, chapter sixty-one of this code who is not prohibited~~
 12 ~~at the time from possessing a firearm pursuant to the provisions of~~
 13 ~~section seven, article seven, chapter sixty-one of this code or by~~
 14 ~~any applicable federal law,~~ may, for self-defense, the defense of
 15 other persons, the defense of livestock and domestic animals and
 16 other lawful purposes, own, possess, carry, a handgun in a concealed
 17 ~~manner for self defense purposes~~ transfer, transport, store and keep
 18 handguns and parts, components and ammunition for handguns:

19 (1) In or on any national, state, county, municipal or other
 20 public park, forest, wildlife management area, wildlife refuge,
 21 trail or other public lands;

22 (2) While afield hunting, trapping or fishing in a lawful
 23 manner;

24 (3) While hiking, camping, backpacking, farming, ranching or

1 engaged in any other lawful outdoor activity in which weapons are
2 often carried for recreation or protection;

3 (4) While in or on a ~~motor~~ any vehicle, vessel or other means
4 of transportation or conveyance on land or water; or

5 (5) While engaging in any other activity regulated by this
6 chapter or rules promulgated by the director.

7 (b) When a person owns, possesses, carries, transfers,
8 transports, stores or keeps a handgun or parts, components or
9 ammunition for a handgun as provided by subsection (a) of this
10 section:

11 (1) The person shall be presumed to be owning, possessing,
12 carrying, transferring, transporting, storing or keeping the handgun
13 and parts, components and ammunition for the handgun for
14 self-defense or another lawful purpose other than hunting; and

15 (2) The handgun and parts, components and ammunition for the
16 handgun shall be presumed to not be an implement of hunting, unless
17 the person knowingly and willfully uses the handgun to take wildlife
18 and the taking was not in justifiable self-defense or the defense
19 of another person or property.

20 ~~The provisions of (b)(c) This section shall~~ does not exempt
21 authorize any person from obtaining any hunting or fishing to hunt
22 or fish without any license or stamp required by the Division of
23 Natural Resources this chapter.

24 (d) Notwithstanding any existing or future provision of this

1 chapter to the contrary:

2 (1) This section supersedes and preempts any prohibition or
 3 restriction contained in or authorized by any other provision of
 4 this chapter, rules promulgated by the director or any county or
 5 municipal ordinance, pertaining to the ownership, possession,
 6 carrying, transfer, transportation, storage or keeping of handguns
 7 and parts, components and ammunition for handguns;

8 (2) Any future act of the Legislature may not be construed to
 9 amend or supersede this section unless the act specifically and
 10 expressly amends or repeals this section;

11 (3) This section is supplemental and additional to existing
 12 rights to bear arms, and nothing in this section shall impair or
 13 diminish such rights; and

14 (4) This section shall be liberally construed to effectuate its
 15 purpose.

16 **§20-2-32. Issuance of licenses; duplicate licenses;**
 17 **confidentiality of personally-identifying**
 18 **information.**

19 (a) The clerk of the county commission in each county and other
 20 persons designated by the director ~~shall be~~ are license-issuing
 21 authorities. ~~Each~~ A license-issuing authority shall issue a license
 22 to ~~a license~~ an applicant if ~~in the opinion of the authority,~~ the
 23 license applicant is legally ~~entitled~~ qualified to obtain the
 24 license, ~~applied for~~ makes a proper application and pays the proper

1 fee.

2 (b) The director shall furnish all materials and supplies
3 necessary for the issuance of licenses ~~shall be furnished by the~~
4 ~~Director~~ to each person authorized to issue licenses.

5 (c) Each license shall bear a serial number and shall be signed
6 by the licensee. The issuing authority shall keep an accurate
7 record, in the form and manner prescribed by the director, of all
8 licenses issued and ~~of all money collected as~~ license fees
9 collected.

10 (d) Any license-issuing authority may issue a duplicate
11 license, to replace a lost, destroyed or damaged license, upon
12 receipt of a verified application duly executed by the original
13 ~~license holder~~ licensee and the payment to the issuing authority of
14 a duplicate license fee of \$1.

15 (e) (1) Except as otherwise provided in this subsection, the
16 personally-identifying information of individuals who apply for or
17 have been issued any license, permit or stamp to hunt, trap or fish
18 and any records of the director or any license-issuing authority
19 that, if disclosed, would tend to reveal such information, unless
20 such information has been redacted, are not public records and may
21 be copied or inspected only by:

22 (A) The person to whom the record pertains;

23 (B) The duly qualified conservator or guardian of the person
24 to whom the record pertains;

1 (C) The duly qualified personal representative of a deceased
2 person to whom the record pertains or, if a personal representative
3 has not qualified, the next of kin of a deceased person to whom the
4 record pertains;

5 (D) An attorney, attorney-in-fact or other agent or
6 representative acting pursuant to a written power of attorney or
7 other written authorization signed by the person to whom the record
8 pertains; or

9 (E) A duly authorized representative of a law-enforcement
10 agency or license-issuing authority for any official purpose or any
11 other agency or instrumentality of federal, state or local
12 government seeking the record in the ordinary course of performing
13 its official duties for an official purpose; or

14 (F) (I) A person authorized by an order of any court, based
15 upon a finding of the court that the information is sufficiently
16 necessary to a proceeding before the court to substantially outweigh
17 the importance of maintaining the confidentiality established by
18 this subsection, to copy or inspect information protected by this
19 subsection.

20 (ii) Before any court may grant access to any records pursuant
21 to this paragraph, the court shall order the moving party to give
22 each affected person notice of the proceedings, the request for
23 confidential records under this paragraph and the opportunity of
24 affected persons to confidentially intervene and object to the

1 request by having the director print and mail by first-class mail
2 to each affected person, the costs for which the moving party shall
3 prepay in full to the director, and perform this notification in a
4 manner not inconsistent with the confidentiality provisions of this
5 subsection.

6 (2) This subsection does not prohibit disclosure or publication
7 of statistical summaries, abstracts or other records containing
8 information in an aggregate or statistical form that does not
9 disclose any personally-identifying information protected from
10 public disclosure under this subsection.

11 (3) (A) The director shall furnish to any nonprofit
12 firearm-related or hunting-related educational or issue-advocacy
13 organization exempt from federal income taxation under §501(c) of
14 the Internal Revenue Code that has not obtained records pursuant to
15 this subdivision within the immediate preceding six months, a
16 current list of the names, mailing addresses, telephone numbers,
17 e-mail addresses and county of residence if a resident of this
18 state, of all persons at least eighteen years of age who hold any
19 license, permit or stamp under this chapter, in a commonly-used
20 electronic database format acceptable to the requesting
21 organization.

22 (B) The director shall furnish to the state executive committee
23 of any political party, as defined in section eight, article one,
24 chapter three of this code, that has not obtained records pursuant

1 to this subdivision within the immediate preceding six months, a
2 current list of the names, birthdates, mailing addresses, telephone
3 numbers, e-mail addresses and county of residence of all residents
4 of this state who are at least eighteen years of age and who hold
5 any license, permit or stamp under this chapter, in a commonly-used
6 electronic database format acceptable to the requesting committee.

7 (C) A personally-identifying information other than the
8 information described in paragraph (A) or (B) of this subdivision,
9 as applicable, or any information pertaining to the type of license,
10 permit or stamp, other than whether it is a hunting only, fishing
11 only or combined hunting and fishing license, permit or stamp, may
12 not be disclosed pursuant to this subdivision.

13 (D) The director shall create and maintain an electronic
14 database of all information described in paragraphs (A) and (B) of
15 this subdivision for the purpose of promptly responding to requests
16 for such information. The director may charge any entity requesting
17 information pursuant to paragraph (A) or (B) of this subdivision,
18 a reasonable fee, not to exceed the actual marginal cost incurred
19 in fulfilling the request, which may not include any portion of
20 overhead or other fixed costs incurred in creating or maintaining
21 the database required by this paragraph.

22 (E) Before any personally-identifying information of persons
23 who hold any license, permit or stamp under this chapter may be
24 disclosed pursuant to this subdivision, the person obtaining the

1 information shall complete and verify under oath a notarized request
 2 form prescribed by the director, which shall be a public record, and
 3 file the request form at the director's office in person or by
 4 certified mail, return receipt requested. The director shall
 5 maintain a record of requests fulfilled under this subdivision for
 6 at least five years and not more than seven years. The director
 7 shall, upon request of any person who holds or has previously held
 8 any license, permit or stamp under this chapter, notify the person
 9 of all organizations to which the person's personally-identifying
 10 information have been disclosed pursuant to this subdivision during
 11 the period for which the director maintains those records and
 12 provide a copy of all requests for disclosure made to the director
 13 pursuant to this subdivision.

14 **§20-2-37. Display of license, etc., by persons in possession of**
 15 **hunting, fishing, etc., paraphernalia.**

16 (a) Any person ~~having in his or her possession~~ who possesses
 17 in or near the fields or woods, or about the streams of this state,
 18 any dog, ~~gun~~ rifle, shotgun, fishing rod or other hunting, fishing
 19 or trapping paraphernalia, shall, upon demand of any officer
 20 authorized to enforce the provisions of this chapter:

21 (1) State his or her correct name and address; and ~~shall~~

22 (2) Exhibit for inspection:

23 ~~(a)~~ (A) All ~~applicable~~ licenses and documents ~~set forth~~
 24 specified in subsection (a), section thirty-six of this article; and

1 ~~(b) (B) All firearms and wildlife which and rifles or shotguns~~
2 he or she may have in his or her possession possesses.

3 ~~Nothing in (b) This section may be construed as authorizing~~
4 does not authorize searches or seizures that violate article three,
5 section six of the West Virginia Constitution or the Fourth
6 Amendment to the Constitution of the United States ~~nor and~~ may
7 ~~anything in this section not~~ be construed as effecting a waiver of
8 these Constitutional provisions.

9 **§20-2-421. Class A-1 handgun hunting stamp.**

10 ~~Notwithstanding the provisions of section two, article seven,~~
11 ~~chapter sixty-one of this code,~~

12 (a) A Class A-1 stamp is a small arms handgun hunting stamp.
13 ~~To be eligible to get a Class A-1 stamp, a person must be legally~~
14 ~~able to possess a firearm. If a person is otherwise qualified, The~~
15 director may issue a Class A-1 stamp may be issued to a any person
16 who is at least 21 years of age, or older who holds a valid resident
17 or nonresident hunting license or to a person who is a resident
18 sixty-five years of age or older, but a Class A-1 stamp shall never
19 be issued to a person who has been convicted of a misdemeanor
20 associated with the use of firearms or dangerous weapons or who has
21 been convicted of a felony exempt from the requirement of obtaining
22 a hunting license and is not prohibited by federal law or section
23 seven, article seven, chapter sixty-one of this code, from
24 possessing or transporting handguns. The director may issue a

1 lifetime Class A-1 stamp to any person qualified to obtain a Class
2 A-1 stamp who holds a valid Class A-L or AB-L license or is a
3 resident sixty-five years of age or older exempt from the
4 requirement of obtaining a hunting license.

5 (b) A holder of a Class A-1 stamp shall purchase the
6 appropriate base license before participating in the activities
7 specified in this section, except as noted. A Class A-1 stamp
8 entitles the licensee to hunt, as otherwise permitted by the
9 provisions of this chapter, but only during small game and big game
10 seasons as established annually by the Director, holder of the stamp
11 to hunt as otherwise permitted by this chapter during the small game
12 and big game hunting seasons established by the director with either
13 a revolver or pistol which handgun that has a barrel at least four
14 inches in length. Unless otherwise permitted by the Code of West
15 Virginia, a Class A-1 stamp entitles the licensee to carry or have
16 in his or her possession only one revolver or pistol when going to
17 and from his or her home or residence and a place of hunting and
18 while hunting: Provided, That the Class A-1 stamp may not be valid
19 unless the licensee has in his or her possession a valid resident
20 or nonresident hunting license or is a resident sixty five years of
21 age or older. Provided, however, That at all times, when not
22 actually hunting, the revolver or pistol shall be unloaded. While
23 hunting, the licensee shall carry the revolver or pistol in an
24 unconcealed and easily visible place. The fee for the stamp is eight

1 dollars. A lifetime Class A-1 stamp may be issued to anyone
2 otherwise qualified and holding a valid Class A-L or AB-L license
3 or to a resident sixty-five years of age or older. The lifetime Class
4 A-1 stamp will be issued in a form prescribed by the Director.

5 (c) The fee for a Class A-1 stamp is \$8. The fee for a lifetime
6 Class A-I stamp is \$75. All fees collected for the issuance of the
7 Class A-1 and lifetime Class A-1 stamps shall be deposited in the
8 State Treasury and credited to the law-enforcement section of the
9 Division of Natural Resources. The fees collected shall be paid out
10 of the State Treasury on order of the Director and used solely for
11 law-enforcement purposes.

12 (d) Before the director may issue, renew or reinstate any Class
13 A-1 stamp, the law-enforcement section of the Division of Natural
14 Resources shall conduct an investigation to determine whether the
15 applicant is prohibited by federal law or section seven, article
16 seven, chapter sixty-one of this code, from possessing or
17 transporting firearms. This investigation shall conform to the
18 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
19 or other applicable federal law for qualifying Class A-1 stamps as
20 an alternative to the National Instant Criminal Background Check
21 System or other similar required background check for a resident of
22 this state to purchase a firearm through a licensed firearms dealer
23 within this state, including a background check conducted through
24 the National Instant Criminal Background Check System and, if the

1 applicant is an alien, a federal Immigration Alien Query. The
2 director shall not issue a Class A-1 stamp to any person who is
3 prohibited by federal law or section seven, article seven, chapter
4 sixty-one of this code, from possessing or transporting firearms.

5 (e) The director shall propose rules for legislative approval
6 in accordance with the provisions of article three, chapter
7 twenty-nine-a of this code to permit a holder of a lifetime Class
8 A-1 stamp to periodically apply for a reissued stamp to permit the
9 holder of the stamp to receive the benefit of an exemption under 18
10 U.S.C. §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) or other applicable
11 federal law, from a background check through the National Instant
12 Criminal Background Check System to purchase or receive a firearm
13 from a licensed firearm dealer in this state.

14 (f) The director shall revoke any Class A-1 stamp or lifetime
15 Class A-1 stamp issued to a person ~~convicted of a misdemeanor~~
16 ~~associated with the use of firearms or dangerous weapons or~~
17 ~~convicted of a felony, or any person who becomes legally unable to~~
18 ~~possess a firearm~~ prohibited by federal law or section seven,
19 article seven, chapter sixty-one of this code, from possessing or
20 transporting firearms. The director shall immediately notify the
21 person of the revocation in writing, delivered either by personal
22 service or certified mail, return receipt requested. The person
23 shall immediately surrender the revoked stamp to the director if
24 served in person with the notice or within five business days if

1 served by certified mail.

2 (g) A holder of a Class A-1 stamp or lifetime Class A-1 stamp
3 who becomes ineligible to continue holding the stamp shall
4 immediately surrender the stamp to the Division of Natural Resources
5 regardless of whether the director discovers the disqualification
6 and initiates revocation proceedings under subsection (f) of this
7 section. A holder of a Class A-1 or lifetime Class A-1 stamp is
8 required to purchase the appropriate base license before
9 participating in the activities specified in this section, except
10 as noted.

11 (h) Any person who knowingly and willfully fails to surrender
12 a revoked Class A-1 stamp or lifetime Class A-1 stamp, as required
13 by subsection (f) of this section, or knowingly and willfully fails
14 to surrender a Class A-1 stamp or lifetime Class A-1 stamp the
15 person has become ineligible to continue holding, as required by
16 subsection (g) of this section, is guilty of a misdemeanor and, upon
17 conviction thereof, shall be fined not more than \$1,000, confined
18 in jail for not more than six months, or both fined and confined.

19 (I) The director shall reinstate Class A-1 stamp or lifetime
20 Class A-1 stamp that was revoked pursuant to subsection (f) of this
21 section or surrendered pursuant to subsection (g) of this section
22 if the person to whom the revoked or surrendered stamp was issued
23 subsequently ceases to be prohibited by federal law or section
24 seven, article seven, chapter sixty-one of this code, from

1 possessing or transporting firearms.

2 **§20-2-42p. Class RG resident and Class RRG nonresident ~~gun firearm~~**
3 **deer hunting stamp for an additional deer.**

4 (a) The director ~~has the authority to~~ may issue a Class RG
5 resident and a Class RRG nonresident ~~gun firearm~~ deer hunting stamp
6 stamps when ~~deemed~~ the director considers the taking of additional
7 deer essential for the proper management of ~~the~~ wildlife resources.
8 ~~These~~

9 (b) Class RG and Class RRG stamps ~~allow~~ authorize the licensee
10 holders of those stamps to hunt and take an additional deer as
11 designated by the director. A holder of a Class RG or Class RRG
12 stamp shall purchase the appropriate base license before
13 participating in the activities specified in this section, except
14 as noted.

15 (c) The fee for a Class RG stamp is \$20. ~~and~~ The fee for a
16 Class RRG stamp is \$40.

17 (d) Before the director may issue, renew or reinstate any Class
18 RG or RRG stamp, the law-enforcement section of the Division of
19 Natural Resources shall conduct an investigation to determine
20 whether the applicant is prohibited by federal law or section seven,
21 article seven, chapter sixty-one of this code, from possessing or
22 transporting firearms. This investigation shall conform to the
23 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
24 or other applicable federal law for qualifying Class RG and RRG

1 stamps as an alternative to the National Instant Criminal Background
2 Check System or other similar required background check for a
3 resident of this state to purchase a firearm through a licensed
4 firearms dealer within this state, including a background check
5 conducted through the National Instant Criminal Background Check
6 System and, if the applicant is an alien, a federal Immigration
7 Alien Query. The director may not issue a Class RG or Class RRG
8 stamp to any person who is prohibited by federal law or section
9 seven, article seven, chapter sixty-one of this code, from
10 possessing or transporting firearms.

11 (e) The director shall revoke any Class RG or Class RRG stamp
12 issued to a person who becomes prohibited by federal law or section
13 seven, article seven, chapter sixty-one of this code, from
14 possessing or transporting firearms. The director shall immediately
15 notify the person of the revocation in writing, delivered either by
16 personal service or certified mail, return receipt requested. The
17 person shall immediately surrender the revoked stamp to the director
18 if served in person with the notice or within five business days if
19 served by certified mail.

20 (f) A holder of a Class RG or Class RRG stamp who becomes
21 prohibited by federal law or section seven, article seven, chapter
22 sixty-one of this code, from possessing or transporting firearms,
23 shall immediately surrender the stamp to the Division of Natural
24 Resources regardless of whether the director discovers the

1 disqualification and initiates revocation proceedings under
2 subsection (e) of this section.

3 (g) Any person who knowingly and willfully fails to surrender
4 a revoked Class RG or Class RRG stamp, as required by subsection (e)
5 of this section, or knowingly and willfully fails to surrender a
6 Class RG or Class RRG stamp the person has become ineligible to
7 continue holding, as required by subsection (f) of this section, is
8 guilty of a misdemeanor and, upon conviction thereof, shall be fined
9 not more than \$1,000, confined in jail for not more than six months,
10 or both fined and confined.

11 (h) The director shall reinstate Class RG or Class RRG stamp
12 that was revoked pursuant to subsection (e) of this section or
13 surrendered pursuant to subsection (f) of this section if the person
14 to whom the revoked or surrendered stamp was issued subsequently
15 ceases to be prohibited by federal law or section seven, article
16 seven, chapter sixty-one of this code, from possessing or
17 transporting firearms.

18 (I) The director may ~~promulgate~~ propose rules for legislative
19 approval in accordance with article three, chapter twenty-nine-a of
20 this code governing the issuance, and use and revocation of these
21 Class RG and a Class RRG stamps. ~~These stamps require that the~~
22 ~~licensee purchase the appropriate base license before participating~~
23 ~~in the activities specified in this section, except as noted.~~

24 **§20-2-46e. Class Q special hunting permit for disabled persons.**

1 (a) A Class Q permit is a special statewide hunting permit
2 ~~entitling~~ authorizing the permittee to hunt ~~all legal species of~~
3 ~~game during the designated hunting seasons~~ from a motor vehicle in
4 accordance with the provisions of subsection (d) of this section.

5 (b) ~~A permit form shall be furnished by~~ The director shall
6 furnish a permit form to an applicant who: ~~meets the following~~
7 ~~requirements~~

8 (1) ~~He or she~~ Is permanently disabled in the lower extremities;
9 and

10 (2) ~~He or she~~ Holds a valid resident or nonresident statewide
11 hunting license ~~a senior citizens license~~ or is ~~otherwise~~ exempt
12 from the license requirement.

13 (c) Before the director may issue a Class Q permit, a licensed
14 physician ~~must~~ shall certify the applicant's permanent disability
15 by completing the permit form. When completed, the permit form
16 constitutes a Class Q permit. The Class Q permit and a completed
17 license application shall be submitted to the division, which ~~will~~
18 shall issue ~~a wallet sized card to the permittee~~ a permit card not
19 larger than a driver's license and in a form suitable for carrying
20 in a wallet, similar to a driver's license. ~~The card and all other~~
21 ~~documents and identification required to be carried by this article~~
22 ~~shall be in the permittee's possession when hunting.~~

23 (d) A Class Q ~~permit entitles the holder to~~ permittee may hunt
24 from a motor vehicle and ~~notwithstanding the provisions of~~

1 ~~subdivision (9), section five of this article to possess a loaded~~
 2 ~~firearm or, if the Class Q permittee possesses a Class Y permit, a~~
 3 ~~crossbow with a nocked bolt, in and discharge it from a motor~~
 4 ~~vehicle but only under the following circumstances if:~~

5 (1) The motor vehicle is stationary;

6 (2) The engine of the motor vehicle is not operating;

7 (3) The permittee and one individual, who is at least sixteen
 8 years of age, to assist the permittee, are the only occupants of the
 9 motor vehicle;

10 (4) The individual assisting the permittee ~~may~~ does not hunt
 11 with a firearm, bow or ~~cross-bow~~ crossbow while assisting the
 12 permittee;

13 (5) The motor vehicle is not parked on the right-of-way of any
 14 public road or highway; and

15 (6) The permittee ~~observes~~ complies with all other ~~pertinent~~
 16 applicable laws and ~~regulations~~ rules.

17 (e) The director may propose legislative rules for legislative
 18 approval in accordance with the provisions of article three, chapter
 19 twenty-nine-a of this code ~~setting forth~~ specifying the
 20 qualifications of applicants and the permitting process.

21 **§20-2-58. Shooting across road or near building or crowd;**
 22 **exceptions.**

23 ~~It shall be unlawful for any person to shoot or~~ (a) Except as
 24 otherwise provided by subsections (b) and (c) of this section, a

1 person may not knowingly and willfully discharge any firearms
 2 firearm:

3 (1) Across or ~~in~~ from within any public ~~road~~ street or highway
 4 in this state, at any time; or

5 (2) Within four hundred feet of any schoolhouse or church; or

6 (3) Within five hundred feet of any dwelling house other than
 7 a dwelling house owned, leased or lawfully occupied or possessed by
 8 the person who discharges the firearm, unless:

9 (A) The owners or lessees of all dwelling houses within five
 10 hundred feet of the place where the person discharges the firearm
 11 have given prior consent to the discharge in writing; and

12 (B) The person discharging the firearm does not knowingly
 13 violate any condition of consent specified in any written grant of
 14 consent pursuant to paragraph (A) of this subdivision; or ~~on or near~~

15 (4) Within any state, county, municipal or other public park
 16 or other place where persons gather for purposes of pleasure, except
 17 in an established firearm shooting range.

18 ~~and any person violating this section is guilty of a~~
 19 ~~misdemeanor: *Provided, That*~~

20 (b) Subsection (a) of this section does not apply to the
 21 discharge of a firearm under circumstances in which the use of
 22 deadly force is justified or excused under the laws of this state
 23 to defend persons or property.

24 (c) Notwithstanding subsection (a) of this section, any person

1 operating a gun repair shop, licensed to do business in the State of
 2 West Virginia and duly licensed under applicable federal statutes,
 3 may be exempted from the prohibition established by subsection (a)
 4 of this section and section twelve, article seven, chapter sixty-one
 5 of this code for the purpose of test firing a firearm. The director
 6 of the department of natural resources shall prescribe such propose
 7 rules as may be necessary to carry out the purposes of for
 8 legislative approval in accordance with the provisions of article
 9 three, chapter twenty-nine-a of this code, to implement the
 10 exemption under this section and section twelve, article seven,
 11 chapter sixty-one and subsection. These rules shall ensure that any
 12 person residing in any dwelling ~~home~~ house within five hundred feet
 13 of ~~such the~~ the gun repair shop ~~be~~ is given an opportunity to protest
 14 the granting of such exemption before the director decides whether
 15 to grant the exemption.

16 **ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

17 **§20-7-9. Violations of chapter generally; penalties.**

18 (a) Any person ~~violating~~ who knowingly violates any ~~of the~~
 19 ~~provisions~~ provision of this chapter or rules promulgated under the
 20 provisions of this chapter, ~~the punishment~~ for which another
 21 punishment is not prescribed in this chapter, ~~shall be~~ is guilty of
 22 a misdemeanor and, upon conviction thereof, shall for each offense
 23 be fined not less than \$20 nor more than \$300, ~~or~~ confined in jail
 24 for not less than ten ~~or~~ days nor more than one hundred days, or ~~be~~

1 both, fined and confined ~~imprisoned within the limitations aforesaid~~
 2 and, in the case of a violation by a corporation, every officer or
 3 agent ~~thereof directing~~ of the corporation who directs or ~~engaging~~
 4 engages in ~~such the~~ violation ~~shall be~~ is guilty of a misdemeanor
 5 and, upon conviction thereof, shall be subject to the same penalties
 6 ~~and punishment as herein provided~~ ~~Provided, That~~ in this subsection
 7 for a violation committed by a natural person.

8 (b) Any person violating who knowingly violates subdivision
 9 (3), subsection (a), section five, article two of this chapter ~~shall~~
 10 ~~be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be
 11 fined not less than \$100 nor more than \$500 and shall be ~~imprisoned~~
 12 confined in jail for not less than ten days nor more than one
 13 hundred days. ~~Provided, however, That~~

14 (c) Any person who knowingly hunts any wild animal or wild bird
 15 after the hour of five o'clock antemeridian on Sunday, in violation
 16 of subdivision (26), (27), (28) or (29), subsection (a), section
 17 five, article two of this chapter, is guilty of a misdemeanor and,
 18 upon conviction thereof, shall be fined not less than \$20 nor more
 19 than \$400, confined in jail for not less than ten days nor more than
 20 one hundred days, or both fined and confined.

21 (d) Any person who knowingly uses dynamite or any like
 22 explosive or poisonous mixture placed in any waters of the state to
 23 fish, in violation of subdivision (17), subsection (a), section
 24 five, article two of this chapter, is guilty of a felony and, upon

1 conviction thereof, shall be fined not more than \$500, imprisoned in
2 a state correctional facility not less than six months nor more than
3 three years, or both fined and imprisoned.

4 (e) Any person who ~~is in violation of~~ violates section
5 twenty-seven, article two of this chapter ~~as a result of their~~
6 ~~failure by failing~~ to have a valid Class E nonresident hunting and
7 trapping license, as defined by section forty-two-d, article two of
8 this chapter, or a valid Class EE nonresident bear hunting license,
9 as defined by section forty-two-e, article two of this chapter,
10 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,
11 shall be fined not less than \$250 nor more than \$500, ~~or~~ confined in
12 jail for not less than ten days nor more than one hundred days, or
13 both fined and confined. ~~imprisoned: Provided further, That~~

14 (f) Any person who ~~is in violation of~~ violates section
15 twenty-seven, article two of this chapter ~~as a result of their~~
16 ~~failure by failing~~ to have a Class F nonresident fishing license, as
17 defined by section forty-two-f, article two of this chapter, ~~shall~~
18 ~~be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be
19 fined not less than \$100 nor more than \$300, ~~or~~ confined in jail for
20 not less than ten days nor more than one hundred days, or both fined
21 and confined. ~~fined and imprisoned: And provided further, That~~

22 (g) Any person who violates subsection (a), section two-a,
23 article two of this chapter is guilty of a misdemeanor and, upon
24 conviction thereof, shall be fined not less than \$100 nor more than

1 \$1,000, confined in jail for not less than ten days nor more than
 2 six months, or both fined and confined; but upon conviction of an
 3 offense occurring subsequent to a conviction for a previous offense
 4 and within five years of the date on which the previous offense was
 5 committed, shall be fined not more than \$2,500, confined in jail for
 6 not more than one year, or both fined and confined. The director
 7 shall revoke any hunting or fishing license issued to a person
 8 convicted of violating subsection (a), section two-a, article two of
 9 this chapter.

10 (h) Any person ~~violating~~ who violates any parking or speeding
 11 regulations as promulgated by the director on any state parks, state
 12 forests, public hunting and fishing areas and all other lands and
 13 waters owned, leased or under the control of the Division of Natural
 14 Resources ~~shall be~~ is guilty of a misdemeanor and, upon conviction
 15 thereof, shall be fined not less than \$2 nor more than \$100, ~~or~~
 16 ~~imprisoned~~ confined in jail for not more than ten days, or both
 17 fined and confined. ~~imprisoned~~

18 **~~§20-7-11. Motorboats and other terms defined~~ Definitions.**

19 ~~As used~~ In this section and ~~subsequent~~ the succeeding sections
 20 of this article: ~~unless the context clearly requires a different~~
 21 ~~meaning~~

22 (1) ~~"Vessel" means every description of watercraft, other than~~
 23 ~~a seaplane on the water, used or capable of being used as a means of~~
 24 ~~transportation on water;~~ "Commissioner" has the same meaning as in

1 section one, article one, chapter seventeen-a of this code.

2 (2) ~~"Motorboat" means any vessel propelled by an electrical,~~
3 ~~steam, gas, diesel or other fuel propelled or driven motor, whether~~
4 ~~or not the motor is the principal source of propulsion, but does not~~
5 ~~include a vessel which has a valid marine document issued by the~~
6 ~~bureau of customs of the United States government or any federal~~
7 ~~agency successor thereto;~~

8 (3) "Owner" means ~~a~~ any person, other than a lienholder, having
9 the property in or title to a motorboat ~~The term~~ and includes a
10 person entitled to the use or possession of a motorboat subject to
11 an interest in another person, reserved or created by agreement and
12 securing payment or performance of an obligation, but ~~the term~~
13 excludes a lessee under a lease not intended as security.

14 (4) ~~"Commissioner" means the commissioner of the Division of~~
15 ~~Motor Vehicles;~~

16 (5) ~~"Director" means the director of the Division of Natural~~
17 ~~Resources; and~~

18 (6) ~~"Personal watercraft" means a small vessel of less than~~
19 ~~sixteen feet in length which uses an inboard motor powering a water~~
20 ~~jet pump as its primary source of motive power and which is designed~~
21 ~~to be operated by a person sitting, standing, or kneeling on the~~
22 ~~vessel, rather than the conventional manner of sitting or standing~~
23 ~~inside the vessel. For purposes of this article, the term "personal~~
24 ~~watercraft" also includes "specialty prop crafts" which are vessels~~

1 ~~similar in appearance and operation to a personal watercraft but~~
 2 ~~which are powered by an outboard motor or propeller driven motor.~~

3 **CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.**

4 **ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.**

5 **§24A-7-6. Duty of prosecuting attorneys and law-enforcement**
 6 **officers to enforce chapter; regulatory authority of**
 7 **commission; qualifications of commission employees**
 8 **designated as motor carrier inspectors.**

9 ~~It shall be the duty of the West Virginia State Police and the~~
 10 ~~sheriffs of the counties in West Virginia to~~

11 (a) Law-enforcement officers, as defined in section one,
 12 article twenty-nine, chapter thirty of this code, shall make arrests
 13 or issue citations for and ~~the duty of~~ the prosecuting attorneys ~~of~~
 14 ~~the several counties to~~ shall prosecute all violations of this
 15 chapter and of other chapters governing the regulatory authority of
 16 the commission.

17 (b) The commission employees designated as motor carrier
 18 inspectors shall have the same authority as law-enforcement
 19 officers, as defined in section one, article twenty-nine, chapter
 20 thirty of this code, to enforce the provisions of this chapter and
 21 the provisions of other chapters of this code governing the
 22 regulatory authority of the commission as ~~such~~ those provisions
 23 apply to entities and persons regulated by the commission in any

1 county or ~~city~~ municipality of this state.

2 ~~Notwithstanding any provision of this code to the contrary,~~
3 ~~such~~

4 (c) Motor carrier inspectors designated pursuant to subsection
5 (b) of this section may carry handguns concealed weapons without a
6 license in the course of their official duties after meeting
7 specialized qualifications established by the Governor's Committee
8 on Crime, Delinquency and Correction, which ~~qualifications~~ shall
9 include the successful completion of handgun training, including a
10 minimum of four hours training in handgun safety, paid for by the
11 commission and comparable to the handgun training provided to
12 law-enforcement officers by the West Virginia State Police.
13 ~~Provided, That~~

14 (d) Nothing in this section shall may be construed to include
15 motor carrier inspectors within the meaning of law-enforcement
16 officers as defined in section one, article twenty-nine, chapter
17 thirty of this code.

18 **CHAPTER 25. DIVISION OF CORRECTIONS.**

19 **ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

20 **§25-1-11c. Hiring of other assistants and employees; duties of**
21 **correctional employees; right to carry weapons;**
22 **powers of correctional peace officers.**

23 (a) The warden or administrator of the correctional

1 institutions or units shall, in the manner provided in section
2 eleven of this article, hire all assistants and employees required
3 for the management of the correctional institutions or units,
4 including a sufficient number of correctional employees to preserve
5 order and enforce discipline among the inmates, to prevent escapes
6 and to remove all persons convicted and sentenced to the custody of
7 the Division of Corrections, from the place confined to a
8 correctional institution, all of whom shall be under the control of
9 the warden.

10 **(b)** The commissioner may issue a certificate authorizing any
11 correctional employee who has successfully completed the division's
12 training program for firearms certification, which shall be the
13 equivalent of that required of deputy sheriffs, to carry ~~firearms~~
14 ~~and~~ concealed weapons without a license while on duty. Any
15 correctional employee authorized by the commissioner ~~has the right,~~
16 ~~without a state license, to~~ may carry ~~firearms and~~ concealed weapons
17 without a license while on duty. Each correctional employee,
18 authorized by the commissioner, shall carry with him or her a
19 certificate, authorizing him or her to carry ~~a firearm or~~ concealed
20 ~~weapon~~ weapons without a license when performing his or her official
21 duties as a correctional employee, bearing the official signature of
22 the commissioner and warden or administrator. The ~~right~~ privilege
23 conferred by this subsection is extended to a correctional employee
24 during the time the employee travels from place to place within the

1 state for the purpose of removing prisoners from jails to a
 2 correctional institution of the Division of Corrections, and during
 3 the time the employee is pursuing and apprehending escaped inmates,
 4 and during any other time the employee is performing official duties
 5 as a correctional employee. ~~No correctional employee shall have the~~
 6 ~~right to carry a firearm or concealed weapon~~ The privilege conferred
 7 by this subsection does not apply for any other purpose or during
 8 any other time, including when ~~traveling to and from~~ commuting
 9 between the employee's residence and a correctional institution.
 10 ~~unless the employee has obtained a state license in the manner~~
 11 ~~prescribed in article seven, chapter sixty one of this code~~

12 ~~(b)~~ (c) The Commissioner of Corrections may designate
 13 correctional employees as correctional peace officers. ~~who have the~~
 14 ~~following powers~~ Correctional peace officers designated pursuant to
 15 this subsection may:

16 (1) ~~To~~ Enforce rules and laws necessary for the control and
 17 management of correctional units and the maintenance of public
 18 safety that is within the scope of responsibilities of the Division
 19 of Corrections;

20 ~~(1)~~ (2) ~~To detain~~ Arrest persons for violations of state law
 21 committed on the property of any state correctional institution;

22 ~~(2)~~ (3) ~~To~~ Conduct investigations regarding criminal activity
 23 occurring within a correctional facility, pursue and apprehend
 24 escapees from the custody of the commissioner or any state

1 correctional institution; and

2 (4) ~~To~~ Execute criminal process or other process in furtherance
3 of these duties on persons in the custody of the commissioner, or
4 who surrender themselves at any state correctional institution.

5 **CHAPTER 27. MENTALLY ILL PERSONS.**

6 **ARTICLE 3. CONFIDENTIALITY.**

7 **§27-3-1. Definition of confidential information; disclosure.**

8 (a) (1) Communications and information obtained in the course
9 of treatment or evaluation of any client or patient are confidential
10 information. ~~Such~~

11 (2) Confidential information includes:

12 (A) The fact ~~that~~ a person is or has been a client or patient;

13 (B) Information transmitted by a patient or client or family
14 ~~thereof~~ of a patient or client, for purposes relating to diagnosis
15 or treatment;

16 (C) Information transmitted by persons participating in the
17 accomplishment of the objectives of diagnosis or treatment;

18 (D) All diagnoses or opinions formed regarding ~~a client's or~~
19 ~~patient's~~ the physical, mental or emotional condition of any patient
20 or client;

21 (E) Any advice, instructions or prescriptions issued in the
22 course of diagnosis or treatment; and

23 (F) Any record or characterization of the matters ~~hereinbefore~~
24 described in paragraphs (A) through (E) of this subdivision. ~~It~~

1 (3) Confidential information does not include:

2 (A) Information ~~which~~ that does not identify a client or
3 patient;

4 (B) Information from which a person acquainted with a client or
5 patient would not recognize ~~such~~ the client or patient; ~~and~~ or

6 (C) Uncoded information from which there is no possible means
7 to identify a client or patient.

8 (b) Confidential information shall not be disclosed, except:

9 (1) In a proceeding under section four, article five of this
10 chapter to disclose the results of an involuntary examination made
11 pursuant to section two, three or four, ~~of said~~ article five of this
12 chapter;

13 (2) In a proceeding under article six-a of this chapter to
14 disclose the results of an involuntary examination made pursuant
15 ~~thereto~~ to article six-a of this chapter;

16 (3) Pursuant to an order of any court based upon a finding of
17 the court that the information is sufficiently relevant to a
18 proceeding before the court to outweigh the importance of
19 maintaining the confidentiality established by this section;

20 (4) To provide notice to the ~~federal~~ National Instant Criminal
21 Background Check System established pursuant to section 103(d) of
22 the Brady Handgun Violence Prevention Act, Public Law 103-159, §103,
23 107 Stat. 1536 (1993), reprinted in 18 U.S.C. §922 notes, or the
24 central state mental health registry established pursuant to article

1 seven-a, chapter sixty-one of this code, on individuals prohibited
 2 by federal law or section seven, article seven, chapter sixty-one of
 3 this code, from possessing firearms, in accordance with the
 4 provisions of article seven-a, chapter sixty-one of this code;

5 (5) To conduct mental health background checks on an applicant
 6 for or current holder of a federal firearm license or any license or
 7 permit issued in this or any other state that authorizes the
 8 licensee or permittee to receive, purchase, possess, carry or
 9 transport a firearm or concealed weapon;

10 ~~(5)~~ (6) To protect against a clear and substantial danger of
 11 imminent injury by a patient or client to himself, herself or
 12 another;

13 ~~(6)~~ (7) For treatment or internal review purposes, to staff of
 14 the mental health facility where the patient is being cared for or
 15 to other health professionals involved in treatment of the patient;
 16 ~~and or~~

17 ~~(7)~~ (8) Without the patient's consent as provided ~~for~~ under the
 18 Privacy Rule of the federal Health Insurance Portability and
 19 Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from
 20 the date of admission to a mental health facility, if:

21 ~~(i)~~ (A) The provider makes a good faith effort to obtain
 22 consent from the patient or the patient's legal representative prior
 23 to disclosure;

24 ~~(ii)~~ (B) The minimum information necessary is released for a

1 specifically stated purpose; and

2 ~~(iii)~~ (C) Prompt notice of the disclosure, the recipient of the
3 information and the purpose of the disclosure is given to the
4 patient or the patient's legal representative.

5 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

6 **§27-5-6. Determination of eligibility to lawfully possess firearms**
7 **in certain proceedings.**

8 (a) The court or mental hygiene commissioner shall, upon
9 issuing any order described in subsection (b) of this section, enter
10 findings of fact and conclusions of law as to whether the order
11 causes the person named in the order to become prohibited from
12 possessing firearms or ammunition by 18 U.S.C. §922(g)(4) or
13 subdivision (4), subsection (a), section seven, article seven,
14 chapter sixty-one of this code. Before the court or mental hygiene
15 commissioner issues its findings of fact and conclusions of law
16 under this section, it shall permit the parties to the proceeding to
17 present evidence, arguments and proposed findings of fact and
18 conclusions of law and may hold a separate hearing on the issue.

19 (b) This section applies to:

20 (1) A final commitment order entered pursuant to section four
21 of this article;

22 (2) An order of incompetence to stand trial entered pursuant to
23 section three, article six-a of this chapter;

24 (3) Acquittal in a criminal case by reason of mental illness as

1 provided in section four, article six-a of this chapter;

2 (4) Adjudication as a mentally incompetent ward subject to
3 article fifteen, chapter forty-four of this code;

4 (5) A final order of guardianship or conservatorship entered by
5 a circuit court pursuant to section thirteen, article two, chapter
6 forty-four-a of this code; or

7 (6) Any determination that a person, as a result of an
8 intellectual disability or mental illness, incompetency, condition
9 or disease:

10 (A) Is a danger to himself or to others; or

11 (B) Lacks the mental capacity to contract or manage his or her
12 own affairs.

13 (c) If the court or mental hygiene commissioner finds that the
14 order described in subsection (b) of this section causes the person
15 named in the order to become prohibited from possessing firearms or
16 ammunition by 18 U.S.C. §922(g)(4) or subdivision (4), subsection
17 (a), section seven, article seven, chapter sixty-one of this code,
18 the court or mental hygiene commissioner shall:

19 (1) Enter an order containing its findings of fact and
20 conclusions of law;

21 (2) Notify the person orally and in writing that, as a result
22 of the order, the person has become prohibited from possessing
23 firearms and ammunition by 18 U.S.C. §922(g)(4), subdivision (4),
24 subsection (a), section seven, article seven, chapter sixty-one of

1 this code or a combination thereof;

2 (3) Notify the person orally and in writing that if he or she
3 has a license to carry concealed weapons, the onset of firearm
4 disabilities under federal or state law requires the person to
5 immediately surrender the license to the issuing agency;

6 (4) Query the State Police concealed weapons license database
7 maintained pursuant to subdivision (2), subsection (1), section
8 four, article seven, chapter sixty-one of this code to determine
9 whether the person is licensed in this state to carry concealed
10 weapons and, if so, order the clerk of the court to notify the
11 sheriff of the order and the licensee's probable disqualification
12 from continued licensure immediately in electronic form and in
13 writing within five business days on a form prescribed by the
14 Attorney General;

15 (5) Determine the appropriate public or private individual or
16 entity to act as conservator for the person's firearms and
17 ammunition; and

18 (6) Order the person to immediately surrender to the
19 conservator designated pursuant to subdivision (5) of this
20 subsection, all firearms and ammunition the person owns or
21 possesses.

22 (d) The clerk of the court shall forward a certified copy of
23 any order finding a person to be prohibited from possessing firearms
24 or ammunition by 18 U.S.C. §922(g)(4) or subdivision (4), subsection

1 (a), section seven, article seven, chapter sixty-one of this code,
2 to the Superintendent of the State Police as required by article
3 seven-a, chapter sixty-one of this code.

4 (e) In this section, the terms "firearm" and "ammunition" have
5 the same meanings as in section two, article seven, chapter
6 sixty-one of this code.

7 (f) The Legislature declares that the purpose of this section
8 is to provide an efficient and uniform mechanism for providing
9 individuals subject to the proceedings described in subsection (b)
10 of this section a fair and adequate notice of the likely
11 implications of the proceedings on the person's eligibility to
12 lawfully possess firearms. A determination by any judge or mental
13 hygiene commissioner under this section that a person is prohibited
14 from possessing firearms and ammunition by 18 U.S.C. §922(g)(4),
15 subdivision (4), subsection (a), section seven, article seven,
16 chapter sixty-one of this code, or a combination thereof, may not be
17 used in any subsequent legal proceeding in which the person's
18 eligibility to lawfully possess firearms under 18 U.S.C. §922(g)(4)
19 or subdivision (4), subsection (a), section seven, article seven,
20 chapter sixty-one of this code, is at issue, to preclude any
21 legitimate argument that the findings of fact and conclusions of law
22 were incorrect and that the named person is not prohibited by
23 applicable federal or state law from possessing firearms.

24

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

1 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

2 **§30-29-11. Certification of law-enforcement officers to carry**
3 **concealed firearms under federal Law-Enforcement**
4 **Officers Safety Act of 2004.**

5 (a) Every qualified law-enforcement officer employed by a West
6 Virginia law-enforcement agency shall receive the qualification and
7 certification required to be considered a qualified law-enforcement
8 officer under 18 U.S.C. §926B to carry a concealed firearm
9 nationwide as provided therein. Each law-enforcement official shall
10 provide to each qualified law-enforcement officer under his or her
11 command the identification prescribed therein. A West Virginia
12 law-enforcement agency shall not charge any officer any fees or
13 costs for issuing the certification. This subsection shall not be
14 construed to require nor prohibit a law-enforcement agency from
15 permitting, requiring or prohibiting a law-enforcement officer to
16 carry his or her agency-owned service weapon off-duty.

17 (b) (1) Every West Virginia law-enforcement agency shall, at
18 least once annually, notify each honorably retired law-enforcement
19 officer who retired from that agency of the provisions of 18 U.S.C.
20 §926C that permit a qualified retired law-enforcement officer to
21 carry a concealed firearm nationwide. Each agency shall permit a
22 retired offer who meets the eligibility requirements of said law to
23 receive the qualification and certification required for the retired

1 officer to qualify as a qualified retired law-enforcement officer as
2 provided in 18 U.S.C. §926C. Each qualifying retired officer shall
3 be offered the required periodic recertification as provided in 18
4 U.S.C. §926C, which shall reasonably accommodate any physical
5 disability of the retired officer.

6 (2) Each retired officer who qualifies under this subsection
7 shall be issued a photo identification that shall be no larger than
8 three and three-eighths inches wide by two and one-eighth inches
9 long, shall be made of a hard, laminated material suitable for
10 carrying in a wallet, similar to a driver's license, and shall
11 contain the qualified retired law-enforcement officer's name,
12 address, signature and full-face color photograph, the signature of
13 the chief law-enforcement official of the issuing agency or a
14 facsimile thereof affixed by any person authorized to act on the
15 chief law-enforcement official's behalf pursuant to section five,
16 article two, chapter two of this code, the dates of issue and
17 expiration, the words "Qualified Retired Law-Enforcement Officer
18 under 18 U.S.C. §926C" in conspicuous type and such other
19 information as the chief law-enforcement official of the issuing
20 agency determines appropriate.

21 (3) Before issuing, renewing or reinstating any certification
22 as a qualified retired law-enforcement officer under this
23 subsection, the certifying agency shall conduct an investigation
24 which shall verify that the retired officer is not prohibited by

1 federal law or section seven, article seven, chapter sixty-one of
2 this code, from possessing or transporting firearms or carrying a
3 concealed weapon in a public place. This investigation shall conform
4 to the requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R.
5 §478.102(d)(1) or other applicable federal law for qualifying
6 certifications issued under this subsection as an alternative to the
7 National Instant Criminal Background Check System or other similar
8 required background check for a resident of this state to purchase
9 a firearm through a licensed firearms dealer within this state,
10 including a background check conducted through the National Instant
11 Criminal Background Check System and, if the retired officer is not
12 a citizen of the United States, a federal Immigration Alien Query.

13 (4) A West Virginia law-enforcement agency may not charge its
14 retired officers a fee for periodic qualification and certification
15 under this subsection. However, the person who wishes to qualify
16 shall provide, at his or her own expense, a suitable firearm and any
17 ammunition actually expended in the qualification.

18 (5) The law-enforcement official who issued a certification
19 under this subsection shall revoke any certification under this
20 subsection if the retired officer to whom the certification was
21 issued becomes prohibited by federal law or section seven, article
22 seven, chapter sixty-one of this code, from possessing or
23 transporting firearms or carrying a concealed weapon in a public
24 place. The issuing law-enforcement official shall immediately notify

1 the retired officer of the revocation in writing, delivered either
2 by personal service or certified mail, return receipt requested. The
3 person shall immediately surrender the revoked certification to the
4 issuing law-enforcement official if served in person with the notice
5 or within five business days if served by certified mail.

6 (6) Any person who has been issued a certification under this
7 subsection and becomes ineligible to continue holding the
8 certification shall immediately surrender the certification to the
9 issuing law-enforcement official regardless of whether the issuing
10 law-enforcement official discovers the disqualification and
11 initiates revocation proceedings under subdivision (5) of this
12 subsection.

13 (7) Any person who knowingly and willfully fails to surrender
14 a revoked certification, as required by subdivision (5) of this
15 subsection or knowingly and willfully fails to surrender a
16 certification the person has become ineligible to continue holding,
17 as required by subdivision (6) of this subsection, is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined not more
19 than \$1,000, confined in jail for not more than six months, or both
20 fined and confined.

21 (8) The issuing law-enforcement official shall reinstate a
22 certification under this subsection that was revoked pursuant to
23 subdivision (5) of this subsection or surrendered pursuant to
24 subdivision (6) of this subsection if the person to whom the revoked

1 or surrendered certification was issued subsequently ceases to be
2 prohibited by federal law or section seven, article seven, chapter
3 sixty-one of this code, from possessing or transporting firearms or
4 carrying a concealed weapon in a public place and fulfills all other
5 requirements to receive the certification under this subsection.

6 (c) (1) Notwithstanding any provision of this code or other law
7 of this state to the contrary, except as otherwise provided in this
8 subsection, the names, addresses and other personally-identifying
9 information of qualified retired law-enforcement officers who apply
10 for or have been issued a certificate of qualification under this
11 section or otherwise participates in a program under this section,
12 shall be confidential, are not public records and may be copied or
13 inspected only by:

14 (A) The qualified retired law-enforcement officer to whom the
15 record pertains;

16 (B) The duly qualified conservator or guardian of the qualified
17 retired law-enforcement officer to whom the record pertains;

18 (C) The duly qualified personal representative of a deceased
19 person to whom the record pertains or, if a personal representative
20 has not qualified, the next of kin of the deceased person to whom
21 the record pertains;

22 (D) An attorney, attorney-in-fact or other agent or
23 representative acting pursuant to a written power of attorney or
24 other written authorization signed by the qualified retired

1 law-enforcement officer to whom the record pertains; or

2 (E) A duly authorized representative of a law-enforcement
3 agency for any official purpose or any other agency or
4 instrumentality of federal, state or local government seeking the
5 record in the ordinary course of performing its official duties;

6 (F) By any licensed firearm dealer within this state from which
7 a qualified retired law-enforcement officer proposes purchasing a
8 firearm, for the purpose of verifying the validity of the
9 certificate; or

10 (G) (I) A person authorized by an order of any court, based
11 upon a finding of the court that the information is sufficiently
12 necessary to a proceeding before the court to substantially outweigh
13 the importance of maintaining the confidentiality established by
14 this subsection, to copy or inspect information protected by this
15 subsection.

16 (ii) Before any court may grant access to any records pursuant
17 to this paragraph, the court shall order the moving party to give
18 each affected person notice of the proceedings, the request for
19 confidential records under this paragraph and the opportunity of
20 affected persons to confidentially intervene and object to the
21 request by directing the applicable law-enforcement official to
22 print and mail by first-class mail to each affected person, the
23 costs for which the moving party shall prepay in full to the
24 law-enforcement official, and perform this notification in a manner

1 not inconsistent with the confidentiality provisions of this
2 subsection.

3 (2) Any person who knowingly misrepresents his or her identity
4 to obtain any information whose disclosure is restricted by
5 subdivision (1) of this subsection, knowingly and willfully
6 misrepresents his or her authority to obtain any information whose
7 disclosure is restricted by subdivision (1) of this subsection,
8 knowingly makes a false statement to obtain any information whose
9 disclosure is restricted by subdivision (1) of this subsection or
10 knowingly and willfully discloses any information whose disclosure
11 is restricted by subdivision (1) of this subsection in violation of
12 subdivision (1) of this subsection, is guilty of a felony and, upon
13 conviction thereof, shall be imprisoned in a state correctional
14 facility for not less than one year nor more than ten years, fined
15 not more than \$10,000, or both fined and imprisoned.

16 (3) This subsection does not prohibit disclosure or publication
17 of statistical summaries, abstracts or other records containing
18 information in an aggregate or statistical form that does not
19 disclose any personally-identifying information protected from
20 public disclosure under this subsection.

21 (4) (A) The custodian of records shall furnish to any nonprofit
22 firearm-related or hunting-related educational or issue-advocacy
23 organization exempt from federal income taxation under §501(c) of
24 the Internal Revenue Code that has not obtained records pursuant to

1 this subdivision within the immediate preceding six months, a
2 current list of the names, mailing addresses, telephone numbers,
3 e-mail addresses and county of residence if a resident of this
4 state, of all qualified retired law-enforcement officers who apply
5 for or have been issued a certificate of qualification under this
6 section, in a commonly-used electronic database format acceptable to
7 the requesting organization.

8 (B) The custodian of records shall furnish to the state
9 executive committee of any political party, as defined in section
10 eight, article one, chapter three of this code, that has not
11 obtained records pursuant to this subdivision within the immediate
12 preceding six months, a current list of the names, birthdates,
13 mailing addresses, telephone numbers, e-mail addresses and county of
14 residence of all qualified retired law-enforcement officers who
15 reside in this state and have applied for or been issued a
16 certificate of qualification under this section, in a commonly-used
17 electronic database format acceptable to the requesting committee.

18 (C) A personally-identifying information other than the
19 information described in paragraph (A) or (B) of this subdivision,
20 as applicable, may not be disclosed pursuant to this subdivision.

21 (D) Each custodian of records under this section shall create
22 and maintain an electronic database of all information described in
23 paragraphs (A) and (B) of this subdivision for the purpose of
24 promptly responding to requests for such information. A custodian of

1 records may charge any entity requesting information pursuant to
2 paragraph (A) or (B) of this subdivision, a reasonable fee, not to
3 exceed the actual marginal cost incurred in fulfilling the request,
4 which may not include any portion of overhead or other fixed costs
5 incurred in creating or maintaining the database required by this
6 paragraph.

7 (E) Before any personally-identifying information of any
8 qualified retired law-enforcement officers who apply for or have
9 been issued a certificate of qualification under this section, may
10 disclose pursuant to this subdivision, the person obtaining the
11 information shall complete and verify under oath a notarized request
12 form prescribed by the Attorney General, which shall be a public
13 record, and file the request form at the office of the custodian of
14 records in person or by certified mail, return receipt requested.
15 The custodian of records shall maintain a record of requests
16 fulfilled under this subdivision for at least five years and not
17 more than seven years. The custodian of records shall, upon request
18 of any qualified retired law-enforcement officer who has applied for
19 or been issued a certificate of qualification under this section,
20 notify the qualified retired law-enforcement officer of all
21 organizations to which the person's personally-identifying
22 information has been disclosed pursuant to this subdivision during
23 the period for which the custodian of records maintains those
24 records and provide a copy of all requests for disclosure made to

1 the custodian of records pursuant to this subdivision.

2 (d) A certification as a qualified law-enforcement officer or
3 qualified retired law-enforcement officer under this section is
4 cumulative and supplemental to any license to carry concealed
5 weapons under section four, article seven, chapter sixty-one of this
6 code or authorization under federal law or the laws of this state to
7 carry a concealed weapon without a license. This section is
8 supplemental and additional to existing rights to bear arms, and
9 nothing in this section may be construed to impair or diminish those
10 rights.

11 **CHAPTER 32. UNIFORM SECURITIES ACT.**

12 **ARTICLE 4. GENERAL PROVISIONS.**

13 **§32-4-407. Sworn investigator, investigations and subpoenas.**

14 (a) *Sworn Investigators.* --

15 (1) The commissioner may appoint special investigators to aid
16 in investigations conducted pursuant to chapter thirty-two,
17 thirty-two-a or thirty-two-b of this code.

18 (2) The commissioner, deputy commissioners and each
19 investigator, prior to entering upon the discharge of his or her
20 duties, shall take an oath before any justice of the West Virginia
21 Supreme Court of Appeals, circuit judge or magistrate which is to be
22 in the following form:

23 State of West Virginia

1 County of, to wit: I,
2, do solemnly swear that I will support the
3 Constitution of the United States, the Constitution of the State of
4 West Virginia, and I will honestly and faithfully perform the duties
5 imposed upon me under the provisions of law as a member of the
6 securities commission of West Virginia to the best of my skill and
7 judgment.

8 (Signed).....

9 Taken, subscribed and sworn to before me, this day of
10 2

11 (3) The oaths of the commissioner, deputy commissioner or
12 commissioners and investigators of the West Virginia Securities
13 Commission are to be filed and preserved in the office of the State
14 Auditor.

15 (b) *Investigations and subpoenas.* --

16 (1) The commissioner in his or her discretion: (A) May make
17 such public or private investigations within or outside of this
18 state as he or she considers necessary to determine whether any
19 person has violated or is about to violate any provision of this
20 chapter or any rule or order hereunder, or to aid in the enforcement
21 of this chapter or in the prescribing of rules and forms hereunder;
22 (B) may require or permit any person to file a statement in writing,
23 under oath or otherwise as the commissioner determines, as to all
24 the facts and circumstances concerning the matter to be

1 investigated; and (C) may publish information concerning any
2 violation of this chapter or any rule or order hereunder.

3 (2) For the purpose of any investigation or proceeding under
4 this chapter, the commissioner, deputy commissioner or
5 commissioners, if any, and special investigators appointed pursuant
6 to this section may administer oaths and affirmations, subpoena
7 witnesses, compel attendance of witnesses, take and store evidence
8 in compliance with the policies and procedures of the West Virginia
9 State Police and require the production of any books, papers,
10 correspondence, memoranda, agreements or other documents or records
11 which the commissioner finds relevant or material to the inquiry.

12 (3) In case of contumacy by, or refusal to obey a subpoena
13 issued to, any person, the circuit court of Kanawha County, upon
14 application by the commissioner, may issue to the person an order
15 requiring him or her to appear before the commissioner, or the
16 officer designated by him or her, to produce documentary evidence if
17 so ordered or to give evidence touching the matter under
18 investigation or in question. Failure to obey the order of the court
19 may be punished by the court as a contempt of court.

20 (4) No person is excused from attending and testifying or from
21 producing any document or record before the commissioner, or in
22 obedience to the subpoena of the commissioner or any officer
23 designated by him or her, or in any proceeding instituted by the
24 commissioner on the ground that the testimony or evidence

1 (documentary or otherwise) required of him or her may tend to
2 incriminate him or her or subject him or her to a penalty or
3 forfeiture; but no individual may be prosecuted or subjected to any
4 penalty or forfeiture for or on account of any transaction, matter
5 or thing concerning which he or she is compelled, after claiming his
6 or her privilege against self-incrimination to testify or produce
7 evidence (documentary or otherwise), except that the individual
8 testifying is not exempt from prosecution and punishment for perjury
9 or contempt committed in testifying.

10 (5) Civil and criminal investigations undertaken by the West
11 Virginia Securities Commission are not subject to the requirements
12 of article nine-a, chapter six of this code and chapter
13 twenty-nine-b of this code.

14 (6) Nothing in this chapter may be construed to authorize the
15 commissioner, a deputy commissioner, a special investigator
16 appointed pursuant to this section or any other employee of the
17 State Auditor, to carry ~~or use a hand gun or other firearm in the~~
18 ~~discharge of his or her duties under this article~~ concealed weapon
19 without a license.

20 (7) Nothing in this chapter ~~limits~~ may be construed to limit
21 the power of the state to punish any person for any conduct which
22 constitutes a crime.

23 **CHAPTER 33. INSURANCE.**

24 **ARTICLE 41. PRIVILEGES AND IMMUNITY.**

1 **§33-41-8. Creation of insurance fraud unit; purpose; duties;**
2 **personnel qualifications.**

3 (a) There is established the West Virginia Insurance Fraud Unit
4 within the office of the Insurance Commissioner of West Virginia.
5 The commissioner may employ full-time supervisory, legal and
6 investigative personnel for the unit, who shall be qualified by
7 training and experience in the areas of detection, investigation or
8 prosecution of fraud within and against the insurance industry to
9 perform the duties of their positions. The Director of the Fraud
10 Unit is a full-time position and shall be appointed by the
11 commissioner and serve at his or her will and pleasure. The
12 commissioner shall provide office space, equipment, supplies,
13 clerical and other staff that is necessary for the unit to carry out
14 its duties and responsibilities under this article.

15 (b) The Fraud Unit may in its discretion:

16 (1) Initiate inquiries and conduct investigations when the unit
17 has cause to believe violations of any of the following provisions
18 of this code relating to the business of insurance have been or are
19 being committed: Chapter twenty-three; chapter thirty-three; article
20 three of chapter sixty-one; and section five, article four of
21 chapter sixty-one.

22 (2) Review reports or complaints of alleged fraud related to
23 the business of insurance activities from federal, state and local
24 law-enforcement and regulatory agencies, persons engaged in the

1 business of insurance and the general public to determine whether
2 the reports require further investigation; and

3 (3) Conduct independent examinations of alleged fraudulent
4 activity related to the business of insurance and undertake
5 independent studies to determine the extent of fraudulent insurance
6 acts.

7 (c) The insurance fraud unit may:

8 (1) Employ and train personnel to achieve the purposes of this
9 article and to employ legal counsel, investigators, auditors and
10 clerical support personnel and other personnel as the commissioner
11 determines necessary from time to time to accomplish the purposes of
12 this article;

13 (2) Inspect, copy or collect records and evidence;

14 (3) Serve subpoenas issued by grand juries and trial courts in
15 criminal matters;

16 (4) Share records and evidence with federal, state or local
17 law-enforcement or regulatory agencies, and enter into interagency
18 agreements. For purposes of carrying out investigations under this
19 article, the unit shall be deemed a criminal justice agency under
20 all federal and state laws and regulations and as such shall have
21 access to any information that is available to other criminal
22 justice agencies concerning violations of the insurance laws of West
23 Virginia or related criminal laws;

24 (5) Make criminal referrals to the county prosecutors;

1 (6) Conduct investigations outside this state. If the
2 information the insurance fraud unit seeks to obtain is located
3 outside this state, the person from whom the information is sought
4 may make the information available to the insurance fraud unit to
5 examine at the place where the information is located. The insurance
6 fraud unit may designate representatives, including officials of the
7 state in which the matter is located, to inspect the information on
8 behalf of the insurance fraud unit, and the insurance fraud unit may
9 respond to similar requests from officials of other states;

10 (7) The insurance fraud unit may initiate investigations and
11 participate in the development of, and if necessary, the prosecution
12 of any health care provider, including a provider of rehabilitation
13 services, suspected of fraudulent activity related to the business
14 of insurance;

15 (8) Specific personnel, designated by the commissioner, shall
16 be permitted to operate vehicles owned or leased for the state
17 displaying Class A registration plates;

18 (9) ~~Notwithstanding any provision of this code to the contrary,~~
19 Specific personnel designated by the commissioner may carry ~~firearms~~
20 concealed weapons without a license in the course of their official
21 duties after meeting specialized qualifications established by the
22 Governor's Committee on Crime, Delinquency and Correction, which
23 shall include the successful completion of handgun training provided
24 to law-enforcement officers by the West Virginia State Police.

1 ~~Provided, That~~ However, nothing in this subsection ~~shall~~ may be
 2 construed to include any person designated by the commissioner ~~as~~
 3 within the definition of a law-enforcement officer as ~~that term is~~
 4 defined ~~by the provisions of~~ in section one, article twenty-nine,
 5 chapter thirty of this code; and

6 (10) The insurance fraud unit shall not be subject to the
 7 provisions of article nine-a, chapter six of this code and the
 8 investigations conducted by the insurance fraud unit and the
 9 materials placed in the files of the unit as a result of any such
 10 investigation are exempt from public disclosure under the provisions
 11 of chapter twenty-nine-b of this code.

12 (d) The insurance fraud unit shall perform other duties as may
 13 be assigned to it by the commissioner.

14 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP**

15 **AND CONSERVATORSHIP ACT.**

16 **ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

17 **§44A-2-6. Notice of hearing.**

18 (a) Upon the filing of the petition and evaluation report, the
 19 court shall promptly issue a notice fixing the date, hour and
 20 location for a hearing to take place within sixty days.

21 (b) The ~~alleged protected person~~ petitioner shall be personally
 22 ~~served~~ serve the alleged protected person with the notice, a copy of
 23 the petition and the evaluation report not less than fourteen days

1 before the hearing. The alleged protected person may not waive
2 notice, and a failure to properly notify the alleged protected
3 person shall be jurisdictional.

4 (c) The petitioner shall, at least fourteen days before the
5 hearing, mail a copy of the notice, together with a copy of the
6 petition, ~~shall be mailed~~ by certified mail, return receipt
7 requested, ~~by the petitioner, at least fourteen days before the~~
8 ~~hearing,~~ to all individuals seven years of age or older and to all
9 entities whose names and post office addresses appear in the
10 petition. In the case of a missing person, the petitioner shall, at
11 least fourteen days before the hearing, mail a copy of the petition
12 for the appointment of a conservator ~~shall be mailed~~ by certified
13 mail, return receipt requested, ~~by the petitioner, at least fourteen~~
14 ~~days before the hearing~~ to the last known address of the missing
15 person. The petitioner shall file a copy of certified mail return
16 receipts ~~shall be filed~~ in the office of the circuit clerk on or
17 before the date of hearing.

18 (d) The notice shall include a brief statement in large print
19 of the purpose of the proceedings, and shall inform the alleged
20 protected person of the right to appear at the hearing, the right to
21 an attorney and the right to object to the proposed appointment.
22 Additionally, the notice shall include the following statement in
23 large print:

24 **POSSIBLE CONSEQUENCES OF A COURT FINDING**

1 **THAT YOU ARE INCAPACITATED**

2 At the hearing you may lose many of your rights. A guardian may
 3 be appointed to make personal decisions for you. A conservator may
 4 be appointed to make decisions concerning your property and
 5 finances. The appointment may affect control of how you spend your
 6 money, how your property is managed and controlled, who makes your
 7 medical decisions, where you live, whether you are allowed to vote
 8 and other important rights. If the court enters a final order
 9 appointing a guardian or conservator for you, you may become
 10 prohibited by federal law and state law or both federal law and
 11 state law from possessing firearms and ammunition.

12 (e) ~~No~~ A person may not be appointed a guardian or conservator
 13 without first receiving proper notice and having the opportunity for
 14 a hearing.

15 **CHAPTER 48. DOMESTIC RELATIONS.**

16 **ARTICLE 22. ADOPTION.**

17 **§48-22-804. Prohibited conditions on adoptions--firearms and**
 18 **ammunition.**

19 (a) An agency may not:

20 (1) Make a determination that a person is unsuitable to adopt
 21 based on the lawful possession, storage or use of a firearm or
 22 ammunition by any member of the adoptive home;

23 (2) Require an adoptive parent or prospective adoptive parent

1 to disclose information relating to a person's lawful possession,
2 storage or use of a firearm or ammunition as a condition to adopt;
3 or

4 (3) Restrict the lawful possession, storage or use of a firearm
5 or ammunition as a condition for a person to adopt.

6 (b) In this section, the terms "firearm" and "ammunition" have
7 the same meanings as in section two, article seven, chapter
8 sixty-one of this code.

9 **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

10 **§48-27-403. Emergency protective orders of court; hearings; persons**
11 **present.**

12 (a) Upon the filing of a verified petition under this article,
13 the magistrate court may enter an emergency protective order as it
14 may deem necessary to protect the petitioner or minor children from
15 domestic violence and, upon good cause shown, may do so *ex parte*
16 without the necessity of bond being given by the petitioner. Clear
17 and convincing evidence of immediate and present danger of abuse to
18 the petitioner or minor children shall constitute good cause for the
19 issuance of an emergency protective order pursuant to this section.
20 If the respondent is not present at the proceeding, the petitioner
21 or the petitioner's legal representative shall certify to the court,
22 in writing, the efforts which have been made to give notice to the
23 respondent or just cause why notice should not be required. Copies

1 of medical reports or records may be admitted into evidence to the
2 same extent as though the original thereof. The custodian of such
3 records shall not be required to be present to authenticate such
4 records for any proceeding held pursuant to this subsection. ~~If the
5 magistrate court determines to enter an emergency protective order,
6 the order shall prohibit the respondent from possessing firearms.~~

7 (b) Following the proceeding, the magistrate court shall order
8 a copy of the petition to be served immediately upon the respondent,
9 together with a copy of any emergency protective order entered
10 pursuant to the proceedings, a notice of the final hearing before
11 the family court and a statement of the right of the respondent to
12 appear and participate in the final hearing, as provided in
13 subsection (d) of this section. Copies of any order entered under
14 the provisions of this section, a notice of the final hearing before
15 the family court and a statement of the right of the petitioner to
16 appear and participate in the final hearing, as provided in
17 subsection (d) of this section, shall also be delivered to the
18 petitioner. Copies of any order entered shall also be delivered to
19 any law-enforcement agency having jurisdiction to enforce the order,
20 including municipal police, the county sheriff's office and local
21 office of the State Police, within twenty-four hours of the entry of
22 the order. An emergency protective order is effective until modified
23 by order of the family court upon hearing as provided in subsection
24 (d) of this section. The order is in full force and effect in every

1 county in this state.

2 (c) Subsequent to the entry of the emergency protective order,
3 service on the respondent and the delivery to the petitioner and
4 law-enforcement officers, the court file shall be transferred to the
5 office of the clerk of the circuit court for use by the family
6 court.

7 (d) The family court shall schedule a final hearing on each
8 petition in which an emergency protective order has been entered by
9 a magistrate. The hearing shall be scheduled not later than ten days
10 following the entry of the order by the magistrate. The notice of
11 the final hearing shall be served on the respondent and delivered to
12 the petitioner, as provided in subsection (b) of this section, and
13 ~~must set forth~~ shall specify the hearing date, time and place and
14 include a statement of the right of the parties to appear and
15 participate in the final hearing. The notice ~~must~~ shall also ~~provide~~
16 contain a warning that the petitioner's failure to appear will
17 result in a dismissal of the petition and that the respondent's
18 failure to appear may result in the entry of a protective order
19 against him or her for a period of ninety or one hundred eighty
20 days, as determined by the court. The notice ~~must~~ shall also
21 include the name, mailing address, physical location and telephone
22 number of the family court having jurisdiction over the proceedings.
23 The notice to the respondent shall also include a clear and
24 conspicuous warning that, if the court issues an order, the

1 respondent may become prohibited by federal and state law from
2 possessing firearms while the order is in effect and that if he or
3 she is licensed to carry concealed weapons, the license may be
4 suspended while the order is in effect. To facilitate the
5 preparation of the notice of final hearing required by the
6 provisions of this subsection, the family court ~~must~~ shall provide
7 the magistrate court with a day and time in which final hearings may
8 be scheduled before the family court within the time required by
9 law.

10 (e) Upon final hearing the petitioner ~~must~~ shall prove, by a
11 preponderance of the evidence, the allegation of domestic violence
12 or that he or she reported or witnessed domestic violence against
13 another and has, as a result, been abused, threatened, harassed or
14 has been the subject of other actions to attempt to intimidate him
15 or her, or such petition shall be dismissed by the family court. If
16 the respondent has not been served with notice of the emergency
17 protective order, the hearing may be continued to permit service to
18 be effected. The failure to obtain service upon the respondent does
19 not constitute a basis to dismiss the petition. Copies of medical
20 reports may be admitted into evidence to the same extent as though
21 the original thereof, upon proper authentication, by the custodian
22 of such records.

23 (f) ~~No~~ A person requested by a party to be present during a
24 hearing held under the provisions of this article ~~shall~~ may not be

1precluded from being present unless ~~such~~ that person is to be a
2witness in the proceeding and a motion for sequestration has been
3made and such motion has been granted. A person found by the court
4to be disruptive may be precluded from being present.

5 (g) Upon hearing, the family court may dismiss the petition or
6enter a protective order for a period of ninety days or, in the
7discretion of the court, for a period of one hundred eighty days.
8The hearing may be continued on motion of the respondent, at the
9convenience of the court. Otherwise, the hearing may be continued by
10the court no more than seven days. If a hearing is continued, the
11family court may modify the emergency protective order as it deems
12necessary.

13 (h) Notwithstanding any other provision of this code to the
14contrary, a petition filed pursuant to this section that results in
15the issuance of an emergency protective order naming a juvenile as
16the respondent in which the petition for the emergency protective
17order is filed by or on behalf of the juvenile's parent, guardian or
18custodian or other person with whom the juvenile resides shall be
19treated as a petition authorized by section seven, article five,
20chapter forty-nine of this code, alleging the juvenile is a juvenile
21delinquent: *Provided*, That the magistrate court shall notify the
22prosecuting attorney in the county where the emergency protective
23order is issued within twenty-four hours of the issuance of the
24emergency protective order and the prosecuting attorney may file an

1 amended verified petition to comply with the provisions of
 2 subsection (a) of section seven, article five, chapter forty-nine of
 3 this code within two judicial days.

4 **§48-27-502. Mandatory provisions in protective order.**

5 (a) Every protective order shall contain the full legal name
 6 and date of birth of the respondent and a clear and conspicuous
 7 statement of the order's dates of issue and expiration. A protective
 8 order ~~must~~ shall order the respondent to refrain from abusing,
 9 harassing, stalking, threatening or otherwise intimidating the
 10 petitioner or the minor children, or engaging in other conduct that
 11 would place the petitioner or the minor children in reasonable fear
 12 of bodily injury.

13 (b) ~~The~~ Every protective order ~~must~~ shall inform the
 14 respondent: ~~that he or she is prohibited from possessing any firearm~~
 15 ~~or ammunition, notwithstanding the fact that the respondent may have~~
 16 ~~a valid license to possess a firearm, and~~

17 (1) Of the provisions of 18 U.S.C. §§922(g) and 924(a)(2) and
 18 subdivision (8), subsection (a), section seven, article seven,
 19 chapter sixty-one of this code;

20 (2) That possession of a firearm or ammunition while subject to
 21 the court's protective order is may constitute a criminal offense
 22 under federal law 18 U.S.C. §922(g)(8) and subdivision (8),
 23 subsection (a), section seven, article seven, chapter sixty-one of
 24 this code;

1 (3) That, if the protective order causes the respondent to
2 become prohibited from possessing firearms by 18 U.S.C. §922(g) (8)
3 or subdivision (8), subsection (a), section seven, article seven,
4 chapter sixty-one of this code, the respondent must immediately
5 surrender any licenses to purchase, possess, carry or transport
6 firearms or concealed weapons issued by this state or any other
7 state to the respective issuing agencies;

8 (4) That a delay or failure of an issuing agency to suspend or
9 revoke any license to purchase, possess, carry or transport firearms
10 or concealed weapons does not constitute a defense to any alleged
11 violation of 18 U.S.C. §922(g) (8) or subdivision (8), subsection
12 (a), section seven, article seven, chapter sixty-one of this code;
13 and

14 (5) That a conviction under 18 U.S.C. §922(g) (8) for unlawfully
15 possessing a firearm or ammunition while under the protective order
16 may result in the respondent being prohibited for life from
17 possessing a firearm or ammunition pursuant to 18 U.S.C. §922(g) (1),
18 notwithstanding any future expiration, revocation or other
19 termination of the protective order.

20 (c) The protective order ~~must~~ shall inform the respondent that
21 the order is in full force and effect in every county of this state.

22 (d) The protective order ~~must~~ shall contain on its face the
23 following statement, printed in bold-faced type or in capital
24 letters:

1 "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE THAT MAY BE
2 PUNISHED BY CONFINEMENT IN A REGIONAL ~~OR COUNTY~~ JAIL FOR AS LONG AS
3 ONE YEAR AND BY A FINE OF AS MUCH AS ~~TWO THOUSAND DOLLARS~~ \$4,000".

4 **§48-27-601. Filing of orders with law-enforcement agency; affidavit**
5 **as to award of possession of real property; service**
6 **of order on respondent.**

7 (a) (1) Upon entry of an order pursuant to section 27-403 or
8 part 27-501, *et seq.*, or an order entered pursuant to part 5-501, *et*
9 *seq.*, granting relief provided ~~for~~ by this article, ~~a copy of the~~
10 ~~order~~ the court or the clerk of the court shall, no later than the
11 close of the next business day, ~~be transmitted by the court or the~~
12 ~~clerk of the court~~ transmit a certified copy of the order to a local
13 office of the municipal police, the county sheriff and the West
14 Virginia State Police, where it shall be placed in a confidential
15 file, with access provided only to the law-enforcement agency and
16 the respondent named on the order.

17 (2) Every court that issues an order described in subdivision
18 (1) of this subsection shall, at the time of issuing the order,
19 enter findings of fact and conclusions of law regarding whether the
20 order results in the respondent becoming prohibited by subdivision
21 (8), subsection (a), section seven, article seven, chapter sixty-one
22 of this code or 18 U.S.C. §922(g) (8) from possessing firearms while
23 the order is in effect. The respondent shall have a reasonable

1 opportunity to be heard and to present evidence and arguments
2 against a proposed finding that the order will cause the respondent
3 to be prohibited by subdivision (8), subsection (a), section seven,
4 article seven, chapter sixty-one of this code or 18 U.S.C.
5 §922(g) (8) from possessing firearms while the order is in effect. If
6 the court finds that the order results in the respondent becoming
7 prohibited by subdivision (8), subsection (a), section seven,
8 article seven, chapter sixty-one of this code or 18 U.S.C.
9 §922(g) (8) from possessing firearms while the order is in effect,
10 the court shall immediately transmit three certified copies of the
11 order to the Superintendent of the State Police for the purposes
12 described in subdivisions (3) through (5) of this subsection.

13 (3) Upon receipt of a certified copy of an order pursuant to
14 subdivision (2) of this subsection by the superintendent of the
15 State Police, the superintendent shall:

16 (A) Transmit a certified copy of the order to the Federal
17 Bureau of Investigation or other federal agency responsible for
18 maintaining the National Instant Criminal Background Check System
19 established pursuant to Section 103(d) of the Brady Handgun Violence
20 Protection Act, Public Law 103-159, §103, 107 Stat. 1536 (1993),
21 reprinted in 18 U.S.C. §922 notes; and

22 (B) Search the state concealed weapons license database
23 maintained pursuant to section four, article seven, chapter
24 sixty-one of this code to determine whether the respondent is

1 currently licensed in this state to carry concealed weapons and, if
2 so, notify the issuing sheriff of record of the licensee's probable
3 disqualification from continued licensure and transmit a certified
4 copy of the order to that sheriff.

5 (4) Upon receipt of a certified copy of an order described in
6 paragraph (B), subdivision (3) of this subsection by a sheriff, the
7 sheriff shall determine whether the respondent is currently licensed
8 to carry concealed weapons pursuant to section four or five, article
9 seven, chapter sixty-one of this code and, if the respondent is so
10 licensed, the sheriff shall:

11 (A) If the sheriff is the issuing sheriff of record, determine,
12 in consultation with the prosecuting attorney, whether the order is
13 an order that results in the respondent becoming prohibited by
14 subdivision (8), subsection (a), section seven, article seven,
15 chapter sixty-one of this code or 18 U.S.C. §922(g)(8) from
16 possessing firearms and, if so, comply with the applicable license
17 suspension provisions of subsection (g), section four, article
18 seven, chapter sixty-one of this code; or

19 (B) If the sheriff is not the issuing sheriff of record,
20 forward a certified copy of the order to the issuing sheriff of
21 record, who shall comply with this subdivision and subdivision (5)
22 of this subsection upon receipt of a certified copy of the order.

23 (5) Before any sheriff may initiate suspension or revocation
24 proceedings against any licensee under section four or five, article

1 seven, chapter sixty-one of this code, the sheriff shall
2 independently verify that the information received by the sheriff
3 pertains to the named licensee and not another person and that the
4 information proves an actual disqualification of the named licensee
5 from continued licensure, as provided by subsection (q), section
6 four, article seven, chapter sixty-one of this code.

7 (b) A sworn affidavit may be executed by a party who has been
8 awarded exclusive possession of the residence or household, pursuant
9 to an order entered pursuant to section 27-503 and shall be
10 delivered to ~~such~~ the appropriate law-enforcement agencies
11 simultaneously with any order giving the party's consent for a
12 law-enforcement officer to enter the residence or household, without
13 a warrant, to enforce the protective order or temporary order.

14 (c) Orders shall be promptly served upon the respondent.
15 Failure to serve a protective order on the respondent does not stay
16 the effect of a valid order if the respondent has actual notice of
17 the existence and contents of the order.

18 (d) Any law-enforcement agency in this state in possession of
19 or with notice of the existence of an order issued pursuant to the
20 provisions of sections 27-403 or 27-501 of this article or the
21 provisions of section 5-509 of this chapter which is in effect or
22 has been expired for thirty days or less that receives a report that
23 a person protected by such an order has been reported to be missing
24 shall immediately follow its procedures for investigating missing

1 persons. ~~No~~ An agency or department policy delaying the beginning of
2 an investigation ~~shall~~ may not have any force or effect.

3 (e) The provisions of subsection (d) of this section shall be
4 applied where a report of a missing person is made which is
5 accompanied by a sworn affidavit that the person alleged to be
6 missing was, at the time of his or her alleged disappearance, being
7 subjected to treatment which meets the definition of domestic
8 battery or assault set forth in section twenty-eight, article two,
9 chapter sixty-one of this code.

10 **§48-27-1002. Arrest in domestic violence matters; conditions.**

11 (a) Notwithstanding any provision of this code to the contrary,
12 if a person is alleged to have committed ~~a violation of the~~
13 ~~provisions of subsection (a) or (b),~~ any offense under section
14 twenty-eight, article two, chapter sixty-one of this code, ~~against~~
15 ~~a family or household member~~ in addition to any other authority to
16 arrest granted by this code, a law-enforcement officer ~~has authority~~
17 ~~to~~ may arrest that person without ~~first obtaining~~ a warrant if:

18 (1) The law-enforcement officer has observed credible
19 corroborative evidence that an offense under section twenty-eight,
20 article two, chapter sixty-one of this code, has occurred; and
21 ~~either:~~

22 (2) (A) The law-enforcement officer has received, from the
23 victim or a witness, an oral or written allegation of facts
24 constituting a violation of section twenty-eight, article two,

1 chapter sixty-one of this code; or

2 ~~(3)~~ (B) The law-enforcement officer has observed credible
3 evidence that the accused committed the offense.

4 (b) For the purposes of this section, credible corroborative
5 evidence means evidence that is worthy of belief and corresponds to
6 the allegations of one or more elements of the offense and may
7 include, but is not limited to, the following:

8 (1) *Condition of the alleged victim.* -- One or more contusions,
9 scratches, cuts, abrasions, or swellings; missing hair; torn
10 clothing or clothing in disarray consistent with a struggle;
11 observable difficulty in breathing or breathlessness consistent with
12 the effects of choking or a body blow; observable difficulty in
13 movement consistent with the effects of a body blow or other
14 unlawful physical contact.

15 (2) *Condition of the accused.* -- Physical injury or other
16 conditions similar to those set out for the condition of the victim
17 which are consistent with the alleged offense or alleged acts of
18 self-defense by the victim.

19 (3) *Condition of the scene.* -- Damaged premises or furnishings;
20 disarray or misplaced objects consistent with the effects of a
21 struggle.

22 (4) *Other conditions.* -- Statements by the accused admitting
23 one or more elements of the offense; threats made by the accused in
24 the presence of an officer; audible evidence of a disturbance heard

1 by the dispatcher or other agent receiving the request for police
2 assistance; written statements by witnesses.

3 (c) Whenever any person is arrested pursuant to subsection (a)
4 of this section, the arrested person shall be taken before a
5 magistrate within the county in which the offense charged is alleged
6 to have been committed in a manner consistent with the provisions of
7 Rule 1 of the Administrative Rules for the Magistrate Courts of West
8 Virginia.

9 (d) If an arrest for a violation of subsection (c), section
10 twenty-eight, article two, chapter sixty-one of this code is
11 authorized pursuant to this section, that fact constitutes prima
12 facie evidence that the accused constitutes a threat or danger to
13 the victim or other family or household members for the purpose of
14 setting conditions of bail pursuant to section seventeen-c, article
15 one-c, chapter sixty-two of this code.

16 (e) Whenever any person is arrested pursuant to the provisions
17 of this article or for a violation of an order issued pursuant to
18 section five hundred nine or subsections (b) and (c) of section six
19 hundred eight, article five of this chapter, the arresting officer,
20 subject to the requirements of the Constitutions of this state and
21 of the United States:

22 (1) Shall seize all weapons that are alleged to have been
23 involved or threatened to be used in the commission of domestic
24 violence;

1 (2) May seize a weapon that is in plain view of the officer or
 2 was discovered pursuant to a consensual search, as necessary for the
 3 protection of the officer or other persons; and

4 (3) May seize all weapons that are possessed in violation of a
 5 ~~valid protective order~~ federal law or article seven, chapter
 6 sixty-one of this code.

7 **CHAPTER 49. CHILD WELFARE.**

8 **ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR**
 9 **CHILD WELFARE.**

10 **§49-2B-3. Licensure, certification, approval and registration**
 11 **requirements.**

12 (a) Any person, corporation or child welfare agency, other than
 13 a state agency, which operates a residential child care facility, a
 14 child-placing agency or a day care center shall obtain a license
 15 from the department.

16 (b) Any residential child care facility, day care center or any
 17 child-placing agency operated by the state shall obtain approval of
 18 its operations from the secretary. ~~Provided, That this requirement~~
 19 ~~does not apply to any juvenile detention facility or juvenile~~
 20 ~~correctional facility operated by or under contract with the~~
 21 ~~Division of Juvenile Services, created pursuant to section two,~~
 22 ~~article five-e of this chapter, for the secure housing or holding of~~
 23 ~~juveniles committed to its custody~~ The facilities and placing

1 agencies shall maintain the same standards of care applicable to
2 licensed facilities, centers or placing agencies of the same
3 category.

4 (c) Any family day care facility which operates in this state,
5 including family day care facilities approved by the department for
6 receipt of funding, shall obtain a statement of certification from
7 the department.

8 (d) Every family day care home which operates in this state,
9 including family day care homes approved by the department for
10 receipt of funding, shall obtain a certificate of registration from
11 the department.

12 (e) This section does not apply to:

13 (1) A kindergarten, preschool or school education program which
14 is operated by a public school or which is accredited by the state
15 Department of Education, or any other kindergarten, preschool or
16 school programs which operate with sessions not exceeding four hours
17 per day for any child;

18 (2) An individual or facility which offers occasional care of
19 children for brief periods while parents are shopping, engaging in
20 recreational activities, attending religious services or engaging in
21 other business or personal affairs;

22 (3) Summer recreation camps operated for children attending
23 sessions for periods not exceeding thirty days;

24 (4) Hospitals or other medical facilities which are primarily

1 used for temporary residential care of children for treatment,
2 convalescence or testing;

3 (5) Persons providing family day care solely for children
4 related to them; or

5 (6) Any juvenile detention facility or juvenile correctional
6 facility operated by or under contract with the Division of Juvenile
7 Services, created pursuant to section two, article five-e of this
8 chapter, for the secure housing or holding of juveniles committed to
9 its custody.

10 (f) The secretary ~~is hereby authorized to issue~~ may promulgate
11 an emergency rule relating to conducting a survey of existing
12 facilities in this state in which children reside on a temporary
13 basis in order to ascertain whether they should be subject to
14 licensing under this article or applicable licensing provisions
15 relating to behavioral health treatment providers.

16 (g) Any informal family child care home or relative family
17 child care home may voluntarily register and obtain a certificate of
18 registration from the department.

19 (h) Any child care service that is licensed or receives a
20 certificate of registration shall have a written plan for evacuation
21 in the event of fire, natural disaster or other threatening
22 situation that may pose a health or safety hazard to the children in
23 the child care service.

24 (1) The plan shall include, but not be limited to:

- 1 (A) A designated relocation site and evacuation;
- 2 (B) Procedures for notifying parents of the relocation and
3 ensuring family reunification;
- 4 (C) Procedures to address the needs of individual children
5 including children with special needs;
- 6 (D) Instructions relating to the training of staff or the
7 reassignment of staff duties, as appropriate;
- 8 (E) Coordination with local emergency management officials; and
- 9 (F) A program to ensure that appropriate staff are familiar
10 with the components of the plan.

11 (2) A child care service shall update the evacuation plan by
12 December 31, of each year. If a child care service fails to update
13 the plan, no action shall be taken against the child care service's
14 license or registration until notice is provided and the child care
15 service is given thirty days after the receipt of notice to provide
16 an updated plan.

17 (3) A child care service shall retain an updated copy of the
18 plan for evacuation and shall provide notice of the plan and
19 notification that a copy of the plan will be provided upon request
20 to any parent, custodian or guardian of each child at the time of
21 the child's enrollment in the child care service and when the plan
22 is updated.

23 (4) All child care centers and family child care facilities
24 shall provide the plan and each updated copy of the plan to the

1 Director of the Office of Emergency Services in the county where the
2 center or facility is located.

3 (I) The requirements for the licensure and operation of a
4 child-placing agency shall include compliance with the requirements
5 of section eight hundred four, article twenty-two, chapter
6 forty-eight of this code and sections sixteen and seventeen, article
7 seven, chapter sixty-one of this code.

8 **CHAPTER 50. MAGISTRATE COURTS.**

9 **ARTICLE 1. COURTS AND OFFICERS.**

10 **§50-1-14. Duties of sheriff; service of process; bailiff.**

11 (a) ~~It shall be the duty of~~ Each sheriff ~~to~~ shall execute all
12 civil and criminal process from any magistrate court which may be
13 directed to ~~such~~ the sheriff. Process shall be served in the same
14 manner as provided by law for process from circuit courts.

15 (b) Subject to the supervision of the chief justice of the
16 Supreme Court of Appeals or of the judge of the circuit court, or
17 the chief judge thereof if there is more than one judge of the
18 circuit court, ~~it shall be the duty of~~ the sheriff or his or her
19 designated deputy ~~to~~ shall serve as bailiff of a magistrate court
20 upon the request of the magistrate. ~~Such~~ This service shall also be
21 subject to such administrative rules as may be promulgated by the
22 Supreme Court of Appeals. A writ of mandamus shall lie on behalf of
23 a magistrate to enforce the provisions of this section.

24 ~~(b)~~ (c) The sheriff of any county may employ, by and with the

1 consent of the county commission, one or more persons whose sole
2 duties shall be the service of civil process and the service of
3 subpoenas and subpoenas duces tecum. ~~Any such person~~ A sheriff's
4 process server employed pursuant to this subsection shall not be
5 considered a deputy or deputy sheriff within the meaning of
6 subdivision (2), subsection (a), section two, article fourteen,
7 chapter seven of this code. ~~nor shall any such person be authorized~~
8 ~~to~~

9 (d) A sheriff's process server employed pursuant to subsection
10 (c) of this section may carry deadly concealed weapons without a
11 license in the performance of his or her official duties ~~Provided,~~
12 ~~That the sheriff may authorize an employee whose sole duties involve~~
13 ~~service of civil process to carry a firearm if the employee~~ if: (1)
14 The employee: (A) Has been previously certified as a West Virginia
15 law-enforcement officer; or (B) completes all training requirements
16 otherwise applicable to deputy sheriffs for the use and handling of
17 firearms; ~~Provided, however, That~~ (2) the sheriff ~~may authorize~~
18 ~~previously certified West Virginia law enforcement officers~~
19 authorizes the employee, in writing, to carry ~~a deadly weapon~~
20 concealed weapons without a license in the performance of the his or
21 her official duties ~~of the officers under the provisions of this~~
22 section; ~~Provided further, That these officers and employees~~
23 ~~maintain~~ (3) the employee maintains yearly weapons qualifications
24 otherwise applicable to deputy sheriffs; and are (4) the employee is

1 bonded through the office of the sheriff. This subsection may not be
2 construed to diminish the right of a sheriff's process server to
3 keep and bear arms in the same manner as he or she may lawfully do
4 so as a private citizen.

5 **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

6 **ARTICLE 18. LIMITATIONS OF ACTIONS REGARDING FIREARMS MANUFACTURE,**
7 **SALE, INSTRUCTION AND TRAINING.**

8 **§55-18-1. Legislative declarations and purpose.**

9 The Legislature hereby finds and declares:

10 (a) The lawful design, marketing, manufacture or sale of
11 firearms or ammunition to the public is not an unreasonably
12 dangerous activity and does not constitute a nuisance per se.

13 (b) To the extent the Constitution of this state and the United
14 States protect citizens' rights to keep and bear arms, the
15 Legislature finds and declares that it is within the strict
16 prerogative of its own authority, and not the authority of any
17 county or municipality, to determine whether any manufacturer,
18 dealer or seller of firearms has engaged in any act or omission that
19 would create a cognizable action for damages, injunction or
20 otherwise.

21 (c) Providing qualified immunity from civil liability for
22 qualified firearms safety instructors, certifying organizations,
23 course sponsors and course participants, is a reasonable and proper

1 means of promoting and encouraging widespread availability of and
2 participation in instruction and training in reasonable and accepted
3 firearms safety principles and techniques.

4 **§55-18-3. Firearms safety instruction; limitations on civil**
5 **liability.**

6 (a) In this section:

7 (1) "Certifying organization" means a public department, agency
8 or office with responsibility for or oversight of firearms and
9 firearms-related issues, or an established not-for-profit
10 organization with expertise and experience with firearms safety
11 issues.

12 (2) "Firearm" means any firearm, as defined in section two,
13 article seven, chapter sixty-one of this code, and any ammunition
14 and accoutrements attendant to the lawful possession and use of a
15 firearm.

16 (3) "Qualified firearms safety instructor" means the
17 instructor, assistant instructor or acting instructor of a firearms
18 education and safety course or program who has been certified by a
19 certifying organization as a trained, knowledgeable and responsible
20 adult qualified to provide firearms education and safety instruction
21 to youth or adults.

22 (4) "Reasonable and accepted firearms safety principles and
23 techniques" include, but are not limited to, treating a firearm as
24 if it is always loaded, safe handling and transport of a firearm and

1 proper use of the firearm within diverse environmental surroundings.

2 (b) (1) Except as otherwise provided by subdivision (2) of this
3 subsection, a qualified firearms safety instructor is immune from
4 liability in a civil action resulting from:

5 (A) Any death, injury, or damage that occurs during the course
6 of instruction as a result of the reasonable inherent risks of
7 firearms use; or

8 (B) Any firearms-related death, injury, or damage caused by a
9 course participant after completion of the course.

10 (2) Subdivision (1) of this subsection does not apply if:

11 (A) The acts or omissions of the qualified firearms safety
12 instructor during the course of instruction demonstrate a willful or
13 reckless disregard for reasonable and accepted firearms safety
14 principles and techniques; or

15 (B) A claim against the qualified firearms safety instructor is
16 unrelated to the conduction of the firearms safety course.

17 (c) (1) Except as otherwise provided in subdivision (2) of this
18 subsection, a certifying organization or course sponsor, including
19 an organization that permits a course to be conducted within its
20 facility, is immune from liability in a civil action resulting from:

21 (A) Any death, injury, or damage that occurs during the course
22 of instruction as a result of the reasonable inherent risks of
23 firearms use; or

24 (B) Any firearms-related death, injury, or damage caused by a

1 course participant after completion of the course.

2 (2) Subdivision (1) of this subsection does not apply if a
3 claim against the certifying organization or course sponsor
4 resulting from the actions of a participant after completion of a
5 course is unrelated to the conduction of the firearms safety course.

6 (d) (1) Except as otherwise provided by subdivision (2) of this
7 subsection, a student in a firearms safety course taught by a
8 qualified firearms safety instructor is immune from liability in a
9 civil action resulting from any death, injury, or damage that occurs
10 during the course of instruction as a result of the reasonable
11 inherent risks of firearms use.

12 (2) Subdivision (1) of this subsection does not apply if the
13 acts or omissions of the student demonstrate a willful or reckless
14 disregard for reasonable and accepted firearms safety principles and
15 techniques or a willful or reckless disregard for the directions of
16 the course instructor.

17 (e) This section shall be construed only to provide immunity
18 from liability in civil actions for individuals who engage in
19 conduct protected by this section and may not be construed to create
20 any new duty of care or cause of action.

21 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

22 **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

23 **§61-5-8. Aiding escape and other offenses relating to adults and**

1 **juveniles in custody or confinement; penalties.**

2 (a) ~~Where any adult or juvenile is lawfully detained in custody~~
3 ~~or confinement in any jail, state correctional facility, juvenile~~
4 ~~facility or juvenile detention center, if Any other person who~~
5 knowingly and willfully delivers anything into the place of custody
6 or confinement of ~~the adult or juvenile~~ any inmate with the intent
7 to aid or facilitate the ~~adult's or juvenile's~~ inmate's escape or
8 attempted escape ~~therefrom~~ from lawful custody or confinement, or if
9 ~~the other person~~ forcibly rescues or attempts to forcibly rescue an
10 ~~adult or a juvenile therefrom~~ inmate from lawful custody or
11 confinement, ~~the other person~~ is guilty of a felony and, upon
12 conviction thereof, shall be ~~confined in a state correctional~~
13 ~~facility~~ imprisoned for not less than one year nor more than ten
14 years.

15 (b) ~~Where any adult or juvenile is lawfully detained in custody~~
16 ~~or confinement in any jail, a state correctional facility or a~~
17 ~~juvenile facility or juvenile detention center, if Any other person~~
18 who, without the express authority and permission of the facility
19 supervisor, knowingly and willfully delivers any money or other
20 thing of value, any written or printed matter, any article of
21 merchandise, food or clothing, any medicine, utensil or instrument
22 of any kind to ~~the adult or juvenile~~ without the ~~express authority~~
23 ~~and permission of the supervising officer~~ and any inmate with
24 knowledge that the ~~adult or juvenile~~ inmate is lawfully detained the

1 ~~other person~~ is guilty of a misdemeanor and, upon conviction
2 thereof, shall be fined not less than \$50 nor more than \$500, and
3 confined in jail for not less than three months nor more than ~~twelve~~
4 ~~months:~~ ~~Provided,~~ That the provisions of one year, or both.
5 However, this ~~section do~~ subsection does not ~~prohibit~~ apply to an
6 attorney or ~~his or her employees from supplying~~ or any employee or
7 other agent of an attorney who supplies any written or printed
8 material to an ~~adult or juvenile~~ inmate which pertains to ~~that the~~
9 attorney's representation of the ~~adult or juvenile~~ inmate.

10 (c) (1) ~~If~~ Any person who, without the express authority and
11 permission of the facility supervisor, knowingly and willfully
12 transports any alcoholic liquor, nonintoxicating beer, poison,
13 implement of escape, dangerous material, weapon or ~~any~~ controlled
14 substance ~~as defined by chapter sixty a of this code onto~~ into the
15 ~~grounds~~ secure area of ~~any jail, state a~~ a correctional facility
16 ~~juvenile facility or juvenile detention center~~ within this state and
17 ~~is unauthorized by law to do so, or is unauthorized by the persons~~
18 ~~supervising the facility, the person~~ is guilty of a felony and, upon
19 conviction thereof, shall be fined not less than \$1,000 nor more
20 than \$5,000, or ~~confined~~ imprisoned in a state correctional facility
21 not less than ~~two years~~ one year nor more than ~~ten~~ five years, or
22 both fined or imprisoned, or, in the discretion of the court, be
23 confined in jail not more than one year and fined not more than
24 \$500. Subsection (e), section fifteen, article seven of this

1 chapter, applies to this subdivision only when the proscribed
2 contraband is a weapon and the defendant is licensed to carry
3 concealed weapons pursuant to section four or five, article seven of
4 this chapter, or authorized to carry a concealed weapon without a
5 license pursuant to subsection (d), section three, article seven of
6 this chapter.

7 (2) ~~If Any person who, without the express authority and~~
8 ~~permission of the facility supervisor, knowingly and willfully and~~
9 ~~knowingly transports or causes to be transported any~~
10 ~~telecommunications device into or upon any portion of any jail,~~
11 ~~state the secure area of a correctional facility, juvenile facility~~
12 ~~or juvenile detention center within this state that is not generally~~
13 ~~open and accessible to members of the public without prior approval~~
14 ~~from the Warden/Administrator or designee, and such person is~~
15 ~~unauthorized by law to do so, or is unauthorized by the persons~~
16 ~~supervising the facility after having been given notice in the form~~
17 ~~required by paragraph (C), subdivision (3) of this subsection, that~~
18 ~~the act is unlawful, the person is guilty of a misdemeanor and, upon~~
19 ~~conviction thereof, shall be fined not less than \$100 nor more than~~
20 ~~\$500, or confined in jail not more than one year, or both fined and~~
21 ~~confined.~~

22 (3) The facility supervisor of each correctional facility
23 within this state shall:

24 (A) Establish at the primary public entrance to the secure area

1 of a correctional facility, a secure weapon storage area, as defined
2 in section two, article seven of this chapter;

3 (B) Permit visitors to the secure area of the correctional
4 facility to use the secure weapon storage area designated pursuant
5 to paragraph (A) of this subdivision for the storage of weapons and
6 telecommunications devices while the visitor is in the secure area
7 of a correctional facility; and

8 (C) Cause to be posted at all entrances to the secure area of
9 a correctional facility signs conforming to the requirements of
10 section fifteen, article seven of this chapter, which shall include
11 a notice of the provisions of subdivisions (1) and (2) of this
12 subsection and the availability of the secure weapon storage area
13 for the storage of weapons and telecommunications devices pursuant
14 to paragraphs (A) and (B) of this subdivision.

15 (d) If Any person who, without the express authority and
16 permission of the facility supervisor, knowingly and willfully
17 delivers any alcoholic liquor, nonintoxicating beer, poison,
18 implement of escape, dangerous material, weapon or any controlled
19 substance as defined by chapter sixty-a of this code to an adult or
20 juvenile in custody or confinement in any jail, state correctional
21 facility, juvenile facility or juvenile detention center within this
22 state and is unauthorized by law to do so, or is unauthorized by the
23 persons supervising the facility, the person inmate is guilty of a
24 felony and, upon conviction thereof, shall be fined not less than

1 \$1,000 nor more than \$5,000, or ~~confined~~ imprisoned in a state
 2 correctional facility not less than ~~one year~~ two years nor more than
 3 ~~five~~ ten years, or both fined and imprisoned. Section fifteen,
 4 article seven of this chapter, does not apply to this subsection.

5 (e) ~~Whoever~~ Any person who knowingly and willfully purchases,
 6 accepts as a gift, or secures by barter, trade or in any other
 7 manner, any article or articles manufactured at or belonging to any
 8 ~~jail, state correctional facility juvenile facility or juvenile~~
 9 ~~detention center~~ from any ~~adult or juvenile~~ inmate detained therein
 10 in the correctional facility is guilty of a misdemeanor and, upon
 11 conviction thereof, shall be fined not less than \$50 nor more than
 12 \$500, ~~and~~ confined in jail not less than three months nor more than
 13 ~~twelve months: Provided, That the provisions of~~ one year, or both
 14 fined and confined. However, this subsection ~~do~~ does not apply to
 15 articles specially manufactured in any correctional facility under
 16 the authorization of the ~~persons supervising the facility~~ supervisor
 17 and which are offered for sale within or outside ~~of~~ the correctional
 18 facility.

19 (f) ~~Whoever~~ Any person who knowingly and willfully persuades,
 20 induces or entices or attempts to persuade, induce or entice any
 21 ~~person who is in custody or confined in any jail, state correctional~~
 22 ~~facility, juvenile facility or juvenile detention center~~ inmate to
 23 escape ~~therefrom~~ from lawful custody or confinement or to engage or
 24 aid in any insubordination to the ~~persons supervising the facility~~

1 supervisor is guilty of a misdemeanor and, upon conviction thereof,
2 shall be fined not less than \$50 nor more than \$500, ~~and~~ confined in
3 jail not less than three months nor more than ~~twelve months~~ one
4 year, or both fined and confined.

5 (g) (1) An inmate ~~of a jail, state correctional facility,~~
6 ~~juvenile facility or juvenile detention center having in his or her~~
7 ~~possession~~ who, without the express authority and permission of the
8 facility supervisor, knowingly possesses any poison, implement of
9 escape, dangerous material, weapon, telecommunication device or ~~any~~
10 controlled substance ~~as defined by chapter sixty-a of this code~~ is
11 guilty of a felony and, upon conviction thereof, shall be fined not
12 less than \$1,000 nor more than \$5,000, or ~~confined~~ imprisoned in a
13 state correctional facility not less than one year nor more than
14 five years, or both fined and imprisoned, or, in the discretion of
15 the court, be confined in jail for not more than one year, ~~and~~ fined
16 not more than \$500, or both fined and imprisoned.

17 (2) An inmate ~~of a jail, state correctional facility, juvenile~~
18 ~~facility or juvenile detention center having in his or her~~
19 ~~possession~~ who, without the express authority and permission of the
20 facility supervisor, knowingly possesses any alcoholic liquor,
21 nonintoxicating beer, money or other thing of value, any written or
22 printed matter, any article of merchandise, food or clothing, any
23 medicine, utensil or instrument of any kind ~~without the express~~
24 ~~authority and permission of the supervising officer~~ is guilty of a

1 misdemeanor and, upon conviction thereof, shall be fined not less
 2 than \$50 nor more than \$500, ~~and~~ or confined in jail for not more
 3 than ~~twelve months~~ one year, or both fined and confined.

4 (3) Section fifteen, article seven of this chapter, does not
 5 apply to this subsection.

6 (h) ~~As used~~ In this section:

7 (1) "Controlled substance" has the same meaning as in chapter
 8 sixty-a of this code.

9 (2) "Correctional facility" means any local jail facility,
 10 regional jail facility, juvenile facility or correctional facility,
 11 as those terms are defined in section two, article twenty, chapter
 12 thirty-one of this code.

13 ~~(1)~~ (3) "Dangerous material" means any incendiary material or
 14 device, highly flammable or caustic liquid, explosive, bullet or
 15 other material readily capable of causing death or serious bodily
 16 injury.

17 ~~(2)~~ (4) "Delivers" means to knowingly and willfully transfer an
 18 item to an adult or juvenile who is detained in custody or
 19 confinement in any jail, correctional facility, juvenile facility or
 20 juvenile detention center, or a building appurtenant to those
 21 places. The term includes bringing inmate, to knowingly and
 22 willfully bring the item into a jail, correctional facility juvenile
 23 facility or juvenile detention center or a building appurtenant to
 24 those places. The term includes putting the correctional facility

1 with the specific intent of effecting a transfer of that item to an
2 inmate or to knowingly and willfully put an item in a place where it
3 may be obtained by an inmate with the specific intent of effecting
4 a transfer of that item to an inmate.

5 (5) "Facility supervisor" means the warden, administrator or
6 other person in charge of a correctional facility.

7 ~~(3)~~ (6) "Inmate" means an adult or juvenile who is detained in
8 custody or confinement in any ~~jail,~~ correctional facility ~~juvenile~~
9 ~~facility or juvenile detention center,~~ regardless of whether the
10 individual is temporarily absent due to medical treatment,
11 transportation, court appearance or other reason for a temporary
12 absence.

13 ~~(4)~~ (7) "Implement of escape" means a tool, implement, device,
14 equipment or other item which an inmate is not authorized to
15 possess, capable of facilitating, aiding or concealing an escape or
16 attempted escape by an inmate.

17 (8) "Secure area of a correctional facility" means the portions
18 of a correctional facility designated by the facility supervisor as
19 the portions of the correctional facility that house inmates, into
20 which inmates are permitted access as part of the ordinary course of
21 operation of the facility or into which introduction of any of the
22 articles described in subsection (c) of this section would be
23 reasonably expected to threaten the safety or security of inmates,
24 staff or visitors to the facility or the maintenance of general

1 discipline and order within the inmate population. However, this
 2 term does not include the portions of the grounds of a correctional
 3 facility constituting motor vehicle parking lots or ways of travel
 4 that are outside the areas into which inmates are ordinarily
 5 confined and which are accessible to members of the public without
 6 prior approval from the facility supervisor.

7 ~~(5)~~ (9) "Telecommunication device" means any type of
 8 instrument, device, machine or equipment which is capable of
 9 transmitting telephonic, electronic, digital, cellular or radio
 10 communications or any part of an instrument, device, machine or
 11 equipment which is capable of facilitating the transmission of
 12 telephonic, electronic, digital, cellular or radio communications
 13 regardless of whether the part itself is able to transmit, ~~The term~~
 14 and includes, but is not limited to, cellular phones, digital phones
 15 and modem equipment devices.

16 ~~(6)~~ (10) "Weapon" means ~~an~~ any implement readily capable of
 17 lethal use and includes:

18 (A) Any firearm deadly weapon as defined in section two,
 19 article seven of this chapter;

20 (B) Any knife, dagger, razor, other cutting or stabbing
 21 implement or club; ~~The term includes~~

22 (C) Any item which has been modified or adapted so that it can
 23 be used as a ~~firearm, knife, dagger, razor, other cutting or~~
 24 stabbing implement or club. ~~For purposes of this definition, the~~

1 ~~term "firearm" includes an unloaded firearm~~ weapon; or

2 (D) The unassembled components of ~~a~~ any firearm or other
3 weapon.

4 **ARTICLE 6. CRIMES AGAINST THE PEACE.**

5 **§61-6-1a. Control of riots and unlawful assemblages.**

6 (a) ~~Members of the department of public safety~~ State Police,
7 sheriffs and mayors, and those acting under their order, may, when
8 engaged in suppressing a riot, rout or unlawful assemblage, cordon
9 off any area or areas threatened by such riot, rout or unlawful
10 assemblage, and may take all actions which are necessary and
11 reasonable under the emergency to restore law and order, and such
12 actions may be, but are not limited to, the following:

13 ~~(a)~~ (1) Prohibit the sale, offering for sale, dispensing,
14 furnishing or transportation of ~~firearms or other dangerous weapons,~~
15 ~~ammunition,~~ dynamite or other dangerous explosives in, to or from
16 such areas.

17 ~~(b)~~ (2) Prohibit the sale, offering for sale, dispensing,
18 furnishing or consumption of alcoholic beverages or nonintoxicating
19 beer in a public place in such areas, and prohibit the
20 transportation of alcoholic beverages or nonintoxicating beer in, to
21 or from such areas.

22 ~~(c)~~ (3) Impose curfews, as required, to control movement of
23 persons in, to and from such areas.

24 ~~(d)~~ (4) Enter a private dwelling or other building or other

1 private place in such areas when in fresh pursuit of a rioter, when
 2 in search of a sniper who has fired upon a person from such a
 3 dwelling or other building or place or when in search of ~~firearms,~~
 4 ~~other dangerous weapons, ammunition,~~ dynamite or other dangerous
 5 explosives when there is reason to believe that such items are
 6 stored in the ~~said~~ dwelling, building or place and that they will be
 7 removed therefrom before a search warrant could be obtained.

8 ~~No person shall wilfully fail~~ (b) Any person who willfully
 9 fails to obey a lawful order of any mayor, sheriff, deputy sheriff,
 10 municipal police officer, member of the ~~department of public safety~~
 11 State Police, or other officer, given pursuant to subsection (a) of
 12 this section, ~~Any person who violates an order given pursuant to the~~
 13 ~~authority of this section shall be~~ is guilty of a misdemeanor and,
 14 upon conviction thereof, shall be fined not more than \$500, ~~or~~
 15 ~~imprisoned~~ confined in the county jail for not more than six months,
 16 or both. ~~fined and imprisoned~~

17 (c) Notwithstanding any provision of this section to the
 18 contrary, this section does not authorize any prohibition or
 19 impairment of the otherwise lawful possession, carrying,
 20 transportation or storage of privately owned firearms or ammunition
 21 or the suspension of otherwise lawful firearm sales or transfers or
 22 any other lawful firearms-related activity conducted by any person
 23 possessing a federal firearms license.

24 **§61-6-19. Willful disruption of governmental processes; offenses**

1 **occurring at state capitol complex; penalties.**

2 (a) ~~If any~~ No person may willfully ~~interrupts~~ interrupt or
 3 ~~molests~~ molest the orderly and peaceful process of any department,
 4 division, agency or branch of state government or of its political
 5 subdivisions. ~~he or she is guilty of a misdemeanor and, upon~~
 6 ~~conviction thereof, shall be fined not more than one hundred~~
 7 ~~dollars, or imprisoned in the county or regional jail not more than~~
 8 ~~six months, or both fined and imprisoned~~ *Provided, That* However, any
 9 assembly in a peaceable, lawful and orderly manner for a redress of
 10 grievances ~~shall~~ is not ~~be~~ a violation of this ~~section~~ subsection.

11 (b) ~~It is unlawful for any person to bring upon the State~~
 12 ~~Capitol complex any weapon, as defined by the provisions of section~~
 13 ~~two, article seven of this chapter. It is unlawful for any~~ No person
 14 ~~to~~ may willfully deface any trees, wall, floor, stairs, ceiling,
 15 column, statue, monument, structure, surface, artwork or adornment
 16 in the state capitol complex. ~~It is unlawful for any~~

17 (c) A person ~~or persons to~~ may not knowingly and willfully
 18 block or otherwise knowingly and willfully obstruct any public
 19 access, stair or elevator in the state capitol complex after being
 20 asked by a law-enforcement officer acting in his or her official
 21 capacity to desist. ~~Provided, That in order to preserve the~~
 22 ~~Constitutional right of the people to assemble, it is not willful~~
 23 ~~blocking or willful obstruction for~~ This subsection does not apply
 24 to persons gathered in a group or crowd, if the persons move to the

1 side or part to allow other persons to pass by the group or crowd to
 2 gain ingress or egress. ~~Provided, however, That this subsection~~
 3 ~~shall not apply to a law enforcement officer acting in his or her~~
 4 ~~official capacity~~

5 (d) Any person who violates any provision of this ~~subsection~~
 6 section is guilty of a misdemeanor and, upon conviction thereof,
 7 shall be fined not ~~less than one hundred dollars~~ more than \$1,000,
 8 ~~or confined in the county or regional jail~~ for not more than six
 9 months, or both fined and confined.

10 **ARTICLE 7. DANGEROUS WEAPONS.**

11 **§61-7-1. Legislative findings and intent.**

12 The Legislature finds and declares that: ~~the overwhelming~~
 13 ~~support of the citizens of West Virginia for~~

14 (1) The Second Amendment of the Constitution of the United
 15 States, as incorporated against the states by the Due Process Clause
 16 of the Fourteenth Amendment of the Constitution of the United
 17 States, and article three, section twenty-two of the Constitution of
 18 this state, commonly known as the "Right to Keep and Bear Arms
 19 Amendment", combined with the obligation of the state to reasonably
 20 regulate protect as a fundamental individual right, the right of
 21 persons an individual to keep and bear arms for self-defense
 22 requires the reenactment defense of this article self, family, home
 23 and state, and for lawful hunting and recreational use.

24 (2) In Syllabus Point 4, State ex rel. City of Princeton v.

1 Buckner, 377 S.E.2d 139, 180 W. Va. 457 (1988), the Supreme Court of
2 Appeals held that "the West Virginia Legislature may, through the
3 valid exercise of its police power, reasonably regulate the right of
4 a person to keep and bear arms in order to promote the health,
5 safety and welfare of all citizens of this state, provided that the
6 restrictions or regulations imposed do not frustrate the
7 Constitutional freedoms guaranteed by article III, §22 of the West
8 Virginia Constitution, known as the 'Right to Keep and Bear Arms
9 Amendment.'"

10 (3) In Buckner, the Supreme Court of Appeals held
11 unconstitutional a former enactment of this article that generally
12 prohibited the carrying of any deadly weapon openly or concealed
13 without a state license, as an overly broad restriction of the
14 individual's right to keep and bear arms.

15 (4) In response to Buckner, the Legislature revised this
16 article to eliminate the requirement of a state license to openly
17 carry weapons and established a uniform, nondiscretionary system for
18 licensing qualified individuals to carry concealed weapons.

19 (5) Requiring a state license to carry a concealed weapon and
20 providing for a uniform, nondiscretionary system for issuing
21 licenses to carry concealed weapons is a valid exercise of the
22 state's police power that does not violate an individual's right to
23 keep and bear arms.

24 (6) Since the Legislature revised this article in response to

1 Buckner, the overwhelming majority of other states have adopted laws
2 of varying similarity to section four of this article that permit
3 individuals who meet specified, objective licensing criteria to be
4 licensed to carry concealed weapons or certain types of concealed
5 weapons, predominately handguns only, without subjective licensing
6 standards that empower an issuing agency to determine whether an
7 applicant has a "need" or "good cause" for a license to carry
8 concealed weapons.

9 (7) The overwhelming majority of other right-to-carry states
10 have established recognition or reciprocity laws of varying natures
11 that provide procedures for either unilaterally recognizing licenses
12 to carry concealed weapons issued by other states, either with or
13 without further qualifications pertaining to the other state's
14 licensing requirements.

15 (8) The principal qualification for receiving reciprocity from
16 another right-to-carry state is the willingness of a state to honor
17 the licenses to carry concealed weapons issued by the other state.

18 (9) The licensing laws of every right-to-carry state have
19 unique features to the individual state to which the licensing laws
20 of some, many or all other right-to-carry states may fail to
21 conform.

22 (10) Many states that have previously included elements in
23 their reciprocity statutes requiring other states to meet specified
24 licensing standards or meet a statutorily undefined standard of

1 having substantially similar licensing requirements have found these
2 provisions to be unworkable and have repealed them.

3 (11) Licensees under section four of this article should enjoy
4 maximum reciprocity with other states to enable them to exercise
5 their right to provide for their self-defense when visiting other
6 states.

7 (12) Nonresidents who have a license to carry concealed
8 weapons, whether issued by the nonresident's state of residence or
9 another state, should be able to have the same ability to provide
10 for their self-defense while visiting West Virginia as West Virginia
11 licensees.

12 (13) Under the Brady Handgun Violence Prevention Act, Public
13 Law 103-159, 18 U.S.C. §922(t), licensed firearm dealers are
14 generally required to perform a background check on each purchaser
15 or transferee of a firearm through the National Instant Criminal
16 Background Check System prior to completing the transfer.

17 (14) Although most National Instant Criminal Background Check
18 System background checks are completed and approved within a few
19 minutes, National Instant Criminal Background Check System computer
20 breakdowns and mistakes of identity frequently delay lawful firearm
21 purchases and impede the exercise of the right to keep and bear arms
22 by law-abiding gun owners.

23 (15) Under 18 U.S.C. §922(t) (3) (A), one of the exceptions to
24 the requirement for a National Instant Criminal Background Check

1 System background check on a prospective firearm purchaser is "a
2 firearm transfer between a licensee and another person if: (I) Such
3 other person has presented to the licensee a permit that: (I) Allows
4 such other person to possess or acquire a firearm; and (II) was
5 issued not more than five years earlier by the state in which the
6 transfer is to take place; and (ii) the law of the state provides
7 that such a permit is to be issued only after an authorized
8 government official has verified that the information available to
9 such official does not indicate that possession of a firearm by such
10 other person would be in violation of law."

11 (16) Many right-to-carry states have adopted licensing statutes
12 whose background check requirements satisfy the requirements of 18
13 U.S.C. §922(t)(3)(A) and the regulations promulgated thereunder and
14 thus have qualified those states' licensees to acquire firearms
15 through licensed firearm dealers within those states without
16 undergoing a redundant background check at the time of acquiring a
17 firearm and often encountering database errors or delays that
18 unnecessarily impede the lawful acquisition of a firearm by a person
19 who has passed the generally more extensive background checks
20 required for a license to carry concealed weapons.

21 (17) West Virginia licensees should enjoy the same ability to
22 lawfully purchase firearms from licensed firearm dealers within this
23 state without the unnecessary risk of delays arising from the need
24 to complete a redundant background check that can be satisfied

1 through the background check process for a license to carry
2 concealed weapons. Therefore, the Legislature intends that licenses
3 issued under section four of this article, other than licenses
4 extended pursuant to subdivision (2), subsection (g) of that
5 section, be designated as a qualifying alternative pursuant to 18
6 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1) and other applicable
7 federal laws.

8 (18) A NICS-exempt license to carry concealed weapons does not
9 exempt a licensed firearm dealer from the requirement of 18 U.S.C.
10 §923(g)(3) to report multiple handgun transfers to one person within
11 a five business day period to state and local law enforcement.

12 (19) The former enactment of section four of this article as it
13 existed prior to the effective date of the amendments to that
14 section enacted during the 2011 Regular Session of the Legislature:

15 (A) Provided for the issuing of licenses to carry concealed
16 pistols and revolvers to residents of this state who met specified,
17 objective licensing standards; and

18 (B) Contained many deficiencies in its provisions governing
19 licensing standards and procedures that:

20 (I) Provided inadequate guidance to sheriffs, applicants and
21 licensees on many licensing issues;

22 (ii) Impeded efforts by the Attorney General to establish
23 reciprocity with other states under former section six-a of this
24 article, as it existed prior to its repeal the effective date of the

1 amendments to section four of this article enacted during the 2011
2 Regular Session of the Legislature; and

3 (iii) Would continue to stand as an impediment to several
4 states recognizing licenses issued under section four of this
5 article unless corrected, notwithstanding the enactment of
6 subdivision (1), subsection (d), section three of this article.

7 (20) The combined deficiencies in the former enactment of
8 section four of this article as it existed prior to the effective
9 date of the amendments to that section enacted during the 2011
10 Regular Session of the Legislature resulted in licensees not
11 receiving many of the legal rights, benefits, privileges and
12 immunities to which licensees under the licensing laws of many other
13 states enjoyed, including broad-based reciprocity with other states
14 and a federal firearm purchase background check exemption under 18
15 U.S.C. §922 (t) (3) (A) .

16 (21) The overwhelming majority of right-to-carry states have
17 closed public access to information concerning applicants and
18 licensees because:

19 (A) Access to information concerning individual applicants and
20 licensees has been used by criminals to facilitate thefts of
21 firearms and to locate intended victims such as current or former
22 judges, corrections officers, law-enforcement officers, adverse
23 witnesses in judicial proceedings, victims of domestic violence and
24 family members of these individuals;

1 (B) Although the former enactment of section four of this
2 article contained some deficiencies, incidents of disqualified
3 individuals receiving licenses to carry concealed weapons in both
4 this state and other states that have similar, nondiscretionary
5 licensing systems are rare;

6 (C) Sufficient public scrutiny of licensing systems can be
7 achieved through comprehensive statistical reporting; and

8 (D) Although the Right to Keep and Bear Arms Amendment does not
9 provide an individual right to carry a concealed weapon without a
10 license, an individual's right to self-defense and effective access
11 to the means of self-defense substantially outweigh all public
12 policy arguments for maintaining public access to records
13 identifying individual applicants for or current or former holders
14 of licenses to carry concealed weapons.

15 (22) As a matter of public policy, it is necessary to provide
16 statewide uniform standards for issuing licenses to carry concealed
17 weapons and to fully occupy and preempt the entire field of
18 regulation of the carrying of concealed weapons to ensure that no
19 person who qualifies under the provisions of section four of this
20 article is denied his or her rights.

21 (23) Section five of this article is enacted to establish a
22 system of temporary emergency licenses to carry concealed weapons
23 pending completion of the required demonstration of competence with
24 a handgun under subsection (d), section four of this article, and

1 the full performance of all required background checks under
2 subsection (b), section four of this article, otherwise required to
3 obtain a license to carry concealed weapons, to provide an adequate
4 means of protection to victims of domestic violence and other
5 serious crimes, witnesses who cooperate with law-enforcement and
6 face the danger of immediate retaliation and other qualified
7 individuals who develop a sudden and emergent need to carry a
8 concealed weapon for personal protection.

9 (24) In *District of Columbia v. Heller*, 554 U.S. ____ (2008),
10 the Supreme Court of the United States held that the Second
11 Amendment of the Constitution of the United States secures, as the
12 right of an individual, the right to keep and bear arms for
13 self-defense.

14 (25) In *McDonald v. Chicago*, 561 U.S. ____ (2010), the Supreme
15 Court of the United States held that the Second Amendment of the
16 Constitution of the United States is incorporated against the states
17 under the Fourteenth Amendment of the Constitution of the United
18 States.

19 (26) In both *Heller* and *McDonald*, the Supreme Court of the
20 United States affirmed that an individual's right to keep and bear
21 arms for self-defense is "deeply rooted in this Nation's history and
22 tradition" and that the Second Amendment applies to handguns because
23 they are "the most preferred firearm in the nation to 'keep' and use
24 for protection of one's home and family." However, the Second

1 Amendment's protections are not limited to handguns or even firearms
2 generally.

3 (27) The *Heller* and *McDonald* decisions mark a beginning, rather
4 than an end, of litigation and legislation that will develop and
5 refine the body of Constitutional law on the full scope, nature, and
6 limits of the Second Amendment's protection of an individual's right
7 to keep and bear arms.

8 (28) An individual's right to keep and bear arms is as
9 fundamental to our nation's system of ordered liberty and as deeply
10 rooted in this nation's history and tradition as other fundamental,
11 individual rights enumerated under the Constitution of the United
12 States, e.g., freedom of speech, freedom of religion, freedom of the
13 press, and freedom of assembly, as protected by the First Amendment
14 of the Constitution of the United States.

15 (29) A consistent, principled application of the extensive body
16 of Constitutional law regarding the protection of fundamental
17 individual rights, particularly those, such as the right to keep and
18 bear arms under the Second Amendment, that are specifically
19 enumerated in the Constitution, requires that all federal, state,
20 and local government policies that implicate an individual's right
21 to keep and bear arms be subjected to strict judicial scrutiny with
22 a presumption of unconstitutionality unless the government can
23 demonstrate that the challenged policy is Constitutional by showing
24 that the policy is necessary to achieve a compelling state interest

1 and that the challenged policy is narrowly-tailored to achieve the
2 intended result and does so by the least restrictive means possible.

3 (30) Almost all regulations of firearms and firearm-related
4 activities can be argued as necessary on some level to protect the
5 public against both criminal and noncriminal, but nevertheless
6 reckless, negligent, or accidental, deaths and injuries. However, as
7 a necessary part of strict scrutiny, the burden must rest with the
8 government to show substantial scientific proof that the challenged
9 policy is actually necessary to achieve the purported compelling
10 state interest.

11 (31) The protection accorded to an individual's right to keep
12 and bear arms under the Second Amendment of the Constitution of the
13 United States, as incorporated against the states by the Due Process
14 Clause of the Fourteenth Amendment of the Constitution of the United
15 States, and Article III, §22 of the Constitution of this state, like
16 the protection accorded to other fundamental individual rights,
17 represents a minimal standard of protection. It does not preclude
18 the Legislature from enacting laws less restrictive than the most
19 restrictive laws that would survive judicial scrutiny.

20 (32) Some public buildings in this state may be subject to
21 special security concerns that may necessitate a prohibition on the
22 possession of weapons in all or parts of a particular public
23 building. However, any concerns about purportedly sensitive
24 locations must balance the applicable security concerns with respect

1 for an individual's right to keep and bear arms for self-defense and
2 the overarching need to protect the safety of all persons within
3 particularly sensitive areas. A mere prohibition on the possession
4 of weapons, without adequate security measures to effectively
5 enforce such prohibition guarantee the safety of the alleged
6 sensitive area, not only creates a false sense of security for the
7 alleged protected persons while actually increasing their exposure
8 to violent crime by signaling to potential criminals that potential
9 victims within a particular area are unarmed and unable to
10 effectively defend themselves, but also would not meet strict
11 judicial scrutiny in light of its empirical ineffectiveness. To
12 effectively balance legitimate public building security concerns
13 with an individual's right to keep and bear arms and to genuinely
14 protect the security of truly sensitive areas of public buildings,
15 the Legislature specifies in section eleven-c of this article,
16 detailed requirements for establishing secure restricted access
17 areas in public buildings into which the possession or conveyance of
18 deadly weapons may be prohibited, that balances the competing
19 interests involved in regulating weapons in public buildings, which
20 shall be the sole and exclusive procedure for establishing
21 location-specific prohibitions on possessing or conveying weapons
22 into public buildings and other public property, except where the
23 Legislature has provided otherwise by section eight, article five of
24 this chapter, and sections eleven-a and eleven-b of this article.

1 (33) Many court proceedings bring together antagonistic
2 litigants, witnesses and their relatives and friends and arouse and
3 agitate personal grievances and passions that tend to trigger
4 personal conflicts and altercations.

5 (34) Some criminal cases involve defendants in custody who pose
6 a flight risk, which must be mitigated by security measures designed
7 to prevent escape and include securing the court facility and other
8 areas to which the defendant in custody may have access from the
9 introduction of weapons or other implements of escape.

10 (35) The tendency of many court proceedings to produce sudden,
11 passionate outbursts and altercations requires the imposition of
12 enhanced security measures, including, but not limited to, the
13 disarming of most individuals in court proceedings and the provision
14 of armed bailiffs and security screening measures to prevent the
15 introduction of weapons into court proceedings.

16 (36) While the state has a legitimate interest in generally
17 prohibiting the possession of weapons in court proceedings, imposing
18 such prohibition throughout the entirety of any courthouse
19 unnecessarily frustrates the right of individuals who are attending
20 to business before the executive or legislative branches of
21 government, which do not conduct the same sensitive proceedings as
22 the judiciary, is unnecessary to adequately protect the security of
23 court proceedings.

24 (37) Each of the state's court facilities are housed in unique

1 courthouses of varying designs and configurations, many of which
2 have implemented enhanced security measures for either the entire
3 courthouse building or the court facilities specifically.

4 (38) Due to the unique and widely-varying designs and
5 configurations of each of the state's courthouses, the Legislature
6 finds impractical the imposition of a uniform rule governing the
7 portions of courthouses in which weapons are prohibited and in which
8 they are not.

9 (39) To address the issues identified in subdivisions (24)
10 through (38) of this section, the Legislature hereby replaces the
11 general prohibition on possessing a deadly weapon within a
12 courthouse with a narrowly-tailored prohibition limited to judges'
13 chambers and courtrooms with an option for the court or local
14 governing body to include the court facility in a more expansive
15 secure restricted access area under section eleven-c of this
16 article.

17 (40) To protect all persons entering and leaving areas in which
18 the possession or conveyance of weapons is prohibited by
19 subdivisions (1) through (4), subsection (b), section three of this
20 article, or section eleven-b or eleven-c of this article, from the
21 heightened danger of being targeted for the commission of a crime
22 because of the general knowledge that persons traveling to and from
23 a restricted area are disarmed, the Legislature directs the
24 establishment of secure weapon storage areas at each place into

1 which the possession or conveyance of weapons is prohibited by
2 subdivisions (1) through (4), subsection (b), section three of this
3 article, or section eleven-b or eleven-c of this article, to provide
4 individuals who exercise their right to keep and bear arms for
5 self-defense as a matter of ordinary course, a legal and safe means
6 of personal protection and compliance with those sections.

7 (41) A list, record or registry of legally-owned firearms,
8 concealable weapons or law-abiding owners thereof is not a law
9 enforcement tool and can become an instrument for profiling,
10 harassing or abusing law-abiding citizens based on their choice to
11 own a firearm or concealable weapon and exercise their individual
12 right to keep and bear arms. Furthermore, such a list, record or
13 registry has the potential to fall into the wrong hands and become
14 a shopping list for thieves.

15 (42) A list, record or registry of legally-owned firearms,
16 concealable weapons or law-abiding owners of firearms or concealable
17 weapons is not a tool for fighting terrorism, but rather is an
18 instrument that can be used as a means to profile innocent citizens
19 and to harass and abuse citizens based solely on their choice to own
20 firearms or concealable weapons and exercise their individual right
21 to keep and bear arms.

22 (43) Lists, records and registries of legally-owned firearms,
23 concealable weapons and law-abiding owners of firearms or
24 concealable weapons have been used in other jurisdictions both

1 domestically and internationally as the foundation for the eventual
2 prohibition and confiscation of firearms or concealable weapons or
3 certain classes of firearms or concealable weapons, in violation of
4 the natural right of free people to keep and bear arms.

5 (44) Law-abiding owners of firearms and concealable weapons
6 whose names have been illegally recorded in a list, record or
7 registry are entitled to redress.

8 (45) There is a need to provide uniform laws throughout the
9 state regulating the ownership, possession, purchase, other
10 acquisition, transport, storage, carrying, sale and other transfer
11 of concealable weapons, firearms and parts, components and
12 ammunition for firearms (including without limitation the possession
13 and carrying thereof in or on any public building or other property
14 owned, leased or controlled by any public agency), and, except as
15 specified in subsection (d), section sixteen of this article, for
16 the Legislature, to the exclusion of all other public agencies in
17 this state, to exercise exclusive occupation of and preempt the
18 field of regulation in these areas.

19 (46) It is the intent of the Legislature that disabilities
20 regarding possession of firearms under subsection (a), section seven
21 of this article, be construed as no more restrictive than 18 U.S.C.
22 §922(g) except to the extent the Legislature has, in sections two
23 and seven of this article, expressly decoupled state law from
24 federal law and established more restrictive provisions under this

1 article with respect to disregarding certain convictions of crimes
2 punishable by imprisonment for a term exceeding one year based upon
3 the restoration of civil rights.

4 (47) The purpose of establishing multiple classes of licenses
5 to carry concealed weapons under section four of this article is to
6 create an efficient and effective mechanism to maximize West
7 Virginia's reciprocity with other states while not subjecting
8 current licensees to fingerprinting or new training requirements or
9 continuing to deny adults between eighteen and twenty years of age
10 the full right to self-defense. The Legislature anticipates that
11 based upon the system of multiple classes of licenses under section
12 four of this article, other states that have more restrictive
13 reciprocity requirements will liberally construe their respective
14 laws to maximize the classes of licenses under section four of this
15 article that they will honor. The Legislature has established the
16 several classes of licenses under section four of this article with
17 the intent of qualifying Class 1 licenses for reciprocity with every
18 other state that has in effect some form of reciprocity law. The
19 Legislature intends for states that require live fire shooting
20 proficiency qualifications under their respective reciprocity laws
21 to honor Class 1 licenses and, depending on their requirements for
22 fingerprinting and minimum licensure age, Class 2 and 4 licenses.
23 The Legislature intends for states that deny reciprocity to states
24 that issue licenses to adults under 21 years of age to honor Class

1 licenses and, depending upon their respective requirements for
2 fingerprinting and live fire shooting proficiency qualifications,
3 Class 2 and 4 licenses. For these reasons, except as otherwise
4 required to comply with federal law, all licensees of all classes
5 under sections four and five of this article shall have equal
6 rights, benefits, privileges and immunities under this code.

7 (48) This legislation of the 2011 Regular Session of the
8 Legislature shall be known and may be cited as "The West Virginia
9 Gun Owners' Protection Act of 2011".

10 **§61-7-2. Definitions.**

11 In this article:

12 (1) "Aggravated felony" means any felony crime of violence,
13 felony drug offense or felony sexual offense.

14 (2) "Alien" means any person not a citizen or national of the
15 United States.

16 (3) "Ammunition" means ammunition or cartridge cases, primers,
17 bullets, or propellant powder designed for use in any firearm other
18 than an antique firearm.

19 (4) "Antique firearm" means:

20 (A) Any firearm (including any firearm with a matchlock,
21 flintlock, percussion cap, or similar type of ignition system)
22 manufactured in or before 1898; or

23 (B) Any replica of any firearm described in paragraph (A) of
24 this subdivision if such replica:

1 (I) Is not designed or redesigned for using rimfire or
2 conventional centerfire fixed ammunition; or

3 (ii) Uses rimfire or conventional centerfire fixed ammunition
4 which is no longer manufactured in the United States and which is
5 not readily available in the ordinary channels of commercial trade;
6 or

7 (C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle
8 loading pistol, which is designed to use black powder, or a black
9 powder substitute, and which cannot use fixed ammunition. For
10 purposes of this paragraph, the term "antique firearm" does not
11 include any weapon which incorporates a firearm frame or receiver,
12 any firearm which is converted into a muzzle loading weapon, or any
13 muzzle loading weapon which can be readily converted to fire fixed
14 ammunition by replacing the barrel, bolt, breechblock, or any
15 combination thereof.

16 (5) "Blackjack" means a short bludgeon consisting, at the
17 striking end, of an encased piece of lead or some other heavy
18 substance and, at the handle end, a strap or springy shaft which
19 increases the force of impact when a person or object is struck. The
20 term "blackjack" includes, but is not limited to, a billy, billy
21 club, sand club, sandbag or slapjack.

22 (6) "Ballistic knife" means any knife with a detachable blade
23 that is propelled by a spring-operated mechanism.

24 (7) "Body armor" means any personal protective body covering

1 intended to protect against gunfire, regardless of whether the
2 product is to be worn alone or is sold as a complement to another
3 product or garment.

4 (8) "Club" means an instrument that is specially designed,
5 made, or adapted for the purpose of inflicting serious bodily injury
6 or death by striking a person with the instrument, and includes, but
7 is not limited to, a blackjack, mace, metallic or false knuckles,
8 nightstick, nunchuka or tomahawk.

9 (9) "Concealable weapon" means any club, handgun, offensive
10 knife, spring stick or other deadly weapons of like kind or
11 character that can be easily concealed on the person. For the
12 purposes of sections sixteen through twenty of this article, the
13 term "concealable weapon" also includes any air gun, firearm or
14 knife not otherwise included within this definition.

15 (10) "Concealed weapon" means any deadly weapon that is hidden
16 from ordinary observation so as to prevent disclosure or recognition
17 to the extent that another person in the ordinary course of events
18 would not be placed on notice that the deadly weapon was being
19 carried. For the purposes of section three of this article and
20 subsection (c), section seven of this article, a handgun is not
21 concealed if it is carried in: (I) A manner where any portion of the
22 handgun or holster in which the handgun is carried is visible; (ii)
23 a holster that is wholly or partially visible; or (iii) a scabbard
24 or case designed for carrying one or more handguns that is wholly or

1 partially visible.

2 (11) "Contacted by a law-enforcement officer" means a lawful
3 traffic or criminal investigation, arrest or detention or an
4 investigatory stop by a law-enforcement officer that is based on
5 reasonable suspicion that an offense has been or is about to be
6 committed.

7 (12) "Controlled substance" has the same meaning as in section
8 one hundred one, article one, chapter sixty-a of this code.

9 (13) "Conviction" or "convicted," for the purposes of
10 determining whether a person is eligible to obtain or hold a license
11 to carry concealed weapons or prohibited from possessing firearms,
12 shall be determined in accordance with the law of the jurisdiction
13 in which the proceedings were held, but does not include any
14 conviction which has been expunged, set aside, vacated or for which
15 the person has been pardoned, unless the expungement or pardon
16 expressly provides that the person may not possess firearms.

17 (14) "Court facility" means the courtroom of the Supreme Court
18 of Appeals, a circuit court, a family court, a magistrate court or
19 a municipal court; the chambers of any justice, judge or magistrate;
20 those portions of a courthouse designated as witness rooms, jury
21 deliberation rooms, attorney conference rooms, prisoner holding
22 cells or law library; and offices of the court clerks or other
23 employees of the judicial department of this state; but does not
24 include any common area of ingress or egress to a courthouse that

1 provides access to any area of a courthouse not comprising a court
2 facility.

3 (15) "Courthouse" means any state or local government office
4 facility that houses a court facility.

5 (16) "Crime punishable by imprisonment for a term exceeding one
6 year" does not include:

7 (A) Any federal or state offenses pertaining to antitrust
8 violations, unfair trade practices, restraints of trade, or other
9 similar offenses relating to the regulation of business practices;

10 (B) Any state offense classified by the laws of the state in
11 which the offense was committed as a misdemeanor and, punishable by
12 a term of imprisonment of two years or less;

13 (C) Any conviction whose effect is disregarded pursuant to
14 subdivision (12) of this section;

15 (D) Any offense other than an aggravated felony for which the
16 person has had civil rights restored, unless:

17 (I) The restoration of civil rights expressly provides that the
18 person may not ship, transport, possess or receive firearms; or

19 (ii) Less than five years have elapsed since the completion of
20 any sentence, probation, parole, other supervision and payment in
21 full of all fines, court costs and restitution, whichever last
22 occurs; or

23 (E) Any aggravated felony for which the person has had civil
24 rights restored pursuant to a discretionary process in the

1 jurisdiction in which the offense was committed under which the
2 person was not entitled to restoration of civil rights as a matter
3 of right and the person received restoration of civil rights based
4 upon an individualized determination and review of the person by the
5 officer, agency, board, commission, court or other tribunal granting
6 restoration of civil rights in which the person was granted
7 restoration of civil rights as an expressly, individually-named
8 person and not as a member of any group or class of persons, unless:

9 (I) The restoration of civil rights provides that the person
10 may not ship, transport, possess, carry or receive firearms;

11 (ii) Under the laws of the jurisdiction in which the offense
12 was committed and civil rights were restored, the restoration of
13 civil rights failed to remove all legal disabilities under the laws
14 of that jurisdiction relating to shipping, transporting, possessing,
15 carrying or receiving firearms or concealed weapons that resulted
16 from the conviction;

17 (iii) Less than ten years have elapsed since the completion of
18 any sentence, probation, parole, other supervision and payment in
19 full of all fines, court costs, restitution and civil judgments
20 arising from the acts or omissions to which the conviction
21 pertained, whichever last occurs; or

22 (iv) Subsequent to the person's conviction for any prior
23 aggravated felony whose conviction is not disregarded pursuant to
24 subdivision (12) of this section, the person has been convicted of

1 any aggravated felony whose conviction is not disregarded pursuant
2 to subdivision (12) of this section.

3 (17) "Deadly weapon" means an instrument which is designed to
4 be used to produce serious bodily injury or death or is readily
5 adaptable to such use and includes, but is not limited to, firearms,
6 antique firearms and concealable weapons. For the purposes of
7 section one-a, article five, chapter eighteen-a of this code and
8 sections eleven-a through eleven-d of this article, the term "deadly
9 weapon" also includes explosive, chemical, biological and
10 radiological materials. For the purposes of section one-a, article
11 five, chapter eighteen-a of this code and section eleven-a of this
12 article, the term "deadly weapon" does not include any item or
13 material owned by the school or board of education, intended for
14 curricular use, and used by the defendant at the time of the alleged
15 offense solely for curricular purposes.

16 (18) "Drug" has the same meaning as in section one hundred one,
17 article one, chapter sixty-a of this code.

18 (19) "Family or household member" has the same meaning as in
19 section two hundred four, article twenty-seven, chapter forty-eight
20 of this code.

21 (20) "Felony crime of violence":

22 (A) Means any felony that:

23 (I) Has as an element the use, attempted use, or threatened use
24 of physical force, against another person or the presentment or use

1 of a deadly weapon, or

2 (ii) By its nature, involves a substantial risk that physical
3 force against another person may be used in the course of committing
4 the offense;

5 (B) Includes without limitation, but is not limited to, the
6 following offenses:

7 (I) Treason under section one, article one of this chapter;

8 (ii) Murder under sections one, two or three, article two of
9 this chapter;

10 (iii) Attempt to kill or injure by poison under section seven,
11 article two of this chapter;

12 (iv) Malicious wounding under subsection (a), section nine,
13 article two of this chapter;

14 (v) Assault during the commission of or attempt to commit a
15 felony under section ten, article two of this chapter;

16 (vi) Malicious assault or unlawful assault under section ten-b,
17 article two of this chapter;

18 (vii) Robbery or attempted robbery under section twelve,
19 article two of this chapter;

20 (viii) Kidnapping or holding a person hostage under section
21 fourteen-a, article two of this chapter;

22 (ix) First or second degree arson under sections one or two,
23 article three of this chapter;

24 (x) Causing injuries during an arson-related crime under

1 section seven, article three of this chapter, regardless of the
2 degree of the underlying arson offense involved;

3 (xi) Any felony under section eight, article five of this
4 chapter not involving a controlled substance;

5 (xii) A felony offense of retaliating against a juror or
6 witness for performing his or her official duties in an official
7 proceeding, in violation of section twenty-seven, article five of
8 this chapter, if such offense involved actual violence or threats of
9 violence;

10 (xiii) Any sexually violent offense as defined in article
11 twelve, chapter fifteen of this code;

12 (xiv) Any attempt or conspiracy to commit any of the offenses
13 described in subparagraphs (I) through (xiii) of this paragraph; but

14 (C) Does not include any conviction whose effect is disregarded
15 pursuant to subdivision (12) of this section.

16 (21) "Felony drug offense":

17 (A) Means any:

18 (I) Felony under sections four hundred one, four hundred six,
19 four hundred nine or four hundred eleven, article four, chapter
20 sixty-a of this code;

21 (ii) Felony involving a controlled substance under section
22 eight, article five of this chapter; or

23 (iii) Unlawful act committed in violation of federal law or the
24 law of any other state that:

1 (I) Is a felony or crime punishable by imprisonment for a term
2 exceeding one year in the jurisdiction in which the offense was
3 committed; and

4 (II) Would, if committed in this state, based upon the facts
5 determined by the trier of fact beyond a reasonable doubt in the
6 proceedings in which the conviction was had, constitute an offense
7 described in subparagraph (I) or (ii) of this paragraph; but

8 (B) Does not include any conviction whose effect is disregarded
9 pursuant to subdivision (12) of this section.

10 (22) "Felony sexual offense":

11 (A) Means any felony upon conviction of which a person is
12 required to register for any period of time as a sex offender under
13 article twelve, chapter fifteen of this code;

14 (B) Includes, but is not limited to:

15 (I) Any offense under the following provisions of this chapter
16 that, at the time the offense was committed, was punishable as a
17 felony:

18 (I) Section fourteen, article two;

19 (II) Sections six, seven or twelve, article eight of this
20 chapter; or

21 (III) Article eight-b, including the provisions of former
22 section six of said article, relating to the offense of sexual
23 assault of a spouse, which was repealed by Chapter 85, Acts of the
24 Legislature, 2000 Regular Session;

1 (IV) Article eight-c;
2 (V) Sections five or six, article eight-d;
3 (VI) Section fourteen-b, article three-c, as it relates to
4 violations of those provisions of this chapter that are listed in
5 clauses (I) through (IV) of this paragraph; or
6 (ii) Any unlawful act committed in violation of federal law or
7 the law of any other state that:
8 (I) Is a felony or crime punishable by imprisonment for a term
9 exceeding one year in the jurisdiction in which the offense was
10 committed; and
11 (II) Would, if committed in this state, based upon the facts
12 determined by the trier of fact beyond a reasonable doubt in the
13 proceedings in which the conviction was had, constitute an offense
14 described in subparagraph (I) of this paragraph; but
15 (C) Does not include any conviction whose effect is disregarded
16 pursuant to subdivision (12) of this section.
17 (23) "Firearm" means any weapon which will, is designed to or
18 may readily be converted to expel a projectile by action of an
19 explosion. However, for the purposes of section seven of this
20 article and section six, article five, chapter twenty-seven of this
21 code, the term "firearm" does not include an antique firearm. For
22 the purposes of section nine of this article, "firearm" has the same
23 meaning as in 26 U.S.C. §5845(a), as it exists as of January 1,
24 2011. For the purposes of section fourteen-a of this article, in

1 addition to the meaning otherwise given by this subdivision,
2 "firearm" also includes all ammunition and accoutrements attendant
3 to the lawful possession or use of a firearm.

4 (24) "Fugitive from justice" means any person who has fled from
5 any state to avoid prosecution for a crime or to avoid giving
6 testimony in any criminal proceeding.

7 (25) "Gravity knife" means any knife that has a blade released
8 from the handle by the force of gravity or the application of
9 centrifugal force and when so released is locked in place by means
10 of a button, spring, lever or other locking or catching device.

11 (26) "Handgun" means any firearm which has a short stock and is
12 designed to be held and fired by the use of a single hand and
13 includes any pistol or revolver.

14 (27) "Higher education institution" has the same meaning as in
15 section two, article one, chapter eighteen-b of this code.

16 (28) "Indictment" includes an indictment or information in any
17 court under which a crime punishable by imprisonment for a term
18 exceeding one year may be prosecuted.

19 (29) "Intimate partner" means, with respect to a person, the
20 spouse of the person, a former spouse of the person, an individual
21 who is a parent of a child of the person, and an individual who
22 cohabitates or has cohabited with the person.

23 (30) "Intoxication-related offense":

24 (A) Means any criminal offense:

1 (I) That includes an element that the person:
2 (I) Be under the influence of alcohol;
3 (II) Be under the influence of a controlled substance or other
4 drug;
5 (III) Be under the combined influence of alcohol, a controlled
6 substance or any other drug; or
7 (IV) Have a blood alcoholic concentration of eight hundredths
8 of one percent or more, by weight; and
9 (ii) For which the person was convicted was pursuant to one or
10 more of the elements described in clauses (I) through (IV),
11 subparagraph (I) of this paragraph; and
12 (B) Includes:
13 (I) Any offense under section two, article five, chapter
14 seventeen-c of this code other than the acts of (I) driving a
15 vehicle while under the age of 21 years with an alcohol
16 concentration in the person's blood of two hundredths of one percent
17 or more, by weight, but less than eight hundredths of one percent,
18 by weight and (II) knowingly permitting the person's vehicle to be
19 driven in violation of that section;
20 (ii) Any offense under section eighteen-b, article seven,
21 chapter twenty of this code other than the acts of (I) operating a
22 motorboat, jet ski or other motorized vessel while under the age of
23 21 years with an alcohol concentration in the person's blood of two
24 hundredths of one percent or more, by weight, but less than eight

1 hundredths of one percent, by weight and (II) knowingly permitting
2 the person's motorboat, jet ski or other motorized vessel to be
3 operated in this state in violation of that section;

4 (iii) Any offense under section eleven, article two-a, chapter
5 twenty-nine of this code other than knowingly permitting the
6 person's aircraft to be operated in this state in violation of that
7 section;

8 (iv) Public intoxication in violation of subdivision (1),
9 subsection (a), section nine, article six, chapter sixty of this
10 code; or

11 (v) Any offense under any municipal ordinance or law of any
12 other state or political subdivision thereof or of the United States
13 that has the same elements as any offense described in subparagraphs
14 (I) through (iv) of this paragraph.

15 (31) "Knife" means an instrument, intended to be used or
16 readily adaptable to be used as a weapon, consisting of a
17 sharp-edged or sharp-pointed blade, usually made of steel, attached
18 to a handle which is capable of inflicting cutting, stabbing or
19 tearing wounds. The term "knife" includes, but is not limited to,
20 any offensive knife or any other instrument capable of inflicting
21 cutting, stabbing or tearing wounds. A pocket knife with a blade
22 three and one-half inches or less in length, a hunting or fishing
23 knife carried for hunting, fishing, sports or other recreational
24 uses, or a knife designed for use as a tool or household implement

1 shall not be included within the term "knife" as defined in this
2 subdivision and shall not be considered an offensive knife,
3 concealable weapon or deadly weapon unless such knife is knowingly
4 used or intended to be used to produce serious bodily injury or
5 death.

6 (32) "Law-enforcement officer" means:

7 (A) Any law-enforcement officer or law-enforcement official, as
8 those terms are defined in section one, article twenty-nine, chapter
9 thirty of this code;

10 (B) Law-enforcement agents of the Armed Forces of the United
11 States, the Naval Criminal Investigative Service and federal agents
12 who are otherwise authorized by federal law to carry firearms in the
13 performance of their duties, including without limitation the
14 officers described in subsection (b), section five, article ten,
15 chapter fifteen of this code; or

16 (C) Any law-enforcement officer or law-enforcement official of
17 any state or other political subdivision of the United States whose
18 duties are similar to those of a law-enforcement officer or
19 law-enforcement official of this state and who is authorized to
20 carry firearms in the performance of his or her duties.

21 (33) "Licensed firearm dealer" means any person licensed as a
22 dealer under 18 U.S.C. Chapter 44 (18 U.S.C. §§921 et seq.).

23 (34) "Loaded," with respect to a firearm, means that the
24 firearm:

1 (A) Has live, unexpended ammunition in the firing position or
2 a position whereby the manual operation of any mechanism once would
3 cause live, unexpended ammunition to be fired;

4 (B) Has live, unexpended ammunition in a magazine that is
5 locked in place in the firearm;

6 (C) Has live, unexpended ammunition anywhere in the cylinder,
7 if the firearm is a revolver; or

8 (D) Is capped or primed and has a powder charge and ball or
9 shot in the barrel or cylinders, if the firearm is a muzzle-loader.

10 (35) "Metallic or false knuckles" means a set of finger rings
11 attached to a transverse piece to be worn over the front of the hand
12 for use as a weapon and constructed in such a manner that, when
13 striking another person with the fist or closed hand, considerable
14 physical damage may be inflicted upon the person struck, without
15 regard to the metal or other substance or substances from which the
16 metallic or false knuckles are made.

17 (36) (A) Except as otherwise provided in this subdivision,
18 "misdemeanor crime of violence":

19 (I) Means any offense other than a crime punishable by
20 imprisonment for a term exceeding one year or a traffic offense
21 under chapter seventeen-c of this code or a similar municipal
22 ordinance or law of another state, that has, as an element of the
23 offense, the intentional or knowing commission of an act involving:

24 (I) The use or attempted use of physical force against another

1 person;

2 (II) The threatened immediate use of a deadly weapon against
3 another person; or

4 (III) Any other act done with intent to cause fear in another
5 person of such other person suffering immediate bodily harm or
6 death; and

7 (ii) Includes, without limitation, any offense under sections
8 nine, nine-a, ten-b, eleven, fifteen, fifteen-a, sixteen-a,
9 twenty-eight or twenty-nine, article two of this chapter or section
10 eleven of this article, other than any offense that is a crime
11 punishable by imprisonment for a term exceeding one year, or any
12 offense under federal law or the laws of another state or political
13 subdivision thereof, other than an offense that is a crime
14 punishable by imprisonment for a term exceeding one year, that, if
15 committed within this state, would constitute an offense under
16 sections nine, nine-a, ten-b, eleven, fifteen, fifteen-a, sixteen-a,
17 twenty-eight or twenty-nine, article two of this chapter or section
18 eleven of this article.

19 (B) A person shall not be considered to have been convicted of
20 such an offense for purposes of this article, unless:

21 (I) The person was represented by counsel in the case, or
22 knowingly and intelligently waived the right to counsel in the case;
23 and

24 (ii) In the case of a prosecution for an offense described in

1 this paragraph for which a person was entitled to a jury trial in
2 the jurisdiction in which the case was tried, either:

3 (I) The case was tried by a jury, or

4 (II) The person knowingly and intelligently waived the right to
5 have the case tried by a jury, by guilty plea or otherwise.

6 (C) A person shall not be considered to have been convicted of
7 such an offense for purposes of this article if the conviction's
8 effect is disregarded pursuant to subdivision (12) of this section.

9 (37) (A) Except as otherwise provided in this subdivision,
10 "misdemeanor drug offense" means any misdemeanor offense under
11 section four hundred one, four hundred three-a or four hundred nine,
12 article four, chapter sixty-a of this code or an offense under
13 federal law or the law of any other state, other than a felony or a
14 crime punishable by imprisonment for a term exceeding one year,
15 that, if committed in this state, would constitute a misdemeanor
16 offense under section four hundred one, four hundred three-a or four
17 hundred nine, article four, chapter sixty-a of this code.

18 (B) A person shall not be considered to have been convicted of
19 such an offense for purposes of this article, unless:

20 (I) The person was represented by counsel in the case, or
21 knowingly and intelligently waived the right to counsel in the case;
22 and

23 (ii) In the case of a prosecution for an offense described in
24 this paragraph for which a person was entitled to a jury trial in

1 the jurisdiction in which the case was tried, either:

2 (I) The case was tried by a jury, or

3 (II) The person knowingly and intelligently waived the right to
4 have the case tried by a jury, by guilty plea or otherwise.

5 (C) A person shall not be considered to have been convicted of
6 such an offense for purposes of this article if the conviction's
7 effect is disregarded pursuant to subdivision (12) of this section.

8 (38) "Motor vehicle" has the same meaning as in section one,
9 article one, chapter seventeen-a of this code.

10 (39) "Nonresident" has the same meaning as in section one,
11 article one, chapter seventeen-b of this code.

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

18 (41) "Offensive knife" means a:

19 (A) Knife with a blade over three and one-half inches;

20 (B) Hand instrument designed to cut or stab another by being
21 thrown, including, but not limited to, any throwing star or oriental
22 dart;

23 (C) Ballistic knife;

24 (D) Dagger, including, but not limited to, a dirk, stiletto or

1 poniard;

2 (E) Bowie knife;

3 (F) Gravity knife;

4 (G) Switchblade knife;

5 (H) Sword; or

6 (I) Spear, but does not include any pocket knife with a blade
7 three and one-half inches or less in length, a hunting or fishing
8 knife carried for hunting, fishing, sports or other recreational
9 uses, or a knife designed for use as a tool or household implement.

10 (42) "Personal knowledge" means knowledge of a fact that a
11 person has himself or herself gained through his or her own senses,
12 or knowledge that was gained by a law-enforcement officer or
13 prosecutor through the performance of his or her official duties.

14 (43) "Personally-identifying information" includes, but is not
15 limited to, the name, date of birth, Social Security number,
16 residence address, mailing address, telephone number or e-mail
17 address of any person.

18 (44) "Pistol" means a short firearm having a chamber which is
19 integral with the barrel, designed to be aimed and fired by the use
20 of a single hand.

21 (45) "Place of instruction" includes, but is not limited to,
22 any hunting club, rifle club, rifle range, pistol range, shooting
23 range, the premises of a licensed firearm dealer or a lawful gun
24 show or meet.

1 (46) "Private property" does not include any real or personal
2 property owned, leased or controlled, in whole or in part, by any
3 public agency, regardless of whether the property is generally open
4 to the public or subject to access restrictions.

5 (47) "Private property owner" means any property owner other
6 than:

7 (A) The United States;

8 (B) A public agency; or

9 (C) A lessee or other person charged with the care, custody or
10 control of any property owned, leased or controlled by a public
11 agency, except where the person is a lessee of a residential
12 premises or is exercising temporary control over other premises the
13 person exclusively occupies as a temporary place of lodging.

14 (48) "Property owner" means an owner, lessee or other person
15 charged with the care, custody and control of real property. For
16 the purposes of this definition, "person" means an individual or any
17 entity which may acquire title to real property.

18 (49) "Prosecutor" means any prosecuting attorney or assistant
19 prosecuting attorney of this state, any United States attorney or
20 assistant United States attorney, any officer, employee or agent of
21 another state or political subdivision thereof who exercises powers
22 substantially similar to those of a prosecuting attorney or
23 assistant prosecuting attorney of this state, or any special
24 prosecutor of this state, the United States or another state or

1 political subdivision of another state.

2 (50) "Public agency" means:

3 (A) This state or any political subdivision of this state;

4 (B) Any department, agency, authority, board, commission,
5 council, state institution of higher education, airport operator as
6 defined in section two, article twenty-nine-b, chapter eight of this
7 code, government corporation or other entity or instrumentality of
8 this state or any political subdivision of this state;

9 (C) Any public agency within the meaning of section two,
10 article nine-a, chapter six of this code;

11 (D) Any public body within the meaning of section two, article
12 one, chapter twenty-nine-b of this code;

13 (E) Any other entity or instrumentality:

14 (I) Whose chief executive or administrative officer or a
15 majority of whose board of directors or substantially similar
16 governing body, is elected, appointed or subject to the confirmation
17 of or removal by one or more entities described in paragraphs (A),
18 (B), (C) or (D) of this subdivision;

19 (ii) That receives a majority of its annual operating revenue
20 from one or more entities described in paragraphs (A), (B), (C) or
21 (D) of this subdivision; or

22 (iii) For the purposes of subdivisions (46) and (47) of this
23 section and sections four, five, eleven-c, eleven-d, fourteen,
24 fourteen-a, sixteen, seventeen and twenty of this article, that is

1 a recipient of any form of financial assistance, direct or indirect,
2 from any entity described in paragraphs (A), (B), (C) or (D) of this
3 subdivision, for any program or activity. For the purposes of this
4 subparagraph, the term "program or activity" includes all of the
5 operations of:

6 (I) A higher education institution, primary or secondary school
7 or other school system, whether public or private, any part of which
8 is extended financial assistance, direct or indirect, from any
9 entity described in paragraphs (A), (B), (C) or (D) of this
10 subdivision;

11 (II) An entire corporation, partnership, limited liability
12 company or other private organization or legal entity, any part of
13 which is extended financial assistance, direct or indirect, from any
14 entity described in paragraphs (A), (B), (C) or (D) of this
15 subdivision; or

16 (III) Any agency, as defined by section one hundred four,
17 article twenty-two, chapter forty-eight of this code, or
18 child-placing agency, as defined in section two, article two-b,
19 chapter forty-nine of this code; or

20 (F) Any officer, director, employee or other agent of any
21 entity described in paragraphs (A) through (E) of this subdivision,
22 when acting in his or her representative capacity.

23 (51) "Public building" means any building that is owned by a
24 public agency or those portions of any building that is not owned by

1 a public agency that is leased or controlled by a public agency.

2 (52) "Public event" means a specifically named or sponsored
3 event of limited duration that is conducted by:

4 (A) A public agency;

5 (B) A higher education institution; or

6 (C) A private entity with a permit or license granted by any
7 public agency, but does not include any unsponsored gathering of
8 people in any public place.

9 (53) "Qualified out-of-state license or permit to carry
10 concealed weapons" means any license or permit that:

11 (A) Authorizes the licensee or permittee to carry:

12 (I) Concealed weapons generally; or

13 (ii) Any one or more handguns in a concealed manner, regardless
14 of whether the license or permit contains restrictions that limit
15 the scope of the license or permit to:

16 (I) Only handguns or similar classification of firearms, to the
17 exclusion of other types or classes of firearms or concealable
18 weapons, or to specific, listed handguns or types, classes or
19 calibers of handguns or similar classifications of firearms; or

20 (II) Times, places or purposes for which the licensee or
21 permittee may lawfully carry the licensed or permitted weapons; and

22 (B) Under the laws of the issuing state, throughout the issuing
23 state and all of its political subdivisions, the license:

24 (I) Is current, valid and unexpired; or

1 (ii) Is extended beyond the expiration date printed on the
2 license pursuant to any law of the issuing state, including, but not
3 limited to, any extension for a deployed servicemember or any
4 licensee who has applied for a renewal of the license.

5 (54) "Qualified out-of-state licensee" means any person who is:

6 (A) A licensee or permittee pursuant to a qualified
7 out-of-state license or permit to carry concealed weapons;

8 (B) Not less than the minimum age specified in section four of
9 this article as the minimum age to apply for licensure under section
10 four of this article;

11 (C) Not prohibited by federal law, including without limitation
12 18 U.S.C. §922(g) and (n), as they exist as of January 1, 2011, from
13 possessing or transporting firearms;

14 (D) Not prohibited by section seven of this article from
15 possessing firearms or carrying a concealed weapon in a public
16 place; and

17 (E) (I) A nonresident;

18 (ii) A new resident of this state who has established residence
19 in this state within the immediate preceding ninety days unless,
20 during such period and subsequent to the establishment of residence
21 in this state:

22 (I) The person applied for a license under section four of this
23 article; and

24 (II) The sheriff to whom the person applied for a license under

1 section four of this article, made a final decision to deny a
2 license, unless the denial was based primarily upon the applicant's
3 failure to meet the requirements of subdivision (2), subsection (a),
4 section four of this article, the applicant's failure to have a
5 driver's license or nondriver state photo identification issued by
6 this state or a combination thereof;

7 (iii) A new resident of this state who has established
8 residence in this state for a period greater than the period
9 specified in subparagraph (ii) of this paragraph if, prior to the
10 expiration of the period specified in subparagraph (ii) of this
11 paragraph:

12 (I) The person applied for a license under section four of this
13 article and possesses an application receipt issued by the sheriff
14 pursuant to subdivision (1), subsection (f), section four of this
15 article; and

16 (II) The sheriff to whom the person applied for a license under
17 section four of this article, has not made a final decision on
18 granting or denying the license; or

19 (iv) A servicemember whose permanent duty station is located
20 outside this state or the spouse of a servicemember whose permanent
21 duty station is located outside this state. Nothing contained in
22 this subparagraph may be deemed to disqualify a person described in
23 this subparagraph from obtaining a license under section four or
24 five of this article upon the basis of place of residence or to deem

1 any person described in this subparagraph a nonresident for any
2 other purpose.

3 (55) "Readily accessible for immediate use" or "about the
4 person" means that a deadly weapon or ammunition for a firearm is
5 carried on the person or within such close proximity and in such a
6 manner that it can be retrieved and used as easily and quickly as if
7 carried on the person.

8 (56) "Revolver" means a short firearm having a cylinder of
9 several chambers that are brought successively into line with the
10 barrel to be discharged, designed to be aimed and fired by the use
11 of a single hand.

12 (57) "School bus" has the same meaning as in section one,
13 article one, chapter seventeen-a of this code.

14 (58) "School safety zone" means:

15 (A) Any public or private primary or secondary school building
16 and its improved grounds, whether leased or owned by the school,
17 including any vocational education building, structure, facility or
18 grounds thereof where secondary vocational education programs are
19 conducted;

20 (B) The interior of a school bus while that school bus is
21 actually in use by any school described in paragraph (A) of this
22 subdivision for the purpose of transporting one or more primary or
23 secondary school students to or from school or school-related
24 activities, including curricular, cocurricular, extracurricular or

1 supplementary activities; or

2 (C) That portion of any property not described in paragraph (A)
3 of this subdivision that is open to the public and then used
4 exclusively for a school-sponsored function or curricular,
5 cocurricular, extracurricular or supplementary activity, while that
6 function or activity is occurring.

7 (59) "Secure restricted access area":

8 (A) Means a secure area beyond a security perimeter and
9 security checkpoints where all visitors are screened for weapons
10 prohibited within the area, a secure weapon storage area is provided
11 and in which the safety of all occupants of the area is protected by
12 the security perimeter and the significant presence of
13 law-enforcement officers or professional security guards; and

14 (B) Does not include common areas of ingress and egress open to
15 the general public outside the security perimeter and checkpoints.

16 (60) "Secure weapon storage area" means a facility maintained
17 in conjunction with any area within which the possession or carrying
18 of firearms or other deadly weapons is restricted or prohibited
19 that:

20 (A) Provides free storage of any deadly weapon otherwise lawful
21 for the depositor to possess whose possession within the area within
22 which the possession or carrying of deadly weapons or firearms is
23 restricted or prohibited;

24 (B) (I) Provides, free of charge, self-service storage lockers

1 consisting of individual stationary locked boxes not less than one
2 foot wide by one foot high by two feet deep when the locker is
3 closed, resulting in an interior capacity of not less than two cubic
4 feet, into which a person can secure his or her weapons, ammunition
5 and other personal effects, lock the box, retain the key during his
6 or her presence in the area within which the possession or carrying
7 of firearms or other deadly weapons is restricted or prohibited and
8 personally unlock the box and retrieve the items stored in it upon
9 leaving the area within which the possession or carrying of firearms
10 or other deadly weapons is restricted or prohibited; or

11 (ii) Designates an official to receive weapons for safekeeping,
12 free of charge, during the depositor's visit to restricted areas of
13 the building, who tags each weapon stored and issues a corresponding
14 receipt that protects the weapon from misplacement or erroneous
15 transfer and enables the depositor to retrieve the weapon upon
16 exiting the area within which the possession or carrying of deadly
17 weapons or firearms is restricted or prohibited; and

18 (C) Which is open for retrieval at all times the area within
19 which the possession or carrying of deadly weapons or firearms is
20 restricted or prohibited is occupied plus a reasonable amount of
21 time thereafter for a depositor who has lawfully entered and
22 remained in the area within which the possession or carrying of
23 deadly weapons or firearms is restricted or prohibited to retrieve
24 the weapon and not be unduly denied restoration of his or her lawful

1 possession of the weapon upon leaving the area within which the
2 possession or carrying of deadly weapons or firearms is restricted
3 or prohibited.

4 (61) "Securely encased" means in a glove compartment, whether
5 or not locked; snapped in a holster; in a gun case, whether or not
6 locked; in a zippered gun case; or in a closed box or container
7 which requires a lid or cover to be opened for access.

8 (62) "Servicemember" means a member of the uniformed services,
9 as that term is defined in 10 U.S.C. §101(a) (5) as it exists as of
10 January 1, 2011, and any member of the National Guard while on
11 active service, as that term is defined in 10 U.S.C. §101(d) (3) as
12 it exists as of January 1, 2011.

13 (63) "Spring stick" means a spring-loaded metal stick activated
14 by pushing a button which rapidly and forcefully telescopes the
15 weapon to several times its original length.

16 (64) "State institution of higher education" has the same
17 meaning as in section two, article one, chapter eighteen-b of this
18 code.

19 (65) "State or local government office facility" means any
20 public building in which employees of a public agency regularly are
21 present for the purpose of performing their official duties as
22 employees of the public agency, but excludes: (I) Any public
23 building that is used primarily as a shelter, restroom or rest
24 facility; (ii) any public building or portion of a public building

1 that is used as a parking facility for motor vehicles; or (iii) any
 2 portion of any other public building accessible only from the
 3 exterior of the public building that is used as a restroom.

4 (66) "Superintendent" means the Superintendent of the State
 5 Police.

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

9 (68) "The military forces of this state" means the military
 10 forces of the state, as defined in section one, article one, chapter
 11 fifteen of this code.

12 (69) "Unloaded," with respect to a firearm, means that a
 13 firearm is not loaded, as defined in subdivision (34) of this
 14 section.

15 (70) "West Virginia law-enforcement agency" has the same
 16 meaning as in section one, article twenty-nine, chapter thirty of
 17 this code.

18 **§61-7-3. Carrying concealed weapon; prohibited acts; exceptions;**
 19 **penalties.**

20 (a) ~~Any~~ Except as otherwise provided by subsections (c) and (d)
 21 of this section, any person who lawfully carries a ~~about his or her~~
 22 person any concealed deadly weapon without a state license or other
 23 lawful authorization established under the provisions issued
 24 pursuant to section four or five of this code article shall, be

1 whenever he or she is contacted by a law-enforcement officer:

2 (1) Immediately disclose to the law-enforcement officer that he
3 or she is lawfully carrying one or more concealed weapons without a
4 license;

5 (2) Completely and truthfully answer all inquiries by the
6 law-enforcement officer concerning the description, location and
7 number of concealed weapons the person is lawfully carrying;

8 (3) Completely and truthfully answer all requests by the
9 law-enforcement officer for the person to state his or her full
10 legal name, any aliases by which he or she has ever been known, date
11 and place of birth, current home address and any other
12 personally-identifying information or personal biographical history
13 information that may be reasonably necessary for the law-enforcement
14 officer to ascertain the person's true identity and determine
15 whether the person is prohibited by federal law or the laws of this
16 state from carrying the concealed weapon; and

17 (4) Submit to any lawful request of a law-enforcement officer
18 to:

19 (A) Permit the law-enforcement officer to take temporary
20 custody of and secure all deadly weapons in the person's possession
21 during the duration of the contact. Unless the law-enforcement
22 officer arrests the person, the law-enforcement officer shall, upon
23 termination of the contact, return all weapons to the person in the
24 same condition and configuration as they were taken; or

1 (B) Secure all deadly weapons in the person's possession at the
2 direction of the law-enforcement officer during the duration of the
3 contact.

4 (b) Except as otherwise provided by subsections (c) through (e)
5 of this section, a person may not knowingly carry about his or her
6 person any concealed weapon without a state license issued pursuant
7 to section four or five of this article when the person is
8 knowingly:

9 (1) Within any state or local government office facility, or
10 any portion thereof, in which the public agency in control of the
11 state or local government office facility, or portion thereof, has:

12 (A) Posted at every entrance to the state or local government
13 office facility, or portion thereof, signs conforming to the
14 specifications of section fifteen of this article that include the
15 following text: "Pursuant to WV Code §61-7-3(b)(1), carrying a
16 concealed weapon without a license beyond this point is prohibited
17 by law. This facility provides free, secure weapon storage for
18 individuals to check their weapons while in these premises."; and

19 (B) Established at every entrance to the state or local
20 government office facility, or portion thereof, a secure weapon
21 storage area for any person to check and store any weapons the
22 person is carrying while the person is within the posted area and
23 immediately retrieve the same upon leaving the posted area;

24 (2) In any room in which a meeting of either house of the

1 Legislature or any governing body, as defined in section two,
2 article nine-a, chapter six of this code, is occurring, if the
3 applicable body has:

4 (A) Posted at every entrance to the meeting room or gallery,
5 signs conforming to the specifications of section fifteen of this
6 article that include the following text: "Pursuant to WV Code
7 §61-7-3(b) (2), carrying a concealed weapon without a license beyond
8 this point is prohibited by law. This facility provides free, secure
9 weapon storage for individuals to check their weapons while in these
10 premises."; and

11 (B) Established at every entrance to the meeting room or
12 gallery, a secure weapon storage area for any person to check and
13 store any weapons the person is carrying while the person is within
14 the posted area and immediately retrieve the same upon leaving the
15 posted area;

16 (3) Attending any public event where the sponsor, organizer,
17 promoter or other person in charge of the public event, or an agent
18 thereof, has:

19 (A) Posted at every entrance to the public event, signs
20 conforming to the specifications of section fifteen of this article
21 that include the following text: "Pursuant to WV Code §61-7-3(b) (3),
22 carrying a concealed weapon without a license at this event is
23 prohibited by law. Free, secure weapon storage is available for
24 individuals to check their weapons while attending this event."; and

1 (B) Established at every entrance to the public event, a secure
2 weapon storage area for any person to check and store weapons while
3 the person is attending the public event and immediately retrieve
4 the same upon leaving the public event;

5 (4) Within any building owned or leased by a higher education
6 institution, or any portion thereof, if:

7 (A) Signs conforming to the specifications of section fifteen
8 of this article are posted at every entrance to the building, or
9 portion thereof, that include the following text: "Pursuant to WV
10 Code §61-7-3(b) (4), carrying a concealed weapon without a license
11 beyond this point is prohibited by law." If the building is subject
12 to the provisions of paragraph (B) of this subdivision, the signs
13 shall also state: "This facility provides free, secure weapon
14 storage for individuals to check their weapons while in these
15 premises."; and

16 (B) If the higher education institution is a public agency for
17 the purposes of section sixteen of this article, the institution
18 provides a secure weapon storage area for any person to check and
19 store any weapons the person is carrying while the person is within
20 the posted area and immediately retrieve the same upon leaving the
21 posted area;

22 (5) On any private property where the private property owner
23 has posted signs conforming to the specifications of section fifteen
24 of this article that include the following text: "Pursuant to WV

1 Code §61-7-3(b) (5), carrying a concealed weapon without a license on
2 these premises is prohibited by law.”; or

3 (6) In the private residence or dwelling place of another
4 person or the curtilage thereof.

5 (c) Subsections (a) and (b) of this section do not apply to:

6 (1) Any person who is in his or her residence, temporary place
7 of abode or fixed place of business or in or on any private property
8 the person or any family or household member of the person possesses
9 or controls as an owner, lessee, tenant or licensee;

10 (2) Any person who is not prohibited from possessing firearms
11 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
12 subsection (a), section seven of this article, and is carrying any
13 concealed weapon in a place not described in subdivision (1), (2),
14 (3), (4) or (5), subsection (b) of this section:

15 (A) When the concealed weapon is a firearm that is unloaded
16 and:

17 (I) Broken down in a nonfunctioning state;

18 (ii) Securely encased;

19 (iii) Enclosed in a case, firearm carrying box, shipping box or
20 other container, other than as described in subparagraph (ii) of
21 this paragraph; or

22 (iv) The firearm and ammunition capable of being discharged
23 from that firearm are not both readily accessible for immediate use;

24 or

1 (B) When the concealed weapon is not a firearm and is securely
2 encased in a locked container that renders the concealed weapon not
3 readily accessible for immediate use;

4 (3) When the concealed weapon is securely encased within or
5 upon any vehicle, vessel or other means of transportation or
6 conveyance on land or water; or

7 (4) When the person is:

8 (A) Engaged in lawful hunting, trapping or fishing or traveling
9 to or from a place of lawful hunting, trapping or fishing;

10 (B) Camping, hiking, backpacking, farming, ranching or engaged
11 in any other lawful outdoor activity in which weapons are often
12 carried for recreation or protection;

13 (C) Engaged in lawful target practice; or

14 (D) Engaged in instruction at a place of instruction intended
15 to teach the safe handling, maintenance or use of the concealed
16 weapon.

17 (d) Subsections (a) and (b) of this section and any provisions
18 of this code from which licensees under section four or five of this
19 article are exempt do not apply to:

20 (1) A qualified out-of-state licensee;

21 (2) Any law-enforcement officer;

22 (3) Any person who is not prohibited from possessing firearms
23 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
24 prohibited by section seven of this article from possessing firearms

1 or carrying a concealed weapon in a public place, who is a
2 prosecutor or a duly appointed investigator employed by a
3 prosecutor;

4 (4) Any person who is not prohibited from possessing firearms
5 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
6 prohibited by section seven of this article from possessing firearms
7 or carrying a concealed weapon in a public place, who is a justice,
8 judge or magistrate, or a senior status justice or judge, who
9 exercises the judicial power of this state under Article VIII of the
10 Constitution of this state or the judicial power of the United
11 States under Article III of the United States Constitution;

12 (5) Any member of the Armed Forces of the United States or the
13 military forces of this state, who is on duty;

14 (6) Any person who is not prohibited from possessing firearms
15 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
16 subsection (a), section seven of this article, who is an officer,
17 agent or employee of this state, any political subdivision of this
18 state, the United States or any other state or political subdivision
19 thereof, who is authorized by the laws of his or her jurisdiction to
20 possess or carry firearms or other weapons in the course of
21 performance of his or her official duties, while he or she is
22 conducting official business;

23 (7) Any person who is not prohibited from possessing firearms
24 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or

1 subsection (a), section seven of this article, and has been summoned
2 to the aid of any officer or agent of the United States, this state
3 or any political subdivision of this state pursuant to any federal
4 law or law of this state requiring the person to aid such officer or
5 agent, while the person is acting in the course of performance of
6 the aid he or she has been summoned to render;

7 (8) Any person who is not prohibited from possessing firearms
8 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
9 prohibited by section seven of this article from possessing firearms
10 or carrying a concealed weapon in a public place, possesses an
11 expired license that was previously issued pursuant to section four
12 of this article and is eligible to obtain a new license under
13 section four of this article; or

14 (9) Any person who has specific statutory authorization under
15 federal law or another provision of this code to carry firearms or
16 concealed weapons, subject to any conditions or limitations
17 contained in such authorization.

18 (e) Subsection (b) of this section does not apply to any person
19 who is not prohibited from possessing firearms by 18 U.S.C. §922(g),
20 as it exists as of January 1, 2011, and not prohibited by section
21 seven of this article from possessing firearms or carrying a
22 concealed weapon in a public place, when the person is:

23 (1) Carrying the weapon to or from any courtroom, judge's
24 chambers or court proceeding as authorized by section eleven-b of

1 this article;

2 (2) In a public building and is expressly authorized by the
3 officer or agency that controls the public building to carry a
4 concealed weapon without a license in that public building;

5 (3) In a place described in subdivision (2), subsection (b) of
6 this section, and is expressly authorized by the applicable house of
7 the Legislature or governing body to carry a concealed weapon
8 without a license in a meeting of that house of the Legislature or
9 governing body;

10 (4) In a place described in subdivision (3) or (4), subsection
11 (b) of this section, and is expressly authorized by the authorities
12 in charge of the public event or higher education institution to
13 carry a concealed weapon without a license;

14 (5) On private property and has the express permission of the
15 private property owner to carry a concealed weapon without a license
16 on the premises;

17 (6) In or on any parking garage, parking lot or other motor
18 vehicle parking facility; or

19 (7) Carrying a concealed weapon to the extent reasonably
20 necessary to convey the weapon to a secure weapon storage area
21 established pursuant to subdivision (1), (2), (3) or (4), subsection
22 (b) of this section upon entering a place described in subdivision
23 (1), (2), (3) or (4), subsection (b) of this section, check and
24 store the weapon in the secure weapon storage area during the

1 person's presence in a place described in subdivision (1), (2), (3)
2 or (4), subsection (b) of this section and remove the weapon from
3 the secure weapon storage area and convey the weapon outside a place
4 described in subdivision (1), (2), (3) or (4), subsection (b) of
5 this section upon the person's departure from a place described in
6 subdivision (1), (2), (3) or (4), subsection (b) of this section.

7 (f) A licensee under section four or five of this article or
8 person described in subdivision (1) or (8), subsection (d) of this
9 section shall, whenever he or she is carrying a concealed weapon
10 under the authority of that license or engaging in any other
11 activity that, under the laws of this state, would be unlawful in
12 the absence of such license:

13 (1) Carry his or her license on or about his or her person or
14 in a place from which the person may retrieve it within a reasonable
15 amount of time;

16 (2) If the license does not contain the licensee's photograph,
17 carry a driver's license or a photo identification issued by the
18 licensee's state of residence or the United States that contains the
19 licensee's photograph, on or about his or her person or in a place
20 from which the licensee may retrieve it within a reasonable amount
21 of time; and

22 (3) When contacted by a law-enforcement officer, display the
23 license and, if subdivision (2) of this subsection is applicable,
24 the photo identification required by subdivision (2) of this

1 subsection, if the law-enforcement officer requests the person
2 display the license.

3 (g) A licensee under section four or five of this article or
4 any person who is authorized by subsection (c) or (d) of this
5 section to carry a concealed weapon without a license shall,
6 whenever he or she is carrying about his or her person a concealed
7 weapon under the authority of that license or engaging in any other
8 activity that, under the laws of this state, would be unlawful in
9 the absence of a license or other lawful authorization to carry a
10 concealed weapon, shall:

11 (1) When contacted by a law-enforcement officer, accurately and
12 completely answer any inquiries by a law-enforcement officer
13 regarding whether the person is lawfully carrying any concealed
14 weapons and the locations and description of all concealed weapons
15 the person is lawfully carrying about his or her person; and

16 (2) When contacted by a law-enforcement officer, submit to a
17 lawful request of a law-enforcement officer to permit the
18 law-enforcement officer to take temporary custody of and secure all
19 deadly weapons in the person's possession or secure the weapons at
20 the direction of the law-enforcement officer, during the duration of
21 the contact if the law-enforcement officer clearly and expressly
22 informs the person that the officer reasonably believes temporarily
23 disarming the person is necessary for the protection of the person,
24 the officer or another individual. Unless the law-enforcement

1 officer arrests the person, the law-enforcement officer shall, upon
2 termination of the contact, return all weapons to the person in the
3 same condition and configuration as they were taken. This
4 subdivision applies only when a law-enforcement officer is
5 authorized under the laws of this state to disarm a person and may
6 not be construed to create any independent legal authority for any
7 law-enforcement officer to disarm any person who is lawfully
8 carrying any deadly weapon, whether openly or concealed.

9 (h) Any person who violates subsection (f) of this section is
10 guilty of a misdemeanor and, upon conviction thereof, may be fined
11 not more than \$25 for a first offense; and, upon conviction for a
12 second or subsequent offense occurring within five years, fined not
13 less than \$25 nor more than \$250. However, a charge of violating
14 subsection (f) of this section shall be dismissed and a person may
15 not be convicted of violating subsection (f) of this section if the
16 person produces in court or in the office of the arresting officer
17 a license and, if required by subdivision (2), subsection (f) of
18 this section, secondary photo identification, that was valid at the
19 time of the alleged offense.

20 (I) Any person who violates subsection (a), (b) or (g) of this
21 section is guilty of a misdemeanor and, upon conviction thereof,
22 shall be fined not ~~less than one hundred dollars nor~~ more than
23 \$1,000, and may be imprisoned confined in the county jail for not
24 more than ~~twelve~~ six months, or both fined and confined. ~~for the~~

~~1 first offense; but upon conviction of a second or subsequent offense
2 he or she shall be guilty of a felony and, upon conviction thereof,
3 shall be imprisoned in the penitentiary not less than one nor more
4 than five years, and fined not less than one thousand dollars nor
5 more than five thousand dollars.~~

~~6 (b) It shall be the duty of the prosecuting attorney in all
7 cases to ascertain whether or not the charge made by the grand jury
8 is a first offense or is a second or subsequent offense and, if it
9 shall be a second or subsequent offense, it shall be so stated in
10 the indictment returned, and the prosecuting attorney shall
11 introduce the record evidence before the trial court of such second
12 or subsequent offense, and shall not be permitted to use discretion
13 in introducing evidence to prove the same on the trial.~~

~~14 (j) (1) For the purposes of applying the provisions of the
15 federal Law-Enforcement Officers Safety Act of 2004, 18 U.S.C.
16 §§926B and 926C, as amended, to this article, any qualified
17 law-enforcement officer under 18 U.S.C. §926B or qualified retired
18 law-enforcement officer under 18 U.S.C. §926C, is authorized to
19 carry concealed weapons in this state without a license pursuant to
20 subdivision (9), subsection (d) of this section.~~

~~21 (2) For the purposes of applying the provisions of 18 U.S.C.
22 §926B(b) (2) and 18 U.S.C. §926C(b) (2) to the laws of this state, the
23 Legislature expressly declares and provides that, as a matter of
24 state law, all qualified law-enforcement officers under 18 U.S.C.~~

1 §926B and all qualified retired law-enforcement officers under 18
2 U.S.C. §926C, are equally entitled to any exemption under the laws
3 of this state from any prohibition or restriction on the possession
4 of firearms on any state or local government property, installation,
5 building, base or park, that is applicable to any person who is
6 licensed to carry concealed weapons pursuant to section four of this
7 article.

8 (k) When any person is charged with any offense under
9 subsection (a) or (b) of this section:

10 (1) The state shall negate the existence of a license under
11 section four or five of this article valid at the time of the
12 alleged offense in the accusation charging commission of the offense
13 and prove beyond a reasonable doubt as part of its case in chief
14 that the defendant had not been issued a license under section four
15 or five of this article that was valid at the time of the alleged
16 offense.

17 (2) When a person asserts any exemption under subsection (c),
18 (d) or (e) of this subsection, except as otherwise provided by
19 subdivision (3) of this subsection, the exemption shall be a defense
20 that the state is not required to negate in the accusation charging
21 commission of the offense or as part of its case in chief at trial.
22 However, once evidence is admitted by the defendant at trial
23 supporting the existence of an exemption, that person shall be
24 required to prove beyond a reasonable doubt that the asserted

1 exemption did not apply to the defendant.

2 (3) When a person asserts an exemption as a qualified
3 out-of-state licensee but did not exhibit at the time of the alleged
4 offense a facially valid license issued by another state and did not
5 claim to be licensed by an issuing authority that provides the means
6 for instantaneous verification of the validity of all such licenses,
7 accessible twenty-four hours a day, the person's status as a
8 qualified out-of-state licensee shall be an affirmative defense that
9 the defendant shall prove by a preponderance of evidence.

10 (1) When any person carries a concealed weapon in a location
11 described in subsection (b) of this section, possesses a deadly
12 weapon in a school safety zone under subdivision (1), subsection
13 (b), section eleven-a of this article, or engages in any activity
14 that, under the laws of this state, would be unlawful in the absence
15 of a license to carry concealed weapons under section four or five
16 of this article or other lawful authorization to carry a concealed
17 weapon, and:

18 (1) Fails to present to a law-enforcement officer for
19 inspection a license to carry concealed weapons under section four
20 or five of this article or evidence of the person's lawful
21 authorization to carry a concealed weapon, the law-enforcement
22 officer shall ask the person whether he or she is licensed under
23 section four or five of this article or possesses any evidence of
24 qualification to lawfully carry a concealed weapon without a

1 license.

2 (2) Claims to be licensed under section four or five of this
3 article, the law-enforcement officer shall query the concealed
4 weapons license verification service established pursuant to
5 subdivision (2), subsection (1), section four of this article. If
6 the inquiry shows the person is licensed, there is a rebuttable
7 presumption the person is licensed but the law-enforcement officer
8 may, at his or her discretion, issue the person a citation for
9 violating subsection (g) of this section. If the inquiry does not
10 indicate the person is licensed under section four or five of this
11 article, there is a rebuttable presumption the person is not
12 licensed under section four or five of this article and the
13 law-enforcement officer shall ask the person whether he or she is
14 lawfully authorized to carry a concealed weapon without a license
15 and possesses evidence of such authorization.

16 (3) Is not licensed under section four or five of this article
17 claims to be a qualified out-of-state licensee and presents a
18 facially valid qualified out-of-state license to carry concealed
19 weapons, the law-enforcement officer may attempt to verify the
20 validity of the qualified out-of-state license to carry concealed
21 weapons and the person's eligibility under subdivision (1),
22 subsection (d) of this section. If the issuing authority provides
23 the means for instantaneous verification of the validity of all such
24 licenses, accessible twenty-four hours a day, the law-enforcement

1 officer shall immediately contact the issuing authority to verify
2 the validity of the license. If the issuing authority verifies the
3 validity of the license and the law-enforcement officer does not
4 have credible information showing the person is not qualified as a
5 qualified out-of-state licensee, there is a rebuttable presumption
6 the person is a qualified out-of-state licensee.

7 (4) Claims to be a qualified out-of-state licensee, does not
8 have in his or her physical possession a facially valid qualified
9 out-of-state license to carry concealed weapons and the issuing
10 authority provides the means for instantaneous verification of the
11 validity of all such licenses, accessible twenty-four hours a day,
12 the law-enforcement officer shall contact the issuing authority
13 claimed by the person to verify whether the person is licensed. If
14 the issuing authority verifies that the person is currently licensed
15 and the law-enforcement officer does not have credible information
16 showing the person is not qualified as a qualified out-of-state
17 licensee, there is a rebuttable presumption the person is a
18 qualified out-of-state licensee but the law-enforcement officer may
19 issue the person a citation for violating subsection (h) of this
20 section. If the issuing authority responds that its records do not
21 show that the named person is currently licensed, there is a
22 rebuttable presumption that the person is not currently licensed by
23 the issuing authority claimed.

24 (5) Claims to be a qualified out-of-state licensee, does not

1 have in his or her physical possession a facially valid qualified
2 out-of-state license to carry concealed weapons and the issuing
3 authority does not provide the means for instantaneous verification
4 of the validity of all such licenses, accessible twenty-four hours
5 a day, there is a rebuttable presumption that the person is not
6 licensed by the issuing authority by which the person claims to be
7 licensed.

8 (6) Claims to be a qualified out-of-state licensee but is
9 registered to vote in this state, has a child of which the person
10 has primary legal custody enrolled in a public elementary or
11 secondary school in this state, receives any form of public
12 assistance from this state, receives a homestead tax exemption on
13 property in this state, has an application pending for a homestead
14 tax exemption on property in this state, is a student at a state
15 institution of higher education who is not charged nonresident
16 tuition or holds a current, valid West Virginia driver's license,
17 instruction permit or nondriver photo identification card issued by
18 the Division of Motor Vehicles showing a residence address in this
19 state, there is a rebuttable presumption that the person is a
20 resident of this state and disqualified as a qualified out-of-state
21 licensee unless the person produces to the court satisfactory
22 evidence of qualification under paragraph (E), subdivision (54),
23 section two of this article.

24 **§61-7-4. Licenses to carry concealed weapons.**

1 (a) Except as otherwise provided in subsection ~~(h)~~ (y) of this
2 section, any ~~person desiring~~ resident of this state who desires to
3 obtain a state license to carry ~~a concealed deadly weapon~~ weapons
4 shall apply to the sheriff of ~~his or her~~ the county ~~for such~~
5 ~~license, and shall pay to the sheriff, at the time of application,~~
6 ~~a fee of seventy-five dollars, of which fifteen dollars of that~~
7 ~~amount shall be deposited in the courthouse facilities improvement~~
8 ~~fund created by section six, article twenty-six, chapter twenty-nine~~
9 ~~of this code. Concealed weapons permits may only be issued for~~
10 ~~pistols or revolvers. in which he or she resides. Except as~~
11 otherwise provided in subdivision (2) of this subsection or
12 subsection (y) of this section, any nonresident who desires to
13 obtain a state license to carry concealed weapons may apply to the
14 sheriff of any county. Each applicant shall, at the time of
15 application, pay the sheriff a nonrefundable license fee computed
16 pursuant to subsection (n) of this section. Each applicant shall
17 file with the sheriff, a complete application, ~~as~~ in writing,
18 verified under oath and notarized as provided in subsection (e) of
19 this section, on the uniform application form prepared by the
20 ~~superintendent of the West Virginia state police, in writing, duly~~
21 ~~verified~~ Attorney General pursuant to subsection (I) of this
22 section, which sets forth shall specify only the following licensing
23 requirements:

24 (1) A complete description by the applicant of the applicant's:

- 1 (A) Full name;
- 2 (B) All prior legal names and aliases;
- 3 (C) Date and place of birth;
- 4 (D) Country of citizenship;
- 5 (E) Social Security number, and a description of the
6 applicant's whose submission by the applicant shall be optional;
- 7 (F) If the applicant has established a Voluntary Appeal File
8 with the Federal Bureau of Investigation pursuant to 28 C.F.R.
9 §25.10(g), the applicant's Voluntary Appeal File unique personal
10 identification number, whose submission by the applicant shall be
11 optional;
- 12 (G) If the applicant is a naturalized citizen of the United
13 States, the applicant's United States naturalization number;
- 14 (H) If the applicant is an alien, the applicant's United
15 States-issued alien or admission number and any other information
16 designated by the Attorney General on the application form necessary
17 to determine the applicant's immigration status and whether the
18 applicant is prohibited by federal law from possessing,
19 transporting, shipping or receiving firearms on the basis of
20 immigration status;
- 21 (I) Driver's license, commercial driver's license, instruction
22 permit or nondriver state photo identification number and the
23 issuing state;
- 24 (J) Residence address, which, unless the applicant is subject

1 to the provisions of subsection (s) of this section, shall be
2 consistent with the residence address listed by the applicant with
3 the issuing agency of the driver's license or nondriver state
4 identification card the applicant stated pursuant to paragraph (I)
5 of this subdivision;

6 (K) Mailing address if different from the residence address
7 specified pursuant to paragraph (J) of this subdivision;

8 (L) Telephone numbers and e-mail address, if available, at
9 which the applicant desires to be contacted about any questions
10 pertaining to the application or to receive notice of the
11 disposition of the application, whose submission by the applicant
12 shall be optional;

13 (M) Sex;

14 (N) Race;

15 (O) Height;

16 (P) Weight as of the date of the application or any time within
17 the thirty days preceding the date of the application;

18 (Q) Natural hair color;

19 (R) Natural eye color;

20 (S) Other physical features of and descriptive information
21 about the applicant necessary to determine the applicant's
22 eligibility for licensure and performance of the investigation and
23 background checks required by subsection (b) of this section, as
24 specified by the Attorney General on the uniform application form;

1 (T) Desired license class; and

2 (U) If the applicant holds a current, valid license under this
3 section, the class and expiration date of the licensee's current
4 license, the county in which the licensee's current license was
5 issued, if different from the county in which the licensee is
6 applying for renewal or modification, and, if the current license
7 has a unique license number assigned pursuant to subdivision (5),
8 subsection (h) of this section, the licensee's current license
9 number;

10 (2) That, on the date the application is made, the applicant
11 is:

12 (A) A bona fide resident of this state and of the county in
13 which the application is made and, unless the applicant is subject
14 to subsection (s) of this section, has a valid driver's license,
15 commercial driver's license, instruction permit or other
16 state-issued nondriver photo identification issued by the Division
17 of Motor Vehicles showing such the applicant's residence address in
18 this state;

19 (B) A servicemember:

20 (I) Who is domiciled in this state and the county in which the
21 application is made but whose permanent duty station is located
22 outside this state; or

23 (ii) Who is domiciled outside this state, whose permanent duty
24 station is located within this state or an adjoining state and who

1 maintains a place of abode in this state and the county in which the
2 application is made;

3 (C) A nonresident who:

4 (I) Resides within the United States or is a citizen of the
5 United States;

6 (ii) Unless the applicant is a citizen of the United States who
7 resides outside the United States, has a valid driver's license or
8 other photo identification issued by the applicant's state of
9 residence, showing the applicant's residence address; and

10 (iii) If the applicant is a resident of a state the Attorney
11 General has determined, pursuant to paragraph (A), subdivision (3),
12 subsection (u) of this section, grants full faith and credit to
13 licenses issued under this section:

14 (I) The Attorney General has listed the state in which the
15 applicant resides as a state that clearly bars the applicant from
16 lawfully using a license issued pursuant to this section for the
17 purpose of carrying a handgun or concealed weapon in the applicant's
18 state of residence, pursuant to any licensing law of the applicant's
19 state of residence, as an alternative to licensure by the
20 applicant's state of residence. The Attorney General shall, not less
21 than once annually, review the statutory and case law of every state
22 listed pursuant to paragraph (A), subdivision (3), subsection (u) of
23 this section and publish in the State Register a list of all states
24 in which the Attorney General does not find either clear statutory

1 language or an on-point holding of a statewide appellate court in a
2 published opinion of mandatory precedential value that bars a
3 resident of that state other than persons similarly situated to
4 persons described in subparagraphs (ii) through (iv), paragraph (E),
5 subdivision (54), section two of this article, from using a license
6 issued by another state as an alternative to licensure within that
7 state, and publish a list of these states in the State Register and
8 distribute copies of this list to the superintendent and each
9 sheriff;

10 (II) The applicant holds a current, valid qualified
11 out-of-state license or permit to carry concealed weapons, issued by
12 the applicant's state of residence, and encloses a full-color
13 photocopy of it with the application;

14 (III) The applicant is a full-time student at any higher
15 education institution located in this state and presents proof of
16 his or her full-time student status to the sheriff;

17 (IV) The applicant regularly conducts a lawful trade or
18 business within this state in which the applicant devotes
19 significant time, attention and labor to that trade or business with
20 the principal objective of livelihood and profit and presents
21 satisfactory evidence thereof to the sheriff;

22 (V) The applicant is regularly employed in a position in which
23 the applicant is required to carry a concealable weapon in this
24 state in the course of employment and presents satisfactory evidence

1 of such employment to the sheriff; or

2 (VI) The applicant or a family or household member of the
3 applicant owns real property in the county in which the applicant
4 applies for licensure on which the applicant maintains a seasonal or
5 temporary residence and includes with the application a current,
6 certified document from the assessor of that county, on a form
7 prescribed by the Attorney General, verifying the ownership of the
8 real property; or

9 (D) Is the spouse of any person described in paragraph (B) of
10 this subdivision or clauses (III) through (VI), subparagraph (iii),
11 paragraph (C) of this subdivision, who is licensed under this
12 section or has an application for licensure under this section
13 pending before the sheriff, and applies for licensure in the county
14 in which his or her spouse applied or has been licensed;

15 (3) That the applicant is at least twenty-one years of age ~~or~~
16 ~~older: Provided, That any individual who is less than 21 years of~~
17 ~~age and possesses a properly issued concealed weapons license as of~~
18 ~~the effective date of this article shall be licensed to maintain his~~
19 ~~or her concealed weapons license notwithstanding the provisions of~~
20 ~~this section requiring new applicants to be at least twenty-one~~
21 ~~years of age: Provided, however, That upon a showing of any~~
22 ~~applicant who is eighteen years of age or older, that he or she is~~
23 ~~required to carry a concealed weapon as a condition for employment,~~
24 ~~and presents satisfactory proof to the sheriff thereof, then he or~~

~~1 she shall be issued a license upon meeting all other conditions of
2 this section. Upon discontinuance of employment that requires the
3 concealed weapons license, if the individual issued the license is
4 not yet twenty-one years of age, then the individual issued the
5 license is no longer eligible and must return his or her license to
6 the issuing sheriff if he or she is applying for a Class 1, 2 or 3
7 license or at least eighteen years of age and, on the date the
8 application is made, less than twenty-one years of age, if he or she
9 is applying for a Class 4 or 5 license;~~

10 (4) That the applicant is not addicted to alcohol, a controlled
11 substance or a drug and is not an unlawful user thereof prohibited
12 by federal law, including without limitation 18 U.S.C. §922(g) or
13 (n), from possessing, transporting, shipping or receiving firearms;

14 (5) That the applicant ~~has~~ is not been convicted of a felony or
15 of an act of violence involving the misuse of a deadly weapon
16 prohibited by section seven of this article from possessing
17 firearms;

18 ~~(6) That the applicant has not been convicted of a misdemeanor
19 offense of assault or battery either under the provisions of section
20 twenty-eight, article two of this chapter or the provisions of
21 subsection (b) or (c), section nine, article two of this chapter in
22 which the victim was a current or former spouse, current or former
23 sexual or intimate partner, person with whom the defendant has a
24 child in common, person with whom the defendant cohabits or has~~

1 ~~cohabited, a parent or guardian, the defendant's child or ward or a~~
2 ~~member of the defendant's household at the time of the offense; or~~
3 ~~a misdemeanor offense with similar essential elements in a~~
4 ~~jurisdiction other than this state;~~

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

12 ~~(8) That the applicant is physically and mentally competent to~~
13 ~~carry such weapon;~~

14 ~~(9) That the applicant has not, been adjudicated to be mentally~~
15 ~~incompetent;~~

16 (6) That the applicant is not prohibited by subsection (a),
17 section seven of this article from carrying a concealed weapon
18 outside his or her residence, temporary place of abode, fixed place
19 of business or other real property owned, leased or lawfully
20 possessed by the person;

21 (7) That the applicant is not prohibited by subdivision (1),
22 subsection (c), section seven of this article from carrying a
23 concealed weapon in a public place. For the purposes of this
24 subdivision, the exceptions specified in paragraphs (A) and (B),

1 subdivision (2), subsection (c), section seven of this article, do
2 not apply to the determination of whether a person fulfills the
3 requirements of this subdivision;

4 (8) That the applicant does not suffer a physical infirmity
5 which prevents the safe handling of a handgun;

6 (9) That, on the date of application, the applicant has:

7 (A) Proof of actual or corrected vision rated at 20/40 or
8 better, as demonstrated by:

9 (I) An original or photocopy of an affidavit of an
10 ophthalmologist or optometrist licensed and practicing in either
11 this state or the applicant's state of residence, issued upon the
12 basis of an examination of the applicant conducted within one year
13 immediately preceding the date of application, attesting to the
14 applicant's actual or corrected vision, which the applicant shall
15 enclose with the application; or

16 (ii) Any acceptable means prescribed by the West Virginia
17 Sheriffs' Bureau or, if the West Virginia Sheriffs' Bureau has made
18 no designation pursuant to this subparagraph, the Attorney General,
19 that provides reasonable assurance that the applicant has actual or
20 corrected vision rated at 20/40 or better;

21 (iii) Any other means acceptable to the sheriff that provides
22 reasonable assurance that the applicant has actual or corrected
23 vision rated at 20/40 or better;

24 (B) A current, valid instruction permit or driver's license

1 issued under chapter seventeen-b of this code, other than a Class G
2 driver's license or instruction permit issued pursuant to article
3 two-b, chapter seventeen-b of this code or a bioptic telescopic lens
4 driver's license issued under prior law, or a current, valid
5 commercial driver's license issued under chapter seventeen-e of this
6 code; or

7 (C) A current, valid license to drive or operate motor
8 vehicles, issued by a state listed by the West Virginia Sheriffs'
9 Bureau or, if the West Virginia Sheriffs' Bureau has not promulgated
10 a list of qualifying states pursuant to this paragraph, the Attorney
11 General, as a state that; (I) Has vision standards that, in all
12 material respects, are greater than or equal to the vision
13 requirements to obtain a driver's license in this state; and (ii)
14 has substantially similar requirements for vision screenings of all
15 renewal driver's license applicants, unless the license is a bioptic
16 telescopic lens license similar to a Class G driver's license issued
17 by this state pursuant to article two-b, chapter seventeen-b of this
18 code. The Attorney General shall research the laws, administrative
19 rules or regulations, policies and practices of the licensing
20 agencies of other states and make preliminary recommendations to the
21 West Virginia Sheriffs' Bureau regarding which states qualify under
22 this paragraph. Not less than once annually, the West Virginia
23 Sheriff's Bureau shall, taking into account the research and
24 recommendations of the Attorney General, determine which states'

1 licenses to drive or operate motor vehicles, if any, qualify under
2 this paragraph. The Attorney General shall publish the list of
3 qualifying states in the State Register, distribute copies of the
4 list of qualifying states to the superintendent and each sheriff and
5 make the list of qualifying states available to the public on the
6 Internet and in printed form upon request;

7 (10) That the applicant has qualified under the minimum
8 requirements ~~set forth~~ specified in subsection (d) of this section
9 ~~for 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~~ demonstrating competence with a handgun based
12 upon the class of license sought by the applicant;

13 (11) That, as of the date the application is made, the
14 applicant has been furnished a copy of the current compendium of
15 West Virginia weapons and self-defense laws described in subsection
16 (w) of this section and has read and is knowledgeable of its
17 contents. However, this subdivision does not apply to any
18 application made prior to the publication of the initial compendium
19 of West Virginia weapons and self-defense laws described in
20 subsection (w) of this section;

21 ~~(11)~~ (12) That the applicant authorizes the sheriff ~~of the~~
22 ~~county, or his or her designee,~~ to whom the application is made to
23 conduct an investigation relative to the information contained in
24 the application;

1 (13) That the applicant authorizes the sheriff to whom the
2 application is made and the superintendent to examine any records,
3 including mental health records, substance abuse treatment records,
4 military service records and judicial records kept under seal,
5 pertaining to the applicant's eligibility for a license to carry
6 concealed weapons;

7 (14) That, except as otherwise restricted by federal law, the
8 applicant waives any right or privilege to maintain the secrecy of
9 mental health or substance abuse treatment records or any right to
10 conceal any fact the applicant may have the right or privilege of
11 concealing resulting from any law pertaining to the confidentiality
12 of such records, which waiver is limited to the background
13 investigation for determining the applicant's eligibility to receive
14 a license to carry concealed weapons and expires upon completion of
15 the background checks required by subsection (b) of this section and
16 the decision of the sheriff to issue or deny a license;

17 (15) Full-color photocopies of:

18 (A) The driver's license or nondriver state identification card
19 the applicant stated pursuant to paragraph (I), subdivision (1) of
20 this subsection;

21 (B) Documentation of the applicant's fulfillment of the
22 requirements of subdivision (3) of this subsection if the applicant
23 fulfills subdivision (3) of this subsection other than by paragraph
24 (A) of that subdivision;

1 (C) If the applicant is an alien:

2 (I) The applicant's:

3 (I) United States government-issued Permanent Resident Card
4 I-551 or its equivalent successor identification; or

5 (II) Other United States government-issued evidence of lawful
6 admission to the United States, which shall include the applicant's
7 category of admission, if the applicant has not been lawfully
8 admitted for permanent residence; and

9 (ii) If the applicant is an alien who has not been lawfully
10 admitted for permanent residence, evidence of compliance with the
11 provisions of 18 U.S.C. §922 (g) (5) and (y) (2), 27 C.F.R. §478.32
12 and any other applicable federal law or regulation regulating the
13 possession, transportation, shipment or receipt of a firearm by an
14 alien; and

15 (D) If the applicant is otherwise ineligible for licensure due
16 to a criminal conviction but the conviction has been expunged, set
17 aside or vacated or the person has been pardoned or otherwise had
18 firearm rights restored, a copy of the relevant pardon, expungement
19 or other order restoring firearm rights, unless the applicant is a
20 renewal applicant who previously provided the required documentation
21 under this paragraph in connection with a prior application under
22 this section made on or after the effective date of the amendments
23 to this section enacted during the 2011 Regular Session of the
24 Legislature;

1 (16) (A) Two passport-regulation color photographs of the
2 applicant taken within thirty days of the date of the application,
3 if the applicant applies by mail; or

4 (B) A digital photograph of the applicant taken by the sheriff
5 at the time of application, if the applicant applies in person; and

6 (17) If the applicant is applying for a Class 1 license, does
7 not hold a current, valid Class 1 license under this section and
8 does not possess a Class 1 license that, including any extension
9 pursuant to subdivision (2), subsection (g) of this section, expired
10 within six months prior to the date of a renewal application, a full
11 set of the applicant's fingerprints, which shall be administered by
12 electronic fingerprint imaging by any West Virginia law-enforcement
13 agency or any private contractor designated by the West Virginia
14 Sheriff's Bureau or by fingerprint card by any law-enforcement
15 agency in the United States or any private contractor designated by
16 the West Virginia Sheriff's Bureau.

17 (b) (1) The sheriff to whom an application is made under this
18 section shall conduct an investigation ~~including a nationwide~~
19 ~~criminal background check, in order to verify that~~ to determine
20 whether the information required in subdivisions (1), (2), (3), (5),
21 (6), (8), and (9), statements made by the applicant in the
22 application relative to the criteria specified in subsection (a) of
23 this section ~~is~~ are, in all material respects, true and correct, and
24 whether the applicant is qualified for licensure under this section.

1 (2) The sheriff shall, as part of the investigation required by
2 subdivision (1) of this subsection:

3 (A) Conduct a state and national criminal history records
4 check, domestic violence protective order check, immigration records
5 check and mental health records check of each applicant to determine
6 whether the applicant is qualified for licensure under this section;
7 and

8 (B) Investigate and make a reasonable effort to verify that
9 each applicant has met the applicable requirements of subsection (d)
10 of this section for demonstrating competence with a handgun based
11 upon the class of license sought by the applicant. As part of any
12 investigation of a Class 1, 2 or 4 applicant required by this
13 paragraph, the sheriff shall attempt to verify that the instructor
14 of any course of instruction subject to the documentation
15 requirements of paragraph (D), subdivision (4), subsection (d) of
16 this section, complied with those requirements.

17 (3) The sheriff shall, as part of the background checks
18 required by paragraph (A), subdivision (2) of this subsection,
19 conduct on each applicant:

20 (A) A state criminal history records check through the State
21 Police Criminal Identification Bureau established pursuant to
22 section twenty-four, article two, chapter fifteen of this code;

23 (B) A state mental health records check through the central
24 state mental health registry established pursuant to article seven-a

1 of this chapter;

2 (C) A query of the domestic violence database established
3 pursuant to section twenty-one, article one, chapter fifty-one of
4 this code;

5 (D) A national criminal history records check by obtaining
6 reports on each applicant from:

7 (I) The National Crime Information Center; and

8 (ii) The Interstate Identification Index maintained by the
9 Federal Bureau of Investigation;

10 (E) If the applicant is an alien, a federal Immigration Alien
11 Query. If the applicant is an alien who has not been lawfully
12 admitted for permanent residence, in addition to the Immigration
13 Alien Query, the sheriff shall, if any doubt exists relating to
14 whether the alien may lawfully purchase a firearm under federal law,
15 consult with the United States Department of Homeland Security,
16 United States Department of Justice, United States Department of
17 State or other federal agency to confirm whether, under federal law,
18 the alien may lawfully purchase or possess a firearm in the United
19 States;

20 (F) A query of the National Instant Criminal Background Check
21 System established pursuant to Section 103 of the Brady Handgun
22 Violence Protection Act, Public Law 103-159, §103, 107 Stat. 1536
23 (1993), reprinted in 18 U.S.C. §922 notes, to determine whether the
24 applicant is prohibited from possessing or transporting firearms by

1 federal law, including without limitation 18 U.S.C. §922(g) or (n),
2 or section seven of this article;

3 (G) If the applicant is an applicant for a Class 1 license who
4 is required to submit fingerprints pursuant to subdivision (17),
5 subsection (a) of this section, fingerprint-based state and national
6 criminal and mental health background checks, including a
7 fingerprint-based national criminal background check report from the
8 Federal Bureau of Investigation; and

9 (H) Any other records checks determined by the West Virginia
10 Sheriffs' Bureau or, if the West Virginia Sheriffs' Bureau has made
11 no designation pursuant to this paragraph or a change in federal law
12 has rendered the most recent designation inadequate, the Attorney
13 General, necessary to preserve the designation of licenses issued
14 under this section on or after the effective date of the amendments
15 to this section enacted during the 2011 Regular Session of the
16 Legislature, other than licenses extended pursuant to subdivision
17 (2), subsection (g) of this section, as a qualifying alternative
18 under 18 U.S.C. §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and other
19 applicable federal laws governing background checks on purchasers of
20 firearms from licensed dealers, as they may be amended from time to
21 time, and to maximize the eligibility of each class of license for
22 reciprocal recognition by the greatest number of other states.

23 (4) The background check requirements of this subsection, other
24 than fingerprinting of Class 1 applicants, are equal for all

1 applicants, regardless of whether the applicant is applying as a
2 renewal or nonrenewal applicant.

3 (5) The Attorney General shall petition the United States
4 Bureau of Alcohol, Tobacco, Firearms and Explosives or its successor
5 to list licenses issued under this section on or after the effective
6 date of the amendments to this section enacted during the 2011
7 Regular Session of the Legislature, other than licenses extended
8 pursuant to subdivision (2), subsection (g) of this section, as a
9 qualifying alternative pursuant to 18 U.S.C. §922(t)(3)(A) and 27
10 C.F.R. §478.102(d)(1) and seek to maintain this listing.

11 (c) (1) There is hereby created in the State Treasury a special
12 revenue revolving fund account known as the State Police Concealed
13 Weapons License Background Check Administration Fund, which shall be
14 an interest-bearing account. This fund shall consist of twenty-five
15 percent of each license fee collected by the sheriffs pursuant to
16 subsection (a) of this section and subsection (b), section five of
17 this article, any funds appropriated into the fund by the
18 Legislature and any interest accrued to the fund. The balance
19 remaining in this fund at the end of each fiscal year shall remain
20 in the fund and shall not revert to the state General Revenue Fund.
21 The sheriff shall forward twenty-five percent of each license fee
22 the sheriff collects pursuant to subsection (a) of this section and
23 subsection (b), section five of this article, excluding any
24 fingerprinting fees for Class 1 applicants under subdivision (10),

1 subsection (n) of this section, to the State Treasurer, not later
2 than the tenth day of the month following the month of collection,
3 and indicate that the remittance is for deposit into the State
4 Police Concealed Weapons License Background Check Administration
5 Fund. The State Treasurer shall deposit all remittances received
6 from sheriffs pursuant to under this subdivision into the State
7 Police Concealed Weapons License Background Check Administration
8 Fund. The State Police Concealed Weapons License Background Check
9 Administration Fund shall be expended from collections rather than
10 appropriations by the Legislature on order of the superintendent
11 solely for the purpose of defraying the costs incurred by the State
12 Police in the performance of state criminal and mental health
13 background checks, as provided in subsection (b) of this section, on
14 applicants for licenses under this section or section five of this
15 article. Sixty dollars of the application fee and any fees for
16 replacement of lost or stolen licenses received by the sheriff shall
17 be deposited by

18 (2) The sheriff shall deposit the remainder of each license fee
19 the sheriff collects pursuant to subsection (a) of this section and
20 subsection (b), section five of this article, after making the
21 required remittances under subdivision (1) of this subsection, and
22 the whole amount of all other fees the sheriff collects in relation
23 to licenses to carry concealed weapons, into a Concealed Weapons
24 License Administration Fund. Such The sheriff shall administer the

1 Concealed Weapons License Administration Fund, which shall be
 2 administered by the sheriff and shall take the form of an interest
 3 bearing interest-bearing account with any interest earned to be
 4 compounded to the fund. Any funds deposited in this concealed weapon
 5 license administration Each county's Concealed Weapons License
 6 Administration Fund shall be a perpetual, revolving fund are to that
 7 be expended by the sheriff may expend only to pay for the costs
 8 incurred by the sheriff associated with issuing concealed weapons
 9 licenses administering this section and section five of this
 10 article. Any surplus in the fund on hand at the end of each fiscal
 11 year may be expended for other law enforcement purposes or operating
 12 needs of the sheriff's office, as the sheriff may consider
 13 appropriate shall remain in the fund, shall not revert to the
 14 General Fund of any county or county sheriff and shall be used only
 15 to pay future costs payable from the fund as provided by this
 16 section.

17 (d) (1) All persons applying for a license must complete a
 18 training course in handling and firing to carry concealed weapons
 19 shall demonstrate competence with a handgun The successful
 20 completion of any of the following courses fulfills this training
 21 requirement as prescribed by this subsection based upon the class of
 22 license the applicant seeks. An applicant for a Class 3 or 5
 23 license shall demonstrate basic competence with a handgun under
 24 subdivision (2) of this subsection. An applicant for a Class 1, 2 or

1 4 license shall demonstrate basic competence with a handgun under
2 subdivision (2) of this subsection and demonstrate competence in
3 handling and firing a handgun as prescribed by subdivision (4) of
4 this subsection.

5 (2) A person may fulfill the requirement of demonstrating basic
6 competence with a handgun by any one of the following:

7 ~~(1)~~ (A) Completion of any official National Rifle Association
8 handgun safety or training course;

9 ~~(2)~~ (B) Completion of any handgun safety or training course or
10 class available to the general public offered by an official
11 law-enforcement organization, community college, junior college,
12 college or private or public institution or organization or handgun
13 training school utilizing instructors duly certified by such
14 institution;

15 ~~(3)~~ (C) Completion of any handgun training or safety course or
16 class conducted by a handgun instructor certified ~~as such~~ by any
17 branch of the Armed Forces of the United States, the military forces
18 of this state, any federal, state or local law-enforcement agency,
19 the state in which the course or class was conducted or ~~by~~ the
20 National Rifle Association;

21 ~~(4)~~ (D) Completion of any handgun training or safety course or
22 class conducted by any branch of the Armed Forces of the United
23 States or the military reserve or National Guard forces of this
24 state;

1 (E) Evidence of qualification prior to March 8, 1996, under the
2 minimum standards for demonstrating competence with a handgun in
3 effect at the time of qualification, prescribed by the Department of
4 Natural Resources pursuant to the former enactment of subdivision
5 (8), subsection (a) of this section, as it existed at any time
6 between July 7, 1989, and March 8, 1996, the former enactment of
7 subdivision (5), subsection (b), section two of this article, as it
8 existed between June 6, 1988, and July 6, 1989, or the former
9 enactment of subsection (e), section two of this article, as it
10 existed between June 6, 1975, and June 5, 1988;

11 (F) Completion of any law-enforcement handgun safety or
12 training course or class offered for security guards, investigators,
13 special deputies or any division or subdivision of law-enforcement
14 or security enforcement;

15 (G) Experience in organized handgun shooting competition;

16 (H) Proof of current service in or an honorable discharge or a
17 general discharge under honorable conditions from any branch of the
18 Armed Forces of the United States or the military forces of this
19 state;

20 (I) Evidence the applicant currently holds or was previously
21 issued any license pursuant to this section or any former enactment
22 of section two of this article as it existed at any time between
23 June 6, 1975, and July 6, 1989;

24 (J) Evidence the applicant currently holds or was previously

1 issued a qualified out-of-state license or permit to carry concealed
2 weapons, by a state listed by the West Virginia Sheriffs' Bureau
3 pursuant to this paragraph as having requirements for demonstrating
4 competence with a handgun that are substantially similar to the
5 requirements of this subsection for the class of license being
6 sought, unless the license was a temporary or emergency license not
7 subject to the issuing state's demonstration of competence
8 requirement and the applicant was not subsequently issued a regular
9 license subject to the applicable demonstration of competence
10 requirement. The Attorney General shall research the laws,
11 administrative rules or regulations, policies and practices of the
12 licensing agencies of other states and make preliminary
13 recommendations to the West Virginia Sheriffs' Bureau regarding each
14 state's qualifications under this paragraph. Not less than once
15 annually, the West Virginia Sheriff's Bureau shall, taking into
16 consideration the research and recommendations of the Attorney
17 General, determine which states have requirements for demonstrating
18 competence with a handgun as a prerequisite for the issuance of a
19 qualified out-of-state license or permit to carry concealed weapons
20 that are substantially similar to the requirements of this
21 subdivision for each class of license and publish a list of
22 qualifying states for each class of license. The Attorney General
23 shall publish each list in the State Register, distribute copies of
24 each list to the superintendent and each sheriff and make each list

1 available to the public on the Internet and in printed form upon
2 request;

3 (K) Evidence the applicant is an honorably retired
4 law-enforcement officer exempt from payment of licensing fees
5 pursuant to subdivision (5), subsection (n) of this section;

6 (L) Completion of any law-enforcement agency handgun training
7 course and qualifying to carry a handgun in the course of normal
8 law-enforcement duties;

9 (M) Completion of any handgun safety or training course or
10 class approved by the West Virginia Sheriffs' Bureau; or

11 (N) Completion of any handgun safety or training course or
12 class that the sheriff considers adequate.

13 (3) Evidence of qualification under subdivision (2) of this
14 subsection may be documented by:

15 (A) A photocopy of a certificate of completion of any of the
16 courses or classes or specified in subdivision (2) of this
17 subsection;

18 (B) An affidavit from the instructor, school, club,
19 organization or group that conducted or taught ~~said~~ a course or
20 class specified in subdivision (2) of this subsection, attesting to
21 the successful completion of the course or class by the applicant;
22 ~~or a~~

23 (C) An original or a copy of any document indicating
24 participation in any firearms shooting competition;

1 (D) An original or a copy of a United States Department of
2 Defense Form 214 (DD-214) indicating an honorable discharge or
3 general discharge under honorable conditions, a certificate of
4 completion of basic training or any other document demonstrating
5 proof of the applicant's current status in the Armed Forces of the
6 United States or an honorable discharge or a general discharge under
7 honorable conditions, as prescribed by paragraph (H), subdivision
8 (2) of this subsection;

9 (E) An original or a full-color copy of any license described
10 in paragraph (I) or (J), subdivision (2) of this subsection;

11 (F) A copy of any document which shows successful completion of
12 the a course or class ~~shall constitute~~ described in subdivision (2)
13 of this subsection; or

14 (G) Any other reasonable, competent and credible evidence of
15 qualification under subdivision (2) of this ~~section~~ subsection.

16 (4)(A) An applicant for a Class 1, 2 or 4 license shall
17 demonstrate competence in handling and live firing a handgun by
18 including with any application for a Class 1, 2 or 4 license:

19 (I) A copy of a current or expired Class 1, 2 or 4 license
20 under this section;

21 (ii) Documentation of having been previously issued a Class 1,
22 2 or 4 license under this section;

23 (iii) An original or photocopy of a notarized affidavit by a
24 certified handgun instructor eligible to offer any course or class

1 described in paragraph (A), (B), (C), (D), (F), (L), (M) or (N),
2 subdivision (2) of this subsection, on a form prescribed by the
3 Attorney General, attesting that the applicant successfully
4 completed the live fire shooting exercises and passed the live fire
5 shooting proficiency test specified in paragraph (B) of this
6 subdivision; or

7 (iv) Any other evidence of demonstrated competence in handling
8 and live firing a handgun prescribed by the West Virginia Sheriffs'
9 Bureau. Before the West Virginia Sheriffs' Bureau may authorize any
10 alternative forms of demonstrated competence in handling and live
11 firing a handgun under this subparagraph, it shall, in consultation
12 with the Attorney General and any individuals or organizations in
13 regular communication with the Attorney General about concealed
14 weapons license issues, consult the Attorney General or other agency
15 responsible for administering the concealed weapons license
16 reciprocity laws of states in which reciprocal recognition of
17 licenses issued under this section is conditioned on the nature of
18 this state's requirements for demonstrating competence in handling
19 and firing a handgun. The West Virginia Sheriffs' Bureau may
20 authorize any alternative forms of demonstrated competence in
21 handling and live firing a handgun under this subparagraph only if
22 the West Virginia Sheriffs' Bureau, in consultation with the
23 Attorney General, determines that the proposed alternative will not
24 impair the reciprocal recognition of any Class 1, 2 or 4 license

1 under this section in any other state. This subparagraph shall be
2 narrowly construed in light of the Legislature's intent expressed in
3 subdivision (47), section one of this article.

4 (B) A certified handgun instructor eligible to offer any course
5 or class described in paragraph (A), (B), (C), (D), (F), (L), (M) or
6 (N), subdivision (2) of this subsection, may issue an affidavit, on
7 a form prescribed by the Attorney General, certifying that a person
8 who has met the requirements of subdivision (2) of this subsection
9 for demonstrating basic competence with a handgun has:

10 (I) Spent at least two hours on a handgun shooting range within
11 this state;

12 (ii) In the course of the shooting proficiency test described
13 in subparagraph (iii) of this paragraph and preparatory shooting
14 exercises held at the shooting range during the same day as the
15 testing, shot at least one hundred rounds of live, factory-loaded
16 ammunition of a caliber not less than .380 from a semiautomatic
17 pistol at one or more B-27 silhouette targets or equivalent targets;
18 and

19 (iii) In the course of a shooting proficiency test administered
20 by the instructor while the applicant was in the actual physical
21 presence of and under the direct personal supervision of the
22 instructor, successfully fired twenty rounds of live, factory-loaded
23 ammunition of a caliber not less than .380 from a semiautomatic
24 pistol, from a distance of not less than twenty-one feet, at a B-27

1 silhouette target or an equivalent target and hit the silhouette
2 portion of the target with at least 15 of the 20 rounds of
3 ammunition. An applicant who fails to hit the silhouette portion of
4 the target with at least fifteen of the twenty rounds of ammunition
5 fired during a test may retake the test an unlimited number of times
6 until the applicant hits the silhouette portion of the target with
7 at least fifteen of the twenty rounds of ammunition expended in a
8 single test.

9 (C) During each session of live fire shooting exercises and
10 testing under paragraph (B) of this subdivision, an instructor may
11 not have more than five students per range officer engaged in live
12 firing exercises.

13 (D) Any instructor who attests to the successful completion of
14 a live fire shooting exercise and proficiency test pursuant to
15 paragraph (B) of this subdivision shall maintain records certifying
16 that, in his or her actual physical presence and under his or her
17 direct personal supervision, he or she observed the student safely
18 handle a handgun and complete the live fire shooting exercises and
19 pass the live fire shooting proficiency test prescribed in paragraph
20 (B) of this subdivision.

21 (5) A sheriff may not require an applicant to demonstrate
22 competence with a handgun other than as provided in subdivisions (2)
23 through (4) of this subsection. Any demonstration of competence
24 under subdivision (2) or (4) of this subsection does not expire.

1 (6) All courses of instruction under subdivision (2) of this
2 subsection and live fire shooting exercises and testing under
3 subdivision (4) of this subsection shall reasonably accommodate any
4 physical disability of any trainee who is mentally and physically
5 capable of safely handling and firing a handgun with at least one
6 hand.

7 (7) The Attorney General shall compile and make available to
8 the public on the Attorney General's website searchable databases of
9 firearm training schools or instructors who regularly offer to the
10 public handgun safety or training courses that fulfill the
11 requirements of subdivision (2) or (4) of this subsection.
12 Participation in these databases shall be voluntary and without
13 charge. These databases shall be geographically indexed by county
14 in which qualifying courses are offered and shall permit
15 participating programs and instructors to list their names,
16 addresses, telephone numbers, e-mail addresses, websites and
17 locations where instruction is offered. Before listing any program
18 or instructor, the Attorney General shall verify the certification
19 and eligibility of the program or instructor to offer instruction
20 that fulfills the requirements of subdivision (2) or (4) of this
21 subsection.

22 ~~(e) All concealed weapons license applications must be~~
23 ~~notarized by~~ An applicant for a license to carry concealed weapons
24 shall, before filing the application with the sheriff, appear before

1 a notary public ~~duly licensed under article four, chapter~~
2 ~~twenty-nine of this code~~ commissioned pursuant to the laws of this
3 state or, if the applicant is a nonresident who applies by mail, the
4 state from which the nonresident applicant submits the application,
5 and subscribe to an acknowledgement of the application and an oath
6 verifying the truthfulness of the applicant's statements in the
7 application. Falsification of any portion of the application
8 constitutes false swearing and is punishable under the provisions of
9 section two, article five ~~chapter sixty-one of this code~~ chapter.

10 ~~(f) If the information in the application is found to be true~~
11 ~~and correct,~~

12 (f)(1) The sheriff shall date and time-stamp each complete
13 application received and issue to the applicant a receipt for the
14 application on a form prescribed by the Attorney General,
15 immediately in person if the applicant submitted the application in
16 person or by first-class mail to the applicant's mailing address
17 stated in the application if the applicant submitted the application
18 by mail, which shall contain the signature of the issuing sheriff or
19 a facsimile thereof affixed by any person authorized to act on the
20 sheriff's behalf pursuant to section five, article two, chapter two
21 of this code, the seal of the issuing sheriff, the date and time the
22 sheriff received the application and a statement of the time limits
23 for the sheriff to act on the application and the date on which the
24 applicant will become entitled to a temporary license under

1 subdivision (6) of this subsection in the absence of a final
2 decision by the sheriff on granting or denying a license.

3 (2) Upon receiving a complete application and issuing a receipt
4 as provided by subdivision (1) of this subsection, the sheriff
5 shall, except as otherwise authorized by the succeeding sentence of
6 this subdivision or required by subdivision (6) of this subsection,
7 commence the background investigation described in subdivision (1),
8 subsection (c) of this section, including an initiation of all
9 background checks required by subdivisions (2) and (3), subsection
10 (c) of this section, not later than the next business day following
11 the date of receipt stamped on the completed application and
12 diligently pursue that investigation in good faith until its
13 completion and the sheriff's decision on granting or denying a
14 license. The sheriff may delay pursuit of the investigation and
15 background checks for not more than twenty-one days during the
16 proclamation of a state of emergency pursuant to section six,
17 article five, chapter fifteen of this code, if the sheriff
18 determines that the enemy attack or natural or man-made disaster
19 cited in the proclamation of the state of emergency is or may
20 reasonably be anticipated to require the temporary suspension of
21 prompt background check processing otherwise required by this
22 subdivision to reasonably and temporarily reallocate resources of
23 the sheriff's office to respond to the declared emergency or
24 disaster. However, a delay in the prompt and diligent pursuit of

1 background checks authorized by the preceding sentence does not
2 alter the time limits specified by subdivision (4) of this
3 subsection for acting upon the application or the sheriff's duties
4 under subdivision (6) of this subsection.

5 (3) The sheriff shall issue a license unless, based upon the
6 results of the investigation and background checks required by
7 subsection (b) of this section, the sheriff finds that the
8 applicant made a materially false statement in the application, is
9 prohibited by federal law or section seven of this article from
10 possessing or transporting firearms or carrying a concealed weapon
11 in a public place or is not qualified for licensure under the
12 criteria specified in this section. The sheriff shall deny a license
13 if the sheriff finds that the applicant made a materially false
14 statement in the application, is prohibited by federal law or
15 section seven of this article from possessing or transporting
16 firearms or carrying a concealed weapon in a public place or fails
17 to qualify under the licensing criteria listed in subsection (a) of
18 this section.

19 (4) The sheriff shall either issue ~~reissue~~ or deny the a
20 license, as provided in this subsection:

21 (A) Except as otherwise provided by paragraph (B) of this
22 subdivision, on the earlier of (I) ~~within~~ 45 days after the date
23 stamped on the application is filed if all required background
24 checks authorized by this section are completed as the date on which

1 the sheriff received the completed application pursuant to
2 subdivision (1) of this subsection or (ii) completion of the
3 investigation and background checks required by subsection (b) of
4 this section; or

5 (B) If the applicant was issued a temporary license or
6 temporary renewal license pursuant to subdivision (6) of this
7 subsection, on the expiration date of the temporary license or
8 temporary renewal license, or, if the expiration date of the
9 temporary license or temporary renewal license is a Saturday,
10 Sunday, legal holiday or designated day off, the last preceding
11 business day before the expiration date of the temporary license or
12 temporary renewal license, which, if granted, shall be the date of
13 issue printed on the license and the date from which the license's
14 expiration date shall be calculated pursuant to subdivision (2),
15 subsection (g) of this section.

16 (5) Except as provided by subdivision (6) of this subsection,
17 the sheriff may suspend the time limitations prescribed by
18 subdivision (4) of this subsection until receipt of the final
19 disposition or proof of restoration of civil and firearm rights if
20 the sheriff receives criminal history information with no final
21 disposition of any criminal charge for which a conviction would
22 disqualify the applicant.

23 (6) Unless the sheriff has previously issued a temporary
24 license or temporary renewal license pursuant to this subdivision in

1 connection with the application, the sheriff shall certify on the
2 application that applicable time limit specified in paragraph (A),
3 subdivision (4) of this subsection has expired, that the sheriff has
4 performed the background checks specified in paragraphs (E) through
5 (G), subdivision (3), subsection (b) of this section to determine
6 whether the applicant is prohibited by federal law or section seven
7 of this article from possessing or transporting firearms or carrying
8 a concealed weapon in a public place and initiated the remainder of
9 the background investigation required by subsection (b) of this
10 section and that the information available to the sheriff does not
11 indicate that the applicant is prohibited by federal law or section
12 seven of this article from possessing or transporting firearms or
13 carrying a concealed weapon in a public place, and issue the
14 applicant a temporary license if, for any reason, the sheriff has
15 not issued or denied a regular license as provided in subdivision
16 (3) of this subsection after the expiration of the applicable time
17 limit specified in paragraph (A), subdivision (4) of this
18 subsection. The sheriff may issue a temporary license prior to the
19 expiration of the applicable time limit specified in paragraph (A),
20 subdivision (4) of this subsection, if all the conditions for
21 issuing a temporary license, other than the expiration of the
22 applicable time limit, have been fulfilled. Upon receiving an
23 application from a licensee who is applying for renewal of a license
24 issued under this section prior to the current license's expiration

1 date or is an emergency licensee under section five of this article
2 who is applying for a regular license under this section prior to
3 the emergency license's expiration date, the sheriff shall
4 immediately perform the background checks specified in paragraphs
5 (E) through (G), subdivision (3), subsection (b) of this section to
6 determine whether the applicant is prohibited by federal law or
7 section seven of this article from possessing or transporting
8 firearms or carrying a concealed weapon in a public place and, if
9 the information available to the sheriff does not show that the
10 applicant is prohibited by federal law or section seven of this
11 article from possessing or transporting firearms or carrying a
12 concealed weapon in a public place, immediately issue the licensee
13 a temporary renewal license. A temporary license or temporary
14 renewal license issued pursuant to this subdivision shall not
15 contain the licensee's photograph, shall be clearly marked as a
16 temporary or temporary renewal license and is valid for all intents
17 and purposes throughout this state when presented with a valid
18 government-issued photo identification pursuant to subdivision (2),
19 subsection (g), section three of this article, until the expiration
20 date provided by subdivision (3), subsection (g) of this section,
21 unless it is sooner suspended, revoked or voluntarily surrendered.
22 The sheriff shall immediately notify the superintendent by
23 electronic or facsimile communication of the issuance of a temporary
24 or temporary renewal license pursuant to this subdivision and send

1 the superintendent a certified copy of the application indicating
2 the issuance of a temporary or temporary renewal license by mail
3 within seven days, and the superintendent shall cause the concealed
4 weapons license database maintained pursuant to subdivision (2),
5 subsection (l) of this section to be updated accordingly. The
6 sheriff shall fulfill the requirements of this subdivision
7 regardless of whether the applicant prompts the sheriff to do so.
8 Failure of the sheriff to notify the applicant of the denial of the
9 application in accordance with subsection (j) of this section by the
10 expiration date of the temporary license or temporary renewal
11 license, constitutes issuance of a license by default and the
12 sheriff shall immediately fulfill the requirements of this section
13 as in any other case in which the sheriff issues a license.

14 (7) If the sheriff finds an applicant to be qualified for
15 licensure except for adequate evidence of demonstrated competence
16 with a handgun as required by subsection (d) of this section for the
17 class of license sought, the sheriff shall provisionally deny the
18 license and notify the applicant as required by this section in the
19 case of any other denial. If an applicant whose application is
20 provisionally denied for inadequate evidence of demonstrated
21 competence with a handgun required by subsection (d) of this
22 section, presents to the sheriff satisfactory evidence of
23 demonstrated competence with a handgun as required by subsection (d)
24 of this section for the class of license sought, the sheriff shall

1 reopen and reconsider the application and act upon the application
2 within seven days of receipt of the applicant's new evidence of
3 demonstrated competence with a handgun. If an applicant for a Class
4 1, 2 or 4 license fulfills the basic demonstration of competence
5 with a handgun under subdivision (2), subsection (d) of this
6 section, but did not present adequate evidence of competence in
7 handling and firing a handgun pursuant to subdivision (4),
8 subsection (d) of this section, and otherwise fulfills the
9 requirements for a Class 3 or 5 license, the sheriff shall issue a
10 Class 3 license if the applicant sought a Class 1 or 2 license or a
11 Class 5 license if the applicant sought a Class 4 license and
12 provisionally deny the Class 1, 2 or 4 license sought and the
13 licensee may seek a reconsideration of or appeal the sheriff's
14 decision on granting the higher class of license and maintain the
15 lower class of license granted until qualifying for the higher class
16 of license originally sought or succeeding in a reconsideration or
17 appeal of the original decision on denying the license originally
18 sought and granting a lower license classification.

19 ~~(g) Before any approved license shall be issued or become~~
20 ~~effective, the applicant shall pay to the sheriff a fee in the~~
21 ~~amount of fifteen dollars which the sheriff shall forward to the~~
22 ~~superintendent of the West Virginia state police within thirty days~~
23 ~~of receipt. Any such license shall be valid for five years~~
24 ~~throughout the state All licenses issued under this section are~~

1 state licenses to carry concealed weapons that shall, unless sooner
2 suspended or revoked as provided in this section or voluntarily
3 surrendered, be valid throughout this state until the expiration
4 date determined as follows:

5 (1) Except as otherwise provided by subdivisions (2) and (4) of
6 this subsection:

7 (A) All Class 1, 2 and 3 licenses other than temporary licenses
8 and temporary renewal licenses issued pursuant to subdivision (6),
9 subsection (f) of this section, issued on or after the effective
10 date of the amendments to this section enacted during the 2011
11 Regular Session of the Legislature, shall expire on the licensee's
12 first birthday occurring more than four years but not more than five
13 years from the date of issue or, if the licensee is a renewal
14 applicant whose prior license's expiration date was on the
15 licensee's birthday, the licensee's first birthday following the
16 expiration date of the prior license on which the licensee's age
17 becomes evenly divisible by five.

18 (B) All Class 4 and 5 licenses, other than temporary licenses
19 and temporary renewal licenses issued pursuant to subdivision (6),
20 subsection (f) of this section, issued on or after the effective
21 date of the amendments to this section enacted during the 2011
22 Regular Session of the Legislature, shall expire on the licensee's
23 twenty-second birthday.

24 (2) Except as otherwise provided by subdivision (4) of this

1 subsection, the license, other than a temporary or temporary renewal
2 license issued pursuant to subdivision (6), subsection (f) of this
3 section, of any service member that expires during an active-duty
4 military deployment away from the licensee's place of residence or
5 permanent duty station, shall be extended for one hundred eighty
6 days following the end date of the deployment. In order to establish
7 proof of continued validity of a license extended by this
8 subdivision, the licensee shall carry and display in the same manner
9 as required of the license by this article, a copy of the licensee's
10 deployment orders or other documentation from the licensee's
11 commanding officer that orders the licensee to travel away from his
12 place of residence or permanent duty station and indicates the start
13 and end dates of the deployment.

14 (3) Except as otherwise provided by subdivision (4) of this
15 subsection, a temporary license issued pursuant to subdivision (6),
16 subsection (f) of this section, shall expire one hundred eighty days
17 from the date of issue. A temporary renewal license issued pursuant
18 to subdivision (6), subsection (f) of this section, shall expire one
19 hundred eighty days after the expiration date of the licensee's
20 current license under this section or the expiration date of the
21 emergency license issued pursuant to section five of this article
22 when the emergency licensee applies for a regular license under this
23 section prior to the emergency license's expiration date.

24 (4) Any license issued to an alien who has not been lawfully

1 admitted for permanent residence shall expire on the earlier of the
2 expiration date otherwise applicable under this subsection or the
3 last day the applicant or licensee has demonstrated to the sheriff
4 he or she is legally authorized to be in the United States.

5 ~~(h) All persons holding a current and valid concealed weapons~~
6 ~~license as of the sixteenth day of December, one thousand nine~~
7 ~~hundred ninety five, shall continue to hold a valid concealed~~
8 ~~weapons license until his or her license expires or is revoked as~~
9 ~~provided in this article: *Provided, That all reapplication fees*~~
10 ~~shall be waived for applications received by the first day of~~
11 ~~January, one thousand nine hundred ninety seven, for any person~~
12 ~~holding a current and valid concealed weapons license as of the~~
13 ~~sixteenth day of December, one thousand nine hundred ninety five,~~
14 ~~which contains use restrictions placed upon the license as a~~
15 ~~condition of issuance by the issuing circuit court. Any licenses~~
16 ~~reissued pursuant to this subsection will be issued for the time~~
17 ~~period of the original license.~~

18 ~~(I)~~ (h) (1) Each license shall be no larger than three and
19 three-eighths inches wide by two and one-eighth inches long and
20 shall be made of a hard, laminated material suitable for carrying in
21 a wallet, similar to a driver's license.

22 (2) The face of each license shall contain:

23 (A) The licensee's:

24 (I) Full name;

- 1 (ii) Date of birth;
- 2 (iii) Sex;
- 3 (iv) Race;
- 4 (v) Height;
- 5 (vi) Weight;
- 6 (vii) Natural hair color;
- 7 (viii) Natural eye color; and
- 8 (ix) Residence address of the licensee, and a space upon which
9 ~~the signature of the licensee shall be signed with pen and ink. The~~
10 ~~issuing sheriff shall sign and attach his or her seal to all license~~
11 ~~cards. The sheriff shall provide to each new licensee a duplicate~~
12 ~~license card, in size similar to other state identification cards~~
13 ~~and licenses, suitable for carrying in a wallet, and such license~~
14 ~~card is deemed a license for the purposes of this section. or an~~
15 alternate address determined pursuant to subsection (s) of this
16 section;
- 17 (x) Signature; and
- 18 (xi) Full-face color photograph, unless the license is a
19 temporary or temporary renewal license issued pursuant to
20 subdivision (6), subsection (f) of this section;
- 21 (B) The license's dates of issue and expiration;
- 22 (C) The unique license number assigned pursuant to subdivision
23 (5) of this subsection;
- 24 (D) Whether the license is duplicate or replacement license;

1 (E) The class of the license;

2 (F) The signature of the issuing sheriff or a facsimile thereof
3 affixed by any person authorized to act on the sheriff's behalf
4 pursuant to section five, article two, chapter two of this code;

5 (G) The seal of the issuing sheriff; and

6 (H) If the license does not entitle the licensee to an
7 exemption under 18 U.S.C. §922(t)(3)(A) within this state, the
8 phrase "NOT NICS EXEMPT" in red, all-capital letters in not less
9 than 12-point type.

10 (3) The reverse of each license shall contain:

11 (A) The telephone number of the concealed weapons license
12 verification service established pursuant to subdivision (2),
13 subsection (1) of this section and a statement that any
14 law-enforcement officer or other employee or agent of any criminal
15 justice agency within the United States or licensed firearm dealer
16 or any employee or agent thereof may use the concealed weapons
17 license verification service to instantaneously validate the license
18 twenty-four hours a day, seven days a week; and

19 (B) The name, county, office address and nonemergency daytime
20 office telephone number of the issuing sheriff.

21 (4) Each license application shall solicit the applicant for a
22 designation, in writing, of whether the applicant desires to claim
23 the license in person at the sheriff's office or receive delivery of
24 the license by mail. The sheriff shall deliver the license to the

1 licensee by mail to the mailing address specified in the application
2 unless the licensee elected to claim the license in person at the
3 sheriff's office. The sheriff shall contact the licensee by
4 telephone and e-mail at the daytime telephone number and e-mail
5 address, if any, listed in the application or, if the licensee
6 cannot be contacted by telephone or e-mail after two business days
7 or did not provide a daytime telephone number or e-mail address in
8 the application, by letter sent by first-class mail to the
9 licensee's mailing address listed in the application, and advise the
10 licensee that the sheriff has issued the license and specify the
11 place and hours when the licensee may claim the license in person,
12 if the licensee elected to claim the license in person at the
13 sheriff's office.

14 (5) The Superintendent shall assign to each valid license in
15 effect on the effective date of the amendments to this section
16 enacted during the 2011 Regular Session of the Legislature, a unique
17 license number. Before issuing any license on or after the
18 effective date of the amendments to this section enacted during the
19 2011 Regular Session of the Legislature, other than a renewal or
20 replacement license for which a unique license number has been
21 previously assigned pursuant to this subdivision, the sheriff shall
22 obtain from the superintendent a unique license number for the
23 licensee. The superintendent shall, in consultations with the West
24 Virginia Sheriffs' Bureau, develop a unique license number

1 assignment system that permits sheriffs to instantaneously obtain a
2 unique license number for the purpose of indexing all licenses
3 issued throughout the state to enable law-enforcement verification
4 of licenses, preventing duplicate licensing files for an individual
5 applicant or licensee, facilitating the transfer of a license to
6 another county when a resident licensee moves to another county or
7 when a nonresident licensee becomes a resident of this state and a
8 county other than the county in which the license was issued and
9 ensuring efficient administration of the licensing program. The
10 superintendent shall design the license numbering system to number
11 licenses serially and not base any license number on the licensee's
12 Social Security number, date of birth, Zip code or other number that
13 otherwise correlates with any personally-identifying information of
14 the licensee.

15 (6) For the purposes of implementing the 5-class licensing
16 system created by the amendments to this section enacted during the
17 2011 Regular Session of the Legislature, any current, valid license
18 issued under any prior enactment of this section that is in effect
19 on the effective date of the amendments to this section enacted
20 during the 2011 Regular Session of the Legislature, shall become a
21 Class 3 license if the licensee is at least twenty-one years of age
22 or a Class 5 license if the licensee is less than twenty-one years
23 of age.

24 ~~(j)~~ (i) (1) The Attorney General shall, in consultation with the

1 superintendent ~~of and~~ the West Virginia ~~state police shall~~ Sheriffs'
2 Bureau, prepare uniform applications for licenses and license cards
3 showing that ~~such a~~ license has been granted and shall do any other
4 act required ~~to be done~~ to protect the state and see to the
5 enforcement of this section.

6 (2) The Attorney General shall design each application form to
7 include a detailed checklist for each required part of the
8 background checks specified in subdivisions (2) and (3), subsection
9 (b) of this section. The sheriff shall, before issuing any license,
10 certify in writing on the approved application that the sheriff
11 performed all background checks required by this section and that
12 the results of the background checks did not show that the applicant
13 was disqualified from licensure and record on the application the
14 unique approval number issued by the National Instant Criminal
15 Background Check System as part of the background check required by
16 paragraph (F), subdivision (3), subsection (b) of this section.

17 (3) The Attorney General shall design each application or other
18 form promulgated pursuant to this section to comply with Section 7
19 of the Privacy Act of 1974, Public Law 93-579, §7, 88 Stat. 1896,
20 1909 (1974), reprinted in 5 U.S.C. §552a notes.

21 (4) The Attorney General shall design license applications and
22 other forms promulgated pursuant to this section to comply with any
23 applicable requirements of 42 C.F.R. §§2.31 to 2.35, with respect to
24 consent to disclosure of alcohol or drug abuse patient records.

1 (5) The Attorney General shall prepare and distribute a form
2 for affidavit under subparagraph (i), paragraph (A), subdivision
3 (9), subsection (a) of this section and instructions for the
4 affidavit form that fulfill the requirements of subparagraph (i),
5 paragraph (A), subdivision (9), subsection (a) of this section,
6 nonexclusive of any other form of affidavit that fulfills the
7 requirements of subparagraph (i), paragraph (A), subdivision (9),
8 subsection (a) of this section.

9 (6) The Attorney General shall design forms of license cards
10 that (A) differentiate between (i) Class 1, 2 and 3 licenses and
11 (ii) Class 4 and 5 licenses and (B) differentiate between regular
12 licenses and temporary, temporary renewal and emergency licenses.
13 All temporary, temporary renewal and emergency licenses shall
14 contain the words "valid without photo-secondary photo ID required"
15 in the location of the licensee's photograph.

16 (7) All sheriffs shall procure and maintain the means of
17 digitally photographing all applicants or licensees who apply for a
18 license or replacement license in person, taking by electronic
19 fingerprint imaging the fingerprints of Class 1 applicants who apply
20 in person and providing the required digital photography and
21 fingerprinting services at no additional charge to each applicant.

22 (8) The West Virginia Sheriffs' Bureau and the Commissioner of
23 Motor Vehicles shall annually enter into a statewide contract for
24 the production of license cards by the Division of Motor Vehicles on

1 behalf of sheriffs electing to participate under the contract. The
2 contract shall provide that the Commissioner of Motor Vehicles shall
3 produce the license cards for licenses issued under this section by
4 any sheriff electing to use the services of the Division of Motor
5 Vehicles under the contract shall pay the division a uniform fee for
6 each license card produced, which shall reflect only the actual
7 marginal cost of each license card produced without inclusion of any
8 overhead or fixed costs the Division of Motor Vehicles incurs
9 regardless of whether it produces license cards for sheriffs, agreed
10 upon by the West Virginia Sheriffs' Bureau and the Commissioner of
11 Motor Vehicles and the sheriff shall pay the required license card
12 production fee from the concealed weapons license administration
13 fund and that any sheriff may elect to begin or cease participation
14 under the contract at any time. A sheriff may not have license
15 cards produced by the Division of Motor Vehicles except pursuant to
16 the current statewide contract adopted pursuant to this subdivision.

17 (9) Each sheriff shall use only the current, uniform forms
18 prescribed by the Attorney General for the purposes of administering
19 this section and section five of this article. If the Attorney
20 General promulgates a new application form, license card or other
21 form used for the purposes of this section or section five of this
22 article, each sheriff shall immediately destroy all old versions of
23 those forms possessed by his or her office upon receiving a copy of
24 the applicable new form from the Attorney General.

1 (10) The uniform application form, forms for affidavits and
2 other forms for which this section requires an oath, affirmation, or
3 notarization shall conclude with the form for a written oath
4 specified in subsection (a), section one hundred two, article five,
5 chapter twenty-nine-c of this code and an adequate space for a
6 notary public's stamp or seal.

7 ~~(k) In the event~~ (j) (1) If the sheriff denies an application is
8 denied or suspends or revokes a license, the sheriff shall prepare
9 the documents specified in subdivision (2) of this subsection and
10 provide the applicant or licensee, by personal service or certified
11 mail, return receipt requested, written notice of the denial,
12 suspension or revocation and the supporting documentation required
13 by subdivision (2) of this subsection.

14 (2) A sheriff who denies, suspends or revokes any license
15 shall:

16 (A) State in writing:

17 (i) An enumeration of each specific subdivision of subsection
18 (a) of this section and, if applicable, subsection (a) or (c),
19 section seven of this article, or 18 U.S.C. §922(g) or (n), under
20 which the sheriff finds the applicant or licensee disqualified;

21 (ii) All specific ~~reasons for~~ and articulable facts upon which
22 the sheriff based the denial, ~~shall be stated by the sheriff denying~~
23 the application suspension or revocation, including all sources of
24 information upon which the sheriff based his findings of fact; and

1 (iii) A brief statement of law and fact explaining to the
2 applicant or licensee the sheriff's reasons for the denial,
3 suspension or revocation, based upon the legal authority cited by
4 the sheriff pursuant to subparagraph (i) of this paragraph and the
5 facts identified by the sheriff pursuant to subparagraph (ii) of
6 this paragraph;

7 (B) Provide the applicant or licensee:

8 (i) A copy of the documents prepared by the sheriff pursuant to
9 paragraph (A) of this subdivision;

10 (ii) Photocopies of all writings, photographs, records or other
11 documentary evidence upon which the sheriff based the findings of
12 fact described in subparagraph (ii), paragraph (A) of this
13 subdivision;

14 (iii) A written notice of the procedure for requesting
15 reconsideration of the denial, suspension or revocation and, if the
16 applicant or licensee elects, submitting additional documentation
17 relating to the reasons for the denial, suspension or revocation for
18 the sheriff to consider as part of the applicant's or licensee's
19 request for reconsideration;

20 (iv) A written notice of the procedure for appealing the
21 denial, suspension or revocation directly to the circuit court
22 without requesting reconsideration by the sheriff;

23 (v) A written notice of the applicant's rights under
24 subdivision (7), subsection (f) of this section, if the denial is a

1 provisional denial based upon inadequate evidence of demonstrated
2 competence with a handgun as required by subsection (d) of this
3 section; and

4 (vi) A written notice of the right of the applicant or licensee
5 to seek review by the circuit court if the applicant or licensee
6 elects to seek reconsideration by the sheriff of the denial,
7 suspension or revocation and the sheriff affirms the initial denial,
8 suspension or revocation; and

9 (C) Maintain copies of the documents required by this
10 subdivision in the application or license file for not less than two
11 years.

12 (3) Any applicant whom the sheriff denies a license or licensee
13 whose license is suspended or revoked may file, within thirty days
14 of the denial, suspension or revocation, a petition for
15 reconsideration, which may include arguments for reversal of the
16 initial denial, suspension or revocation, with or without additional
17 documentation relating to the reasons for the denial, suspension or
18 revocation. The sheriff shall reconsider the denial, suspension or
19 revocation if the applicant or licensee requests reconsideration as
20 provided in this subdivision. The sheriff shall, within twenty-one
21 days of receiving a request for reconsideration, inform the
22 applicant or licensee of the sheriff's decision after
23 reconsideration. If the sheriff affirms the initial denial,
24 suspension or revocation after reconsideration, the sheriff shall

1 issue the applicant or licensee a notice of the sheriff's action in
2 the same form and substance as the initial notice of denial,
3 suspension or revocation, specifically address any continued
4 deficiencies in light of any arguments or additional documentation
5 submitted by the applicant or licensee and provide a notice of the
6 right of the applicant or licensee to petition the circuit court for
7 review of the sheriff's decision.

8 (4) Any person denied a license or whose license is suspended
9 or revoked may file, in the circuit court of the county in which the
10 application was made or the license was suspended or revoked,
11 without regard to whether the person has petitioned the sheriff for
12 reconsideration under subdivision (3) of this subsection, a petition
13 seeking review of the denial, suspension or revocation. ~~Such~~ The
14 petitioner shall file the petition ~~shall be filed~~ for review within
15 thirty ~~sixty~~ days of the later of: (i) The date of the original
16 denial, suspension or revocation; or (ii) the date of the
17 affirmation of the denial, suspension or revocation upon
18 reconsideration if the person requested reconsideration following
19 the initial notice of denial, suspension or revocation pursuant to
20 subdivision (3) of this subsection. The petition shall name the
21 sheriff who denied, suspended or revoked the license as the
22 respondent. The court shall, except when otherwise requested by the
23 petitioner, assign the petition a high priority on its civil docket
24 and hear the petition on an expedited basis. The court shall then

1 determine whether the applicant petitioner is entitled to the
2 issuance or reinstatement of a license under the criteria ~~set forth~~
3 specified in this section. ~~The applicant may be represented by~~
4 ~~counsel, but in no case shall the court be required to appoint~~
5 ~~counsel for an applicant. The final order of the court shall include~~
6 ~~the court's findings of fact and conclusions of law. If the final~~
7 ~~order upholds the denial, the applicant may file an appeal in~~
8 ~~accordance with the Rules of Appellate Procedure of the Supreme~~
9 ~~Court of Appeals. The court shall review *de novo* all matters within~~
10 the scope of its review, but shall presume the petitioner to meet
11 all specific qualifications for licensure not identified by the
12 sheriff pursuant to subparagraph (i), paragraph (A), subdivision (2)
13 of this subsection, as the basis for the denial of the application
14 or suspension or revocation of the license, and shall limit its
15 scope of review to whether the petitioner was disqualified from
16 licensure for the reasons stated by the sheriff pursuant to
17 subparagraph (i), paragraph (A), subdivision (2) of this subsection.
18 The court shall order the sheriff to issue or reinstate a license
19 and grant the petitioner any other relief to which he or she may be
20 entitled, unless the sheriff proves by clear and convincing evidence
21 that the petitioner is not qualified for licensure under the
22 criteria specified in subsection (a) of this section.

23 (5) Notwithstanding any provision of this code to the contrary,
24 a court may not charge a filing fee or other court costs at the time

1 any person files any petition for review of a denial, suspension or
2 revocation of a license to carry concealed weapons pursuant to
3 subdivision (4) of this subsection. The court shall assess all court
4 costs on the losing party at the conclusion of the proceedings as
5 part of its final judgment.

6 (6) All judicial proceedings under this subsection shall be
7 closed and the record sealed unless the petitioner requests, in
8 writing, that the proceedings and record be opened. A petitioner
9 who elects open proceedings pursuant to this subdivision may, at any
10 time, in writing, subsequently revoke the election.

11 (7) A licensee whose license is suspended or revoked shall
12 comply with subdivision (8), subsection (q) of this section before
13 he or she may petition the sheriff for reconsideration pursuant to
14 subdivision (3) of this subsection or file a petition for review
15 with the circuit court pursuant to subdivision (4) of this
16 subsection, and a failure to comply with subdivision (8), subsection
17 (q) of this section is jurisdictional.

18 ~~(1) (k) (1) In the event~~ A licensee may notify the issuing
19 sheriff and obtain a replacement license as provided by subdivision
20 (2) of this subsection if the license is lost, stolen or destroyed,
21 ~~the person to whom the license was issued may obtain a duplicate or~~
22 ~~substitute license for a fee of five dollars by filing a notarized~~
23 ~~statement with the sheriff indicating that the license has been lost~~
24 ~~or destroyed~~ the licensee's residence address changes or the

1 licensee changes his or her name.

2 (2) A licensee described in subdivision (1) of this subsection
3 who elects to obtain a replacement license shall:

4 (A) File with the issuing sheriff or, if the licensee becomes
5 a resident of a county in this state other than the county in which
6 the license was issued, the sheriff of the licensee's new county of
7 residence, an affidavit declaring, as appropriate, that:

8 (i) The license has been lost, stolen or destroyed;

9 (ii) The licensee has changed his or her legal name and
10 attaches a certified copy of a marriage license or court decree or
11 other evidence of the name change; or

12 (iii) The licensee's residence address has changed. The
13 licensee shall, unless otherwise provided by subsection (s) of this
14 section, list the licensee's new residence address and mailing
15 address, if different. If the licensee has become a resident of a
16 county in this state other than the county in which the license was
17 issued, the licensee shall specify the county in which the license
18 was issued;

19 (B) Pay the sheriff the replacement license fee specified in
20 subdivision (2), subsection (n) of this section; and

21 (C) Unless the license for which a replacement is sought is a
22 temporary, temporary renewal or emergency license:

23 (i) Submit two passport-regulation color photographs of the
24 licensee taken within thirty days of the date of the application for

1 a replacement license, if the licensee files the documents specified
2 in this subdivision and applies for the replacement license by mail;
3 or

4 (ii) Have the sheriff take a digital photograph of the licensee
5 at the time the licensee files the application for a replacement
6 license, if the licensee files the documents specified in this
7 subdivision and applies for the replacement license in person.

8 (3) The sheriff shall, upon receiving the items specified in
9 subdivision (2) of this subsection:

10 (A) Issue the licensee a replacement license that contains the
11 information required by subsection (h) of this section, including,
12 if applicable, the licensee's new name or address; and

13 (B) Notify the superintendent of any change of the licensee's
14 name or address if the licensee obtained the replacement license as
15 the result of a change of the licensee's name or residence address.

16 (4) The sheriff may not require a licensee who applies for a
17 replacement license pursuant to this subsection to surrender the
18 current license until after the licensee takes actual physical
19 possession of the replacement license. A licensee who obtains a
20 replacement license pursuant to this subsection shall, after
21 receiving actual physical possession of a replacement license,
22 surrender the old license to the sheriff that issued the replacement
23 license unless the licensee declared the replaced license lost,
24 stolen or destroyed pursuant to subparagraph (i), paragraph (A),

1 subdivision (2) of this subsection.

2 (5) Any licensee may, at any time, without charge or payment of
3 any fee, obtain a replacement license card if:

4 (A) The licensee is an existing licensee as of the effective
5 date of the amendments to this section enacted during the 2011
6 Regular Session of the Legislature, has not changed his or her name
7 or address and desires a new license card for the purpose of having
8 a license card that shows the licensee's new class of license under
9 the 5-class licensing system created as part of the amendments to
10 this section enacted during the 2011 Regular Session of the
11 Legislature, or which does not contain the licensee's Social
12 Security number or an indication that the license is applicable only
13 to pistols and revolvers; or

14 (B) The licensee has not changed his or her place of residence
15 but the licensee's residence has been assigned a new street address
16 by the licensee's county or municipality of residence.

17 (6) When a licensee becomes a resident of a county other than
18 the county in which the license was issued and applies to the
19 sheriff of his or her new county of residence for a replacement
20 license pursuant to this subsection, the sheriff of the licensee's
21 new county of residence shall notify the issuing sheriff of record
22 within five business days. Within five business days of receipt of
23 a notice from the sheriff of another county that the licensee has
24 moved to that county and applied for a replacement license, the

1 issuing sheriff of record shall transfer the licensee's license file
2 to the sheriff of the licensee's new county of residence and the
3 sheriff of the licensee's new county of residence shall become the
4 issuing sheriff of record.

5 ~~(m)~~ (1) (1) The sheriff shall, immediately after ~~the~~ issuing a
6 license is granted as aforesaid to carry concealed weapons, furnish
7 the superintendent ~~of the West Virginia state police~~ a certified
8 copy of the approved application. ~~It shall be the duty of~~ Upon a
9 written request from the Attorney General, the superintendent or the
10 prosecuting attorney of that county for a list of all licenses
11 issued in the county, the sheriff ~~to~~ shall furnish to the
12 ~~superintendent of the West Virginia state police at any time so~~
13 ~~requested~~ requesting official a certified list of the names, birth
14 dates, license class, addresses and telephone numbers, e-mail
15 addresses and other personally-identifying information on file of
16 ~~all such licenses issued~~ licensees in the county within ten business
17 days of receipt of the written request.

18 (2) The superintendent ~~of the West Virginia state police~~ shall
19 maintain ~~a~~ an automated registry of all ~~persons who have been issued~~
20 ~~concealed weapons licenses~~ licensees under this section and section
21 five of this article and other pertinent information, which shall be
22 available online, upon request, at all times to all law-enforcement
23 and criminal justice agencies throughout the United States. The
24 superintendent may respond only to inquiries limited to verifying an

1 individual license or determining whether a specific, named
2 individual is a licensee. A law-enforcement or criminal justice
3 agency may not conduct random inquiries on whether a specific, named
4 individual is a licensee unless the person is subject to a lawful
5 criminal investigation, arrest, detention or an investigatory stop
6 and the requesting agency has reasonable suspicion to believe the
7 person is carrying a concealed weapon or is otherwise engaging in an
8 act whose legality depends on whether the person is licensed under
9 this section or section five of this article. The superintendent
10 shall maintain and operate a concealed weapons license verification
11 service, which shall be operational twenty-four hours a day, seven
12 days a week, through a dedicated telephone number and the national
13 law-enforcement telecommunication system, for the purpose of
14 responding to law-enforcement inquiries from any law-enforcement
15 agency within the United States or licensed firearm dealer within
16 this state concerning the validity of an individual license issued
17 under this section or section five of this article or determining
18 whether a specific, named individual is a licensee pursuant to this
19 section or section five of this article.

20 (3) The sheriff shall immediately notify the superintendent, by
21 electronic means, including e-mail or facsimile transmission, if the
22 sheriff suspends or revokes a license, denies a renewal application
23 for which a license has been extended pursuant to subdivision (2),
24 subsection (g) of this section or receives a voluntarily-surrendered

1 license, that the license is no longer valid, and the superintendent
2 shall cause the concealed weapons license database to be updated
3 accordingly.

4 ~~(n) All licensees must carry with them a state-issued photo~~
5 ~~identification card with the concealed weapons license whenever the~~
6 ~~licensee is carrying a concealed weapon. Any licensee who fails to~~
7 ~~have in his or her possession a state-issued photo identification~~
8 ~~card and a current concealed weapons license while carrying a~~
9 ~~concealed weapon shall be guilty of a misdemeanor and, upon~~
10 ~~conviction thereof, shall be fined not less than fifty or more than~~
11 ~~two hundred dollars for each offense.~~

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

16 ~~(p) A person who is~~ (m) All persons engaged in the receipt,
17 review, ~~or in the~~ issuance, suspension, ~~or~~ revocation or
18 reinstatement of a ~~concealed weapon~~ any license does not incur any
19 civil liability to carry concealed weapons under this section or
20 section five of this article shall be immune from liability in a
21 civil action as the result of the lawful performance of his or her
22 duties under this article or, unless the person committed willful
23 misconduct or gross negligence, for the acts or omissions of any
24 licensee, including misconduct with a deadly weapon committed by any

1 licensee.

2 (n) (1) Each applicant shall pay to the sheriff, at the time of
3 application, a nonrefundable license fee of \$60, which shall,
4 whenever the license, if granted, will be issued for a period of
5 other than five years pursuant to subdivision (1) or (4), subsection
6 (g) of this section or was extended pursuant to subdivision (2),
7 subsection (g) of this section, be prorated at a rate of \$1 per
8 month for which the license sought is to be issued and by which the
9 license was extended pursuant to subdivision (2), subsection (g) of
10 this section, exclusive of the remaining period of validity of a
11 current license for which a license fee was previously paid in the
12 case of renewal applications, unless the applicant is exempt from
13 payment of the fee pursuant to subdivision (5) of this subsection.
14 In determining the amount of time for which a license would be
15 issued, the license shall be presumed issued on the expiration date
16 of a license for which a renewal application is filed prior to its
17 date of expiration or, in any other case, the deadline for action on
18 the application specified in subdivision (4), subsection (f) of this
19 section, regardless of whether a license is issued sooner.

20 (2) A licensee who applies for a replacement license pursuant
21 to subsection (k) of this section, shall, unless the licensee is
22 exempt from payment of the fee pursuant to subdivision (5) of this
23 subsection or subdivision (5), subsection (k) of this section, pay
24 the sheriff a replacement license fee of \$5 if the licensee applies

1 for a replacement license before January 1, 2012, or, if the
2 licensee applies for a replacement license after December 31, 2011,
3 pay the sheriff a replacement license fee of \$5 if the licensee
4 applies for a replacement license within thirty days of the loss,
5 theft or destruction of the license or change of the licensee's name
6 or address or \$10 if the licensee applies for a replacement license
7 more than thirty days after the loss, theft or destruction of the
8 license or change of the licensee's name or address.

9 (3) Except as otherwise provided in subdivision (9) of this
10 subsection, notwithstanding any other provision of this code to the
11 contrary, the fees prescribed in subdivisions (1) and (2) of this
12 subsection cover all services performed by any public agency in
13 connection with the application and the issuance of a license, other
14 than a training course described in subsection (d) of this section,
15 including without limitation the taking of the applicant's
16 photograph and, if applicable, fingerprints, by the sheriff and all
17 background checks required by subsection (b) of this section, or
18 issuing a replacement license pursuant to subsection (k) of this
19 section. The required remittance under subdivision (1), subsection
20 (c) of this section is the only fee a sheriff shall be required to
21 pay for the services of the State Police in the performance of the
22 state background checks required by subsection (b) of this section.
23 Notwithstanding any provision of this code to the contrary, any
24 other fee required or authorized outside this section or section

1 five of this article shall be inapplicable to applicants for
2 licenses under this section and section five of this article.

3 (4) If the Attorney General, Superintendent or prosecuting
4 attorney requests from the sheriff a list of licenses issued in the
5 county pursuant to subdivision (1), subsection (1) of this section,
6 the sheriff shall charge the requesting official a fee equal to the
7 actual cost incurred by the sheriff in fulfilling the request.

8 ~~(q) Notwithstanding the provisions of subsection (a) of this~~
9 ~~section, with respect to application by (5) A former law-enforcement~~
10 ~~officer honorably retired from agencies any agency governed by~~
11 ~~article fourteen, chapter seven of this code; article fourteen,~~
12 ~~chapter eight of this code; article two, chapter fifteen of this~~
13 ~~code; and or article seven, chapter twenty of this code, an~~
14 ~~honorably retired officer is exempt from payment of fees and costs~~
15 ~~as otherwise required by this section, and the application of the~~
16 ~~honorably retired officer shall be granted without proof or inquiry~~
17 ~~by the sheriff as to those requirements set forth in subdivision~~
18 ~~(9), subsection (a) of this section, if the officer meets the~~
19 ~~remainder of the requirements of this section and has the approval~~
20 ~~of the appropriate chief law enforcement officer other than the~~
21 ~~Class 1 license application fingerprinting fee under subdivision~~
22 ~~(10) of this subsection.~~

23 (6) Each sheriff shall accept, as payment for any fee an
24 applicant or licensee is required to pay the sheriff under this

1 section:

2 (A) Cash, personal checks drawn on a personal account of the
3 applicant or licensee on which are printed the name and residence or
4 other mailing address of the applicant or licensee, cashier's
5 checks, certified checks, money orders or any method the sheriff
6 accepts in person from an individual for payment of taxes collected
7 by the sheriff, for fees paid in person;

8 (B) Personal checks drawn on a personal account of the
9 applicant or licensee on which are printed the name and residence or
10 other mailing address of the applicant or licensee, cashier's
11 checks, certified checks, money orders or any method the sheriff
12 accepts by mail from an individual for payment of taxes collected by
13 the sheriff, for fees paid by mail.

14 (7) Each sheriff may, in his or her discretion, accept methods
15 of payment other than those required by subdivision (6) of this
16 subsection, for the payment of any fee any applicant or licensee is
17 required to pay the sheriff under this section.

18 (8) The sheriff may not apply any surcharge or discount to any
19 fee paid by an applicant or licensee based on the method of payment.

20 (9) The sheriff may charge a fee for any dishonored check,
21 draft or order not to exceed the amount authorized by section
22 thirty-nine-e, article three of this chapter.

23 (10) An applicant for a Class 1 license who is required to
24 submit fingerprints pursuant to subdivision (17), subsection (a) of

1 this section shall, in addition to any other fees required by this
2 section, pay the sheriff a nonrefundable fee equal to the fee
3 charged by the Federal Bureau of Investigation for its fingerprint
4 processing and background check services.

5 (o) (1) Each sheriff shall accept applications, notices of
6 change of name or address and other filings under this section in
7 person and by mail. Each sheriff shall accept filings under this
8 section and perform services required under this section during all
9 normal business hours, including all hours when the sheriff's tax
10 office is open to the public.

11 (2) Each sheriff shall maintain on file with the Attorney
12 General a current physical street address where the sheriff accepts
13 filings under this section in person, the days and hours of
14 operation of that office and the mailing address the sheriff uses to
15 accept filings by mail. The Attorney General shall make available to
16 the public a list of this information, free of charge, on the
17 Internet and in print.

18 (3) The sheriff shall cause all mail the sheriff receives at
19 the listed mailing address designated by the sheriff pursuant to
20 subdivision (2) of this subsection to be checked, opened and
21 processed each business day. Applications submitted by first-class
22 mail shall be presumed, subject to rebuttal by clear and convincing
23 evidence, to be filed with the sheriff not later than the third day,
24 excluding Sundays and legal holidays, after the postmark date on the

1 envelope in which the application was mailed. If an applicant
2 submits an application by registered or certified mail or by any
3 other means through which the United States Postal Service provides
4 official confirmation of the delivery date, the sheriff shall be
5 estopped from denying receipt of the application on the delivery
6 date confirmed by the United States Postal Service.

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 shall authorize the holder of the permit to carry a~~
11 ~~concealed pistol or revolver on the lands or waters of this state.~~

12 (p) (1) Notwithstanding any provision of this code, the Code of
13 State Rules, the common law of this state or any other law of this
14 state to the contrary:

15 (A) This section sets forth the complete and exclusive criteria
16 and procedures for the issuance of licenses to carry concealed
17 weapons and establishes their nature and scope.

18 (B) The Legislature does not delegate to the Attorney General,
19 the superintendent or any sheriff, public agency or other person or
20 body acting under color of law or governmental authority, the
21 authority to regulate or restrict the issuing of licenses provided
22 in this section beyond the provisions contained in this section.

23 (C) A sheriff, law-enforcement officer, public agency or other
24 person or body acting under color of law or governmental authority

1 may not change, modify, or supplement the licensing criteria or
2 procedures prescribed by the Legislature in this section, limit the
3 exercise of a license to carry concealed weapons or require an
4 applicant or licensee to provide any documentation or information
5 not specifically authorized by this section or solicited by the
6 uniform application form prescribed by the Attorney General.

7 (D) A public or private employer or contracting entity may not
8 condition employment or contracting on the fact that a current or
9 prospective employee or contractor is not an applicant or licensee
10 under this section or section five of this article or authorized by
11 subsection (d), section three of this article to carry a concealed
12 weapon without a license.

13 (E) Except as otherwise provided in subparagraph (iv),
14 paragraph (A), subdivision (4), subsection (d) of this section, this
15 section shall be liberally construed to effect the right of an
16 individual to bear arms for self-defense.

17 (F) This section is supplemental and additional to existing
18 rights to bear arms, and nothing in this section may be construed to
19 impair or diminish those rights.

20 (G) The entire field of regulation of the carrying of concealed
21 weapons or open or concealed carrying of concealable weapons, by any
22 licensee under this section or section five of this article or any
23 person who is authorized by subsection (d), section three of this
24 article, to carry a concealed weapon without a license, is fully

1 occupied and preempted by the Legislature.

2 (H) Any person who is a licensee under this section or section
3 five of this article, or authorized by subsection (d), section three
4 of this article, to carry a concealed weapon without a license, has
5 the absolute right to carry concealed weapons or handguns and other
6 concealable weapons, either openly or concealed, anywhere, at any
7 time, throughout this state, without restriction by any person or
8 entity, regardless of whether the person or entity is a public
9 agency or private actor or whether it is acting in a police,
10 proprietary, employment or contracting capacity, except where
11 prohibited or restricted by:

12 (i) Section eight, article five of this chapter;

13 (ii) Sections eleven-b, eleven-c, eleven-d or fourteen of this
14 article;

15 (iii) Subdivisions (5) through (10), subsection (d), section
16 sixteen of this article; or

17 (iv) Any federal law or regulation.

18 (I) In addition to any other remedies provided by law and in
19 addition to any other persons who may have standing to sue, any
20 licensee under this section or section five of this article or any
21 person authorized by subsection (d), section three of this article,
22 to carry concealed weapons without a license, may bring a civil
23 action to enforce this subsection against any public agency that
24 adopts or enforces any ordinance, rule or policy, or takes any

1 administrative action or engages in any other official act that
2 violates this subsection or any private contracting entity,
3 employer, higher education institution or property owner who
4 violates paragraph (A), (B), (C), (D), (G) or (H) of this
5 subdivision, and obtain declaratory and injunctive relief, actual
6 and consequential damages attributable to any violation of paragraph
7 (A), (B), (C), (D), (G) or (H) of this subdivision, attorney's fees
8 pursuant to section twenty of this article, liquidated damages of
9 three times the attorney's fees awarded pursuant to section twenty
10 of this article and any other relief to which the plaintiff may be
11 entitled under any other law of this state. The court shall, except
12 when otherwise requested by the plaintiff, assign the case a high
13 priority on its civil docket and hear the case on an expedited
14 basis.

15 (J) Any person who willfully violates the rights of any
16 licensee under this section or section five of this article or any
17 person authorized by subsection (d), section three of this article,
18 to carry concealed weapons without a license, under paragraph (A),
19 (B), (C), (D), (G) or (H) of this subdivision is guilty of a felony
20 and, upon conviction thereof, shall be imprisoned in a state
21 correctional facility for not less than one year nor more than five
22 years, fined not more than \$50,000, or both fined and imprisoned.
23 Any person who otherwise violates the rights of any licensee under
24 this section or section five of this article or any person

1 authorized by subsection (d), section three of this article, to
2 carry concealed weapons without a license, under paragraph (A), (B),
3 (C), (D), (G) or (H) of this subdivision is guilty of a misdemeanor
4 and, upon conviction thereof, shall be confined in jail for not more
5 than one year, fined not more than \$10,000, or both fined and
6 confined. In all cases, any public officer who is convicted of
7 violating the rights of any licensee under this section or section
8 five of this article or any person authorized by subsection (d),
9 section three of this article, to carry concealed weapons without a
10 license, under paragraph (A), (B), (C), (D), (G) or (H) of this
11 subdivision shall forfeit his or her office pursuant to section
12 nine, article six, chapter six of this code. Except as required by
13 the provisions of the state Constitution or the United States
14 Constitution, public funds may not be used to defend the unlawful
15 conduct of any person charged with a violation of paragraph (A),
16 (B), (C), (D), (G) or (H) of this subdivision, except where such
17 funds are obligated or paid after the final dismissal of charges
18 against such person or acquittal at trial, or where public funds are
19 expended to provide the services of the office of public defender or
20 court-appointed counsel as otherwise provided by law.

21 (K) In addition to any other remedies available by law for a
22 violation of paragraph (A), (B), (C), (D), (G) or (H) of this
23 subdivision, any violation of the rights of any licensee under this
24 section or section five of this article or any person authorized by

1 subsection (d), section three of this article, to carry concealed
2 weapons without a license, under paragraph (A), (B), (C), (D), (G)
3 or (H) of this subdivision is, for the purposes of article six,
4 chapter six of this code, per se official misconduct by every public
5 officer who engages in conduct that violates paragraph the rights of
6 any licensee under this section or section five of this article or
7 any person authorized by subsection (d), section three of this
8 article, to carry concealed weapons without a license, under
9 paragraph (A), (B), (C), (D), (G) or (H) of this subdivision.

10 (L) When a licensee under this section or section five of this
11 article or person authorized by subsection (d), section three of
12 this article to carry concealed weapons without a license is accused
13 of committing any misdemeanor under section three, eleven-a,
14 eleven-b, eleven-c or fourteen of this article, a citation in lieu
15 of arrest pursuant to section five-a, article one, chapter sixty-two
16 of this code or a summons issued pursuant to Rule 4 of the West
17 Virginia Rules of Criminal Procedure for Magistrate Courts shall be
18 the sole modes of commencing a criminal prosecution for the alleged
19 offense and the accused may not be arrested unless he or she demands
20 to be taken immediately before a magistrate, refuses to sign a
21 citation or accept service of a summons, refuses to cease and desist
22 from any alleged violations of this article or the arresting officer
23 reasonably believes the accused is likely to fail to appear to
24 answer the charge. If a licensee under this section or section five

1 of this article or person authorized by subsection (d), section
2 three of this article to carry concealed weapons without a license
3 is arrested for committing any misdemeanor under section three,
4 eleven-a, eleven-b, eleven-c or fourteen of this article, there
5 shall be a strong presumption in favor of releasing the defendant on
6 his or her own recognizance.

7 (M) When a licensee under this section or section five of this
8 article or person authorized by subsection (d), section three of
9 this article to carry concealed weapons without a license is charged
10 with any misdemeanor under section eleven-a, eleven-b, eleven-c or
11 fourteen of this article, the defendant may move for a continuance
12 of the proceedings for a period to be determined by the court of not
13 more than one hundred eighty days. During the pendency of any
14 continuance under this paragraph, all records of the case in
15 possession of the court, prosecuting attorney and any West Virginia
16 law-enforcement agency shall be placed under seal, shall be
17 confidential, are not public records and may be copied or inspected
18 only by the defendant or the defendant's attorney of record, or upon
19 order of the court with good cause shown and notice to the defendant
20 and an opportunity to respond. The sole condition for a continuance
21 pursuant to this paragraph shall be that the defendant not, during
22 the period of the continuance, violate this article or commit any
23 crime for which a conviction would result in the defendant's
24 disqualification from licensure under this section. Upon the

1 expiration of the continuance, the court shall dismiss the charges
2 with prejudice and order all records of the charges to be expunged
3 unless the court finds that, during the continuance, the defendant
4 committed another violation of this article or any crime for which
5 a conviction would result in the defendant's disqualification from
6 licensure under this section. If the defendant fails to qualify for
7 dismissal of the charges and expungement pursuant to this paragraph,
8 the court may proceed to an adjudication of the pending charges. A
9 motion for a continuance under this paragraph may not be construed
10 as an admission or be used as evidence.

11 (N) When a licensee under this section or section five of this
12 article or person authorized by subsection (d), section three of
13 this article to carry concealed weapons without a license is
14 convicted of committing any misdemeanor under section three,
15 eleven-a, eleven-b, eleven-c or fourteen of this article and appeals
16 the conviction, there shall be a strong presumption in favor of
17 granting the defendant postconviction bail and continuing the
18 defendant's pretrial bail or personal recognizance pending the
19 disposition of all appeals.

20 (2) (A) Subject to any other requirements of federal law, the
21 Constitution of this state and this code, a sheriff may exercise his
22 or her sound discretion in:

23 (i) Overruling a presumption of inebriation described in
24 subdivision (3) of this subsection;

1 (ii) Accepting alternative proof of vision under subparagraph
2 (iii), paragraph (A), subdivision (9), subsection (a) of this
3 section;

4 (iii) Accepting a demonstration of basic competence with a
5 handgun not enumerated in paragraphs (A) through (M), subdivision
6 (2), subsection (d) of this section, that the sheriff is authorized
7 to accept pursuant to paragraph (N), subdivision (2), subsection (d)
8 of this section;

9 (iv) Temporarily suspending for not more than twenty-one days
10 the diligent processing requirement of subdivision (2), subsection
11 (f) of this section during a proclaimed state of emergency, as
12 provided by that subdivision;

13 (v) Authorizing additional acceptable means of payment of fees
14 required under this section pursuant to subdivision (7), subsection
15 (n) of this section;

16 (vi) Establishing and modifying a worthless check fee pursuant
17 to subdivision (9), subsection (n) of this section; and

18 (vii) Determining whether an applicant or licensee is entitled
19 to have an alternate address printed on his or her license pursuant
20 to paragraph (D), subdivision (1), subsection (s) of this section.

21 (B) All duties of a sheriff under this section not specified in
22 paragraph (A) of this subdivision and all duties of the
23 superintendent under this section are wholly ministerial duties with
24 regard to whose exercise the Legislature accords no discretion.

1 (3) For the purposes of subdivision (7), subsection (a) of this
2 section, a person shall be presumed, subject to rebuttal, to be an
3 inebriate if, within the immediate preceding three years, the person
4 has been convicted of two or more intoxication-related offenses.

5 (q) (1) The sheriff shall suspend or revoke a license to carry
6 concealed weapons if the licensee becomes unable to meet the initial
7 licensure criteria specified in this section. When the sheriff
8 suspends or revokes a license, the sheriff shall comply with the
9 provisions of subsection (j) of this section and subdivision (3),
10 subsection (l) of this section and, within two business days after
11 the suspension or revocation, notify the licensee in writing, by
12 either personal service or certified mail, return receipt requested,
13 of the suspension or revocation, the licensee's duties under
14 subdivision (8) of this subsection and the criminal penalty for
15 violating subdivision (8) of this subsection. The sheriff shall
16 effect personal service of any notice of suspension or revocation if
17 the licensee refuses service of the notice by certified mail. If the
18 licensee fails to comply with the provisions of subdivision (8) of
19 this subsection, the sheriff shall take appropriate actions to
20 enforce subdivision (8) of this subsection, including, if
21 appropriate, petitioning the magistrate court for a warrant search
22 for and seize the license card and, if the sheriff has probable
23 cause to believe the licensee has violated subdivision (8) of this
24 subsection, file a criminal complaint and obtain a summons or arrest

1 warrant charging the licensee with violating subdivision (8) of this
2 subsection. Nothing contained in the foregoing sentence may be
3 construed to limit or restrict a search of any other place the
4 sheriff may lawfully search, or obtain a search warrant to search,
5 for the license card. The affidavits for any search warrant or
6 criminal complaint shall include the date, time, and manner of
7 service of the notice of suspension or revocation of the license,
8 sufficient in form to clearly indicate the expiration of the
9 licensee's time to comply with subdivision (8) of this subsection.

10 (2) The sheriff shall suspend a license if any fee paid under
11 this section is dishonored or returned and the licensee fails to pay
12 the fee plus any dishonored payment fees within the time provided by
13 section thirty-nine-a, article three of this chapter. The notice
14 specified in section thirty-nine-a, article three of this chapter
15 shall include a notice that the license may be suspended
16 indefinitely if the licensee does not pay the full arrearage. A
17 suspension for a dishonored fee payment does not affect any civil or
18 criminal remedies otherwise authorized by law. The sheriff shall
19 suspend a license if the sheriff finds that the licensee did not
20 properly demonstrate competence with a handgun as required by
21 subsection (d) of this section for the applicable class of license:
22 Provided, That if the sheriff finds a Class 1, 2 or 4 licensee
23 failed to demonstrate competence in handling and firing a handgun
24 pursuant to subdivision (4), subsection (d) of this section, but met

1 the requirement of demonstrating basic competence with a handgun
2 prescribed by subdivision (2), subsection (d) of this section, the
3 sheriff shall suspend the licensee's Class 1, 2 or 4 license
4 classification and issue the licensee a Class 3 or 5 license and the
5 licensee may seek a reconsideration of or appeal the sheriff's
6 decision on suspending the higher class of license and maintain the
7 lower class of license until qualifying for the higher class of
8 license originally issued or succeeding in a reconsideration or
9 appeal of the original decision on suspending the higher license
10 classification. The sheriff shall suspend a license if the licensee
11 has become disqualified from continued licensure by reason of any
12 indictment, court order described in subdivision (8), subsection
13 (a), section seven of this article or 18 U.S.C. §922(g) (8) or other
14 temporary disqualification. The sheriff shall revoke a license if
15 the licensee otherwise becomes disqualified from continued
16 licensure.

17 (3) The sheriff shall reinstate a license suspended for a
18 dishonored fee payment shall remain suspended if the licensee pays
19 the arrearage and applicable dishonored check fee in full. The
20 sheriff shall reinstate a license suspended for the licensee's
21 failure to demonstrate competence with a handgun as required by
22 subsection (d) of this section, if the licensee presents
23 satisfactory evidence of qualification under subsection (d) of this
24 section. A license suspended for any other reason shall remain

1 suspended until the licensee becomes eligible for licensure under
2 this section. If a suspended license is reinstated, the licensee
3 shall, unless the suspension occurred solely by reason of an
4 indictment against which the licensee prevailed, be subject to the
5 applicable fee for a replacement license. If a license is revoked
6 and the licensee subsequently becomes eligible for licensure or a
7 suspended license expires prior to its reinstatement, the licensee
8 shall apply for a new license as a first-time applicant.

9 (4) The superintendent shall electronically cross-reference the
10 concealed weapons license database maintained pursuant to
11 subdivision (2), subsection (1) of this section with relevant
12 criminal justice, immigration and mental health record databases and
13 shall automatically alert an issuing sheriff to any indication
14 derived from these cross-references that a licensee may have become
15 disqualified from continuing licensure. The superintendent shall,
16 not less than once monthly, conduct a background check by means of
17 electronic data transfer on each licensee under this section and
18 section five of this article through the State Police Criminal
19 Identification Bureau, the National Crime Information Center, the
20 Interstate Identification Index and the National Instant Criminal
21 Background Check System, to verify continuing eligibility. The
22 superintendent or sheriff may also conduct additional background
23 checks on a licensee at any time during the period that a license is
24 in effect to verify continuing eligibility.

1 (5) The clerk of any court in this state in which a person
2 becomes prohibited by 18 U.S.C. §922(g)(4) or subdivision (4),
3 subsection (a), section seven of this article from possessing
4 firearms by reason of having been adjudicated as a mental defective
5 or involuntarily committed to a mental institution, shall determine
6 whether the person is a licensee under this section or section five
7 of this article. If the clerk of the court determines that the
8 person is a licensee under this section or section five of this
9 article, the clerk shall notify the issuing sheriff of the person's
10 identity, address and other personally-identifying information known
11 to the court and not otherwise prohibited by law from being
12 transmitted for this purpose and the nature of the conduct,
13 adjudication or commitment that resulted in the notification. The
14 clerk shall also notify the sheriff of any event removing firearm
15 disabilities under 18 U.S.C. §922(g)(4) or subdivision (4),
16 subsection (a), section seven of this article.

17 (6) Whenever a person is indicted for or otherwise charged with
18 an offense that would, upon conviction, prohibit the person from
19 possessing a firearm or carrying a concealed weapon or otherwise
20 disqualify the person from licensure under this section, the
21 prosecuting attorney shall ascertain whether the person is a
22 licensee under this section or section five of this article. If the
23 person is a licensee under this section or section five of this
24 article, the prosecuting attorney shall notify the issuing sheriff

1 that the licensee has been charged with a disqualifying offense. The
2 prosecuting attorney shall also notify the sheriff of the final
3 disposition of the case.

4 (7) Upon receiving a notification from any court, prosecutor or
5 law-enforcement agency of this state, the United States or another
6 state, that a licensee is disqualified from licensure, the issuing
7 sheriff shall perform an independent investigation to determine
8 whether the licensee is the same person to which the potentially
9 disqualifying information pertains and whether the licensee has
10 actually become disqualified from continuing licensure.

11 (8) A licensee shall surrender the license to the issuing
12 sheriff or file with the issuing sheriff an affidavit, under penalty
13 of false swearing under section two, article five of this chapter,
14 declaring that the license has been lost, stolen or destroyed and
15 that the licensee is unable to surrender the license to the sheriff
16 for that reason, unless a court of competent jurisdiction enjoins
17 the application of this subdivision to the affected licensee for
18 good cause shown, within two business days of receiving notice of
19 the suspension or revocation or if the licensee becomes ineligible
20 for continued licensure regardless of whether the sheriff suspends
21 or revoked the license. Any person who knowingly and willfully
22 fails to surrender a license or file the alternative affidavit with
23 the sheriff as required by this subdivision is guilty of a
24 misdemeanor and, upon conviction thereof, shall be fined not more

1 than \$1,000, confined in jail for not more than six months, or both
2 fined and confined. Venue for any prosecution of a violation of
3 this subdivision shall be the county in which the license was issued
4 or, if the licensee had transferred the license to another county,
5 the county of the current issuing sheriff of record.

6 (9) The Attorney General, or the prosecuting attorney of the
7 county of the issuing sheriff of record, upon his or her own
8 initiative may, or upon complaint of any law-enforcement officer,
9 prosecutor, justice, judge or magistrate shall, if he or she finds
10 reasonable grounds to suspect a licensee was licensed or is
11 currently licensed in violation of this section, investigate any
12 licensee and issuing sheriff to determine whether the licensee was
13 licensed or is currently licensed in violation of this section.
14 Whenever the Attorney General or applicable prosecuting attorney
15 finds probable cause to believe that a licensee was licensed or is
16 currently licensed in violation of this section, he or she may bring
17 a civil action in the name of the state in the circuit court of the
18 issuing county of record against the licensee and issuing sheriff of
19 record to seek the enforcement of the applicable suspension or
20 revocation and license surrender requirements of this subsection.
21 The burden of proof is on the plaintiff to prove by clear and
22 convincing evidence that the licensee is disqualified from licensure
23 in the same manner required of the sheriff by subdivision (4),
24 subsection (4) of this section, to sustain a denial, suspension or

1 revocation of a license upon appeal to the circuit court.

2 (r) (1) Before January 1, 2012, the sheriff may, and, after
3 December 31, 2011, the sheriff shall, at least sixty days and not
4 more than ninety days prior to the expiration of each license other
5 than a temporary license issued pursuant to subdivision (6),
6 subsection (f) of this section or a license extended pursuant to
7 subdivision (2), subsection (g) of this section for which the
8 sheriff issued a renewal notice pursuant to this subdivision prior
9 to the license's original expiration date, mail to the licensee at
10 the last mailing address of the licensee known to the sheriff a
11 notice of expiration and renewal procedures. The sheriff shall
12 include in this notice an application for renewal and a statement of
13 the physical street address and hours for applying for renewal in
14 person, the mailing address for applying for renewal by mail, the
15 telephone number of the sheriff's office, the date on which the
16 renewed license will expire if issued, as computed pursuant to
17 subsection (g) of this section, the calculated renewal fee as
18 computed pursuant to subsections (g) and (n) of this section and the
19 methods of payment accepted by the sheriff for the payment of the
20 fee. The sheriff shall include only the name and address of the
21 licensee and the appropriate return mail address on outside of the
22 envelope containing the license renewal notice. The sheriff may not
23 print on the outside of the envelope any other information relating
24 to the licensee nor any indicia that the contents of the envelope

1 pertain to a license to carry concealed weapons.

2 (2) Except as otherwise provided by subsection (y) of this
3 section, a licensee may apply for renewal of a license at any time
4 beginning one year prior to the expiration date of the licensee's
5 current license.

6 (3) If a licensee desires to upgrade the class of his or her
7 license before the renewal period specified in subdivision (2) of
8 this subsection, the licensee shall file with the sheriff of the
9 county in which he or she resides if the licensee is a resident of
10 this state, or the issuing sheriff of record if the licensee is a
11 nonresident:

12 (A) An application for a modified license on a form prescribed
13 by the Attorney General;

14 (B) The replacement license fee prescribed by subdivision (2),
15 subsection (n) of this section;

16 (C) A photocopy of the licensee's current license;

17 (D) If the licensee is currently a Class 3 licensee seeking an
18 upgrade to a Class 1 or 2 license or a Class 5 licensee seeking an
19 upgrade to a Class 1, 2 or 4 license, the required certification of
20 live fire shooting proficiency under subdivision (2), subsection (d)
21 of this section; and

22 (E) If the licensee is seeking an upgrade to a Class 1 license,
23 fingerprints under subdivision (17), subsection (a) of this section
24 and, in addition to the replacement license fee prescribed by

1 subdivision (2), subsection (n) of this section, the Federal Bureau
2 of Investigation fingerprinting fee under subdivision (10)
3 subsection (n) of this section.

4 (4) A Class 5 licensee who has attained the age of twenty-one
5 years shall apply for renewal as a Class 3 licensee unless he or she
6 has met the requirements for a Class 1 or 2 license and seeks to
7 renew as a Class 1 or 2 licensee. A Class 4 licensee who has
8 attained the age of twenty-one years shall apply for renewal as a
9 Class 2 licensee unless he or she has met the requirements for a
10 Class 1 license and seeks to renew as a Class 1 licensee.

11 (5) The sheriff may not require an applicant for renewal or
12 modification of a license under this section to surrender a current,
13 unexpired license or a license extended pursuant to subdivision (2),
14 subsection (g) of this section until after the licensee takes actual
15 physical possession of the new license card. A licensee who obtains
16 a renewal or modified license pursuant to this subsection shall,
17 unless the licensee declared the former license lost, stolen or
18 destroyed pursuant to subparagraph (i), paragraph (A), subdivision
19 (2), subsection (k) of this section, and after receiving actual
20 physical possession of the renewal or modified license, surrender
21 the former license to the issuing sheriff unless the licensee
22 previously surrendered the former license.

23 (s) (1) The sheriff may print on the face of a license an
24 address other than the licensee's residence address if:

1 (A) The licensee is enrolled in a state address confidentiality
2 program;

3 (B) The licensee's address is entitled to be suppressed under
4 a state or federal law or suppressed by a court order;

5 (C) The sheriff determines that the licensee has no fixed or
6 post office recognized designated address of principal residence and
7 must instead utilize another address; or

8 (D) At the discretion of the sheriff, the licensee's address
9 should be suppressed to provide security for classes of licensees
10 such as law-enforcement officers, prosecutors, protected witnesses,
11 members of the state and federal judicial systems and their spouses.

12 (2) A person described in paragraph (A) or (B), subdivision (1)
13 of this subsection may use an alternate address designated by the
14 address confidentiality program or by the court or other federal or
15 state government agency for the purposes of this section, if the
16 agency designating the alternate address provides to the sheriff
17 verification of the state in which the applicant or licensee resides
18 and, if the applicant or licensee resides in this state, the county
19 in which the applicant or licensee resides.

20 (t) (1) The Superintendent shall, not later than the twentieth
21 day of each regular session of the Legislature, submit to the
22 Governor, the Attorney General and the Legislative Librarian a
23 statistical report for the prior calendar year that contains:

24 (A) The number of license applications and licenses issued,

1 suspended, revoked and denied, further categorized by the age, sex,
2 county and ZIP code of the applicant or licensee and license class,
3 since the previous submission, subdivided by month, and in total;

4 (B) The number of licenses currently valid as of the last day
5 of the prior calendar year, categorized by county, ZIP code and
6 license class;

7 (C) The specific reasons for each suspension, revocation and
8 denial and the number of reversed, canceled or corrected actions;

9 (D) The numbers of arrests, convictions and types of offenses,
10 other than minor traffic violations or offenses not punishable by
11 incarceration, committed during the prior calendar year by
12 individuals licensed to carry concealed weapons under this section
13 and section five of this article, subdivided by county, ZIP code and
14 license class, including data as to the number of crimes committed
15 by individuals who used in furtherance of the crime a deadly weapon
16 that was lawfully concealed solely by virtue of any such license;

17 (E) To the extent known or determinable, data on the
18 justifiable use of firearms or concealed weapons in self-defense or
19 the defense of other persons by licensees under this section and
20 section five of this article;

21 (F) The numbers of arrests, convictions and types of offenses,
22 other than minor traffic violations or offenses not punishable by
23 incarceration, committed in this state during the prior calendar
24 year by qualified out-of-state licensees, subdivided by state,

1 including data as to the number of crimes committed by individuals
2 who used in furtherance of the crime a deadly weapon that was
3 lawfully concealed solely by virtue of a reciprocal state's license;

4 (G) To the extent known or determinable, data on the
5 justifiable use of firearms or concealed weapons in self-defense or
6 the defense of other persons within this state by qualified
7 out-of-state licensees;

8 (H) The mean and median amount of time and the longest and
9 shortest amount of time used by the Federal Bureau of Investigation
10 to process the fingerprints of applicants for Class 1 licenses and
11 return a complete national criminal background check report to the
12 requesting sheriff;

13 (I) The actual cost incurred by the State Police per license
14 issued during the prior calendar year, for background check
15 performed on each applicant as part of the background checks
16 required by subsection (b) of this section;

17 (J) Receipts, disbursements and any surplus or deficit incurred
18 by the State Police Concealed Weapons License Background Check
19 Administration Fund for the fiscal year that ended during the prior
20 calendar year;

21 (K) The actual cost incurred by each county in the fiscal year
22 that ended during the prior calendar year:

23 (i) Per license issued or renewed;

24 (ii) Per duplicate or replacement license card issued; and

1 (iii) Paying court costs, attorney's fees and other reasonable
2 expenses of litigation pursuant to section twenty of this article,
3 for applicants or licensees who prevailed in appeals of denials,
4 suspensions or revocations of licenses or obtained mandamus relief
5 to compel the sheriff to act as required by this section or section
6 five of this article; and

7 (L) Each county's concealed weapons license administration fund
8 balance at the end of the fiscal year that ended during the prior
9 calendar year.

10 (2) Each sheriff shall, upon written request from the
11 superintendent, furnish to the superintendent all information
12 available to the sheriff necessary in the compilation of the annual
13 reports required by subdivision (1) of this subsection.

14 (3) The Attorney General shall make the superintendent's annual
15 reports under subdivision (1) of this subsection available to the
16 public on the Internet free of charge and in print at a cost not to
17 exceed the actual marginal cost of publication of each printed copy.

18 (u) (1) (A) The Attorney General shall, not earlier than ninety
19 days nor later than one hundred twenty days after adjournment sine
20 die of each regular session of the Legislature, in the month of
21 December of each year and at any other times the Attorney General
22 may determine, notify the Attorney General and concealed weapon
23 licensing authority, if any, of every other state, in writing, of
24 the provisions of subdivision (1), subsection (d), section three of

1 this article and make written inquiry of whether the other state
2 will extend full faith and credit to licenses issued pursuant to
3 this section and section five of this article and, if so, which
4 classes of licenses and any applicable restrictions based upon an
5 individual licensee's age or residence.

6 (B) The Attorney General shall:

7 (i) Negotiate and execute reciprocity agreements on behalf of
8 this state with states that require a reciprocity agreement to
9 accord full faith and credit to licenses issued pursuant to this
10 section;

11 (ii) Seek to establish, by reciprocity agreement or otherwise,
12 the extension of full faith and credit to all classes of licenses
13 issued pursuant to this section by all states whose laws permit the
14 same, without a requirement for any additional license,
15 qualification or payment of any fee by a West Virginia licensee; and

16 (iii) Maintain efforts to obtain a reciprocity agreement for
17 all classes of licenses under this section and section five of this
18 article from any state that may generally honor licenses issued by
19 this state but affords greater recognition, including exemptions
20 from obtaining an additional license if regularly employed,
21 attending a higher education institution or conducting a business in
22 that state, to all classes of licenses issued by states that have
23 executed reciprocity agreements with that state.

24 (C) Notwithstanding paragraph (A) of this subdivision, the

1 Attorney General is not required to recontact another state while a
2 reciprocity agreement with that state is in force or the state
3 extends full faith and credit to all classes of licenses issued
4 pursuant to this section in the absence of a reciprocity agreement,
5 including when the reciprocity agreement or other extension of full
6 faith and credit is:

7 (i) Limited only to handguns or a similar firearm
8 classification;

9 (ii) Subject to:

10 (I) A restriction or prohibition on residents of the other
11 state using this state's license in that state; or

12 (II) A residency restriction limiting recognition only to
13 licenses held by residents of this state; or

14 (iii) Subject to a combination of the limitations described in
15 subparagraphs (i) and (ii) of this paragraph.

16 (D) The Legislature acknowledges that the majority of
17 license-issuing states issue licenses only for the carrying of
18 concealed handguns and not the carrying of other types of concealed
19 weapons. A licensee of this state is subject to the laws of the
20 state in which the licensee may carry a concealed weapon, including
21 limitations on the types or classes of weapons that may be carried,
22 or where such weapons may be carried, when the licensee is in the
23 other state.

24 (2) For the purposes of participation in reciprocity with other

1 states, the official government-issued identification card issued to
2 a law-enforcement officer or prosecutor who is described in
3 subdivision (2) or (3), subsection (d), section three of this
4 article but who is not a qualified law-enforcement officer under 18
5 U.S.C. §926B and a letter of authorization for a retired or
6 medically discharged member of the State Police to carry concealed
7 weapons issued by the superintendent pursuant to subsection (b),
8 section twenty-five, article two, chapter fifteen of this code,
9 shall be considered a license to carry concealed weapons issued by
10 this state.

11 (3) The Attorney General shall make available to the public:

12 (A) A list and map of those states that have entered into
13 reciprocity agreements with this state or granted full faith and
14 credit to licenses issued under this section without a reciprocity
15 agreement, subdivided by classes of licenses honored in each state;
16 and

17 (B) A list of any restrictions known to the Attorney General,
18 by state, with regard to those matters described in subparagraphs
19 (i) through (iii), paragraph (C), subdivision (1) of this
20 subsection.

21 (v) (1) The Attorney General shall, not later than the twentieth
22 day of each regular session of the Legislature, submit to the
23 Governor and the Legislative Librarian reports:

24 (A) Enumerating:

1 (i) The information specified in subdivision (3), subsection
2 (u) of this section;

3 (ii) The states that issue licenses similar to the license
4 described in this section that have declined to enter into
5 reciprocity agreements with this state and do not otherwise honor
6 licenses issued by this state, the reasons, if any, conveyed to the
7 Attorney General by each state for its respective position and
8 whether each such state has a reciprocity agreement with any other
9 state or otherwise recognizes licenses issued by any other state;

10 (iii) Specific recommendations for amending this section that
11 would result in additional states honoring each class of licenses
12 issued pursuant to this section; and

13 (iv) A public policy analysis, including any reasonable policy
14 arguments for and against the recommendations described in
15 subparagraph (iii) of this paragraph, and the Attorney General's
16 ultimate policy recommendation, concerning the recommendations
17 described in subparagraph (iii) of this paragraph; and

18 (B) Informing the Legislature of:

19 (i) The status of licenses issued pursuant to this section,
20 other than licenses extended pursuant to subdivision (2), subsection
21 (g) of this section, as a qualifying alternative under 18 U.S.C.
22 §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and any other applicable
23 federal law, to a new National Instant Criminal Background Check
24 System check on the licensee at the time of a firearm purchase or

1 other transfer through a licensed firearms dealer within this state;

2 and

3 (ii) If licenses issued pursuant to this section on and after
4 the effective date of the amendments to this section enacted during
5 the 2011 Regular Session of the Legislature, other than licenses
6 extended pursuant to subdivision (2), subsection (g) of this
7 section, have not been listed by the Bureau of Alcohol, Tobacco,
8 Firearms and Explosives as a qualifying alternative:

9 (I) Specific recommendations for amending this section that
10 would result in licenses issued pursuant to this section, other than
11 licenses extended pursuant to subdivision (2), subsection (g) of
12 this section, being listed as a qualifying alternative; and

13 (II) A public policy analysis, including any reasonable policy
14 arguments for and against the recommendations described in clause
15 (I) of this subparagraph, and the Attorney General's ultimate policy
16 recommendation, concerning the recommendations described in clause
17 (I) of this subparagraph.

18 (2) The Attorney General shall make the reports required by
19 subdivision (1) of this subsection available to the public on the
20 Internet free of charge and in print at a cost not to exceed the
21 actual marginal cost of publication of each printed copy.

22 (w)(1) Beginning July 1, 2011, the Attorney General shall
23 annually compile, publish and distribute to the public, free of
24 charge, on the Internet and in print, a compendium of West Virginia

1 weapons, self-defense and use of force laws. The Attorney General
2 shall ensure that all information presented in each year's edition
3 reflects legislation enacted during the regular session of the
4 Legislature held in the current year and reported decisions of the
5 Supreme Court of Appeals rendered through the adjournment sine die
6 of the January term of the Supreme Court of Appeals held in the
7 current year. The Attorney General shall distribute to all sheriffs
8 sufficient quantities of the current compendium of West Virginia
9 weapons and self-defense laws to supply a copy to each person who
10 obtains an application for a license under this section or section
11 five of this article.

12 (2) The compendium of West Virginia weapons and self-defense
13 laws described in subdivision (1) of this subsection shall include:

14 (A) This article in its entirety;

15 (B) Citations and short summaries of all reported decisions of
16 the Supreme Court of Appeals arising from this article;

17 (C) Other provisions of this code relating to the possession,
18 carrying or use of deadly weapons or the use of force;

19 (D) Reported decisions of the Supreme Court of Appeals relating
20 to the possession, carrying or use of deadly weapons or the use of
21 physical force or deadly force in self-defense or the defense of
22 others;

23 (E) The statutory and common law of this state concerning
24 citizen's arrests and the use of force in connection therewith;

1 (F) Beginning with the second annual edition published in the
2 year 2012, significant changes since the preceding edition;

3 (G) Beginning with the third annual edition published in the
4 year 2013, each edition's significant changes from the prior edition
5 for the last five years, subdivided by year; and

6 (H) Other information the Attorney General is required to
7 collect and publicly distribute pursuant to this section other than
8 the reports specified in subsection (u) of this section.

9 (x) Any applicant or licensee may redact his or her Social
10 Security account number from any document he or she submits to the
11 sheriff in connection with any application or license under this
12 section or section five of this article and the redaction shall not
13 affect the validity of the document. Upon request of any applicant
14 or licensee under this section or section five of this article, the
15 sheriff shall redact the Social Security account number of the
16 applicant or licensee from any documents in the sheriff's possession
17 or control furnished by the applicant or licensee in connection with
18 any application or license under this section or section five of
19 this article. Within five business days after receiving a request
20 for redaction of the Social Security number of any applicant or
21 licensee, the sheriff shall transmit a copy of that request to the
22 superintendent. Within five business days after receiving a copy of
23 a request for redaction from the sheriff, the superintendent shall
24 redact the Social Security number from any records the

1 superintendent maintains regarding any applicant or licensee in
2 connection with any application or license under this section or
3 section five of this article. Each application form and
4 instructions shall clearly inform applicants and licensees of their
5 rights under this subsection.

6 (y) Notwithstanding any provisions of this section or the
7 enactment of this section in effect immediately preceding the
8 effective date of the amendments to this section enacted during the
9 2011 Regular Session of the Legislature, to the contrary:

10 (1) Every sheriff shall, on the effective date of the
11 amendments to this section enacted during the 2011 Regular Session
12 of the Legislature, cease processing applications for licenses made
13 to the sheriff prior to such date pursuant to this section as it
14 existed prior to such date, consider the application withdrawn and,
15 within three business days, notify each applicant by certified mail,
16 return receipt requested, that the application has been determined
17 withdrawn by operation of law, that the license sought has been
18 neither issued nor denied and that the applicant may apply pursuant
19 to the enactment of this section effective upon the effective date
20 of the amendments to this section enacted during the 2011 Regular
21 Session of the Legislature and refund in full the application fee
22 paid by each applicant whose application is determined withdrawn by
23 this subdivision;

24 (2) All persons holding a current, valid license issued

1 pursuant to a prior enactment of this section as of the effective
2 date of the amendments to this section enacted during the 2011
3 Regular Session of the Legislature, shall continue to hold a valid
4 license to carry concealed weapons until the license expires, is
5 suspended or revoked pursuant to subsection (q) of this section or
6 subdivision (4) of this subsection, extended pursuant to subdivision
7 (2), subsection (q) of this section, modified pursuant to
8 subdivision (3), subsection (r) of this section, or voluntarily
9 surrendered, or the licensee obtains a reissued license pursuant to
10 subdivision (3) of this subsection. Any license in effect as of the
11 effective date of the amendments to this section enacted during the
12 2011 Regular Session of the Legislature shall continue in effect as
13 a Class 3 license if the licensee is at least twenty-one
14 years of age or a Class 5 license if the licensee is less than twenty-one
15 years of age. However, the limitation of licenses issued prior to
16 the effective date of the amendments to this section enacted during
17 the 2011 Regular Session of the Legislature to pistols and revolvers
18 is repealed and existing licensees are immediately relieved of such
19 limitation;

20 (3) Any licensee under this section who holds a current, valid
21 license under this section as of the effective date of the
22 amendments to this section enacted during the 2011 Regular Session
23 of the Legislature may apply to the appropriate sheriff for a
24 reissued license. The licensee shall file the application otherwise

1 required by this section and shall pay the sheriff the duplicate or
2 replacement license fee prescribed by subdivision (2), subsection
3 (n) of this section. The sheriff shall follow the same procedure as
4 provided by this section for renewing a license. The sheriff shall,
5 within forty-five days after the date of application for a reissued
6 license under this subdivision, issue the licensee a reissued
7 license or deny a reissued license and suspend or revoke the
8 licensee's current license as required by subsection (q) of this
9 section if the licensee is not eligible for licensure under this
10 section. A reissued license pursuant to this subdivision shall
11 expire on the same date as the licensee's current license, but
12 shall entitle the licensee to all rights, benefits, privileges, and
13 immunities to which a licensee who is licensed under this section on
14 or after the effective date of the amendments to this section
15 enacted during the 2011 Regular Session of the Legislature is
16 entitled, including, but not limited to, the exemption described in
17 18 U.S.C. §922(t)(3)(A) and 27 C.F.R. §478.102(d)(1) and the benefit
18 of any reciprocity agreements or other arrangements which may be
19 limited to licenses issued on or after the effective date of the
20 amendments to this section enacted during the 2011 Regular Session
21 of the Legislature; and

22 (4) The eligibility criteria for a license to carry concealed
23 weapons specified in subdivisions (3) through (8), subsection (a) of
24 this section, shall be applied retroactively to all current licenses

1 in effect as of the effective date of the amendments to this section
2 enacted during the 2011 Regular Session of the Legislature. The
3 Superintendent and each sheriff shall fulfill the requirements of
4 subsection (q) of this section with respect to any existing licensee
5 who does not meet the current requirements of subdivisions (3)
6 through (8), subsection (a) of this section, as amended by the
7 amendments to this section enacted during the 2011 Regular Session
8 of the Legislature.

9 (z) (1) Notwithstanding any provision of this code or other law
10 of this state to the contrary, except as otherwise provided in this
11 subsection, the names, addresses and other personally-identifying
12 information of all applicants and licensees under this section and
13 section five of this article and all applications, licenses or
14 reports regarding any individual applicant or licensee under this
15 section or section five of this article or which contains any
16 personally-identifying information about any individual applicant or
17 licensee under this section or section five of this article, unless
18 such information has been redacted, shall be confidential, are not
19 public records and may be copied or inspected only:

20 (A) By the person to whom the record pertains;

21 (B) By the duly qualified conservator or guardian of a person
22 to whom the record pertains;

23 (C) By the duly qualified personal representative of a deceased
24 person to whom the record pertains or, if a personal representative

1 has not qualified, the next of kin of a deceased person to whom the
2 record pertains;

3 (D) By an attorney, attorney-in-fact or other agent or
4 representative acting pursuant to a written power of attorney or
5 other written authorization signed by the person to whom the record
6 pertains;

7 (E) By a duly authorized representative of a law-enforcement
8 agency for any official purpose or any other agency or
9 instrumentality of federal, state or local government seeking the
10 record in the ordinary course of performing its official duties for
11 an official purpose;

12 (F) By any licensed firearm dealer within this state from which
13 a licensee proposes purchasing a firearm, for the purpose of
14 verifying the validity of the license; or

15 (G) (i) Pursuant to an order of any court based upon a finding
16 of the court that the information is sufficiently necessary to a
17 proceeding before the court to substantially outweigh the importance
18 of maintaining the confidentiality of records established by this
19 subsection.

20 (ii) Before any court may grant access to any records pursuant
21 to this paragraph, the court shall order the party seeking access to
22 those records to give each affected applicant or licensee notice of
23 the proceedings, the request for confidential records under this
24 paragraph and the opportunity of affected applicants and licensees

1 to confidentially intervene and object to the request by:

2 (I) Publishing a Class III-O legal advertisement in accordance
3 with the provisions of article three, chapter fifty-nine of this
4 code, whose publication area shall be every county in which any
5 applicant or licensee affected by the request is known to reside.
6 For this purpose, the custodian of records shall provide the court
7 and the party seeking access to those records a list, in writing,
8 verified under oath, of all counties in which the custodian of
9 records has information indicating that applicants or licensees
10 affected by the request reside; and

11 (II) Directing the sheriff or other applicable custodian of
12 records to print and mail by first-class mail to each affected
13 applicant or licensee, the costs for which the moving party shall
14 prepay in full to the sheriff or other applicable custodian of
15 records, and perform this notification in a manner not inconsistent
16 with the confidentiality provisions of this subsection.

17 (iii) Any affected applicant or licensee may, either in person
18 or by counsel, enter a confidential appearance before the court to
19 object to the request for disclosure and present evidence and
20 arguments against the proposed disclosure. The court shall take
21 appropriate measures to protect the confidentiality of individuals
22 entering appearances and objections to disclosures pursuant to this
23 subparagraph.

24 (2) Any person who knowingly misrepresents his or her identity

1 to obtain any information whose disclosure is restricted by
2 subdivision (1) of this subsection, knowingly makes a false
3 statement to obtain any information whose disclosure is restricted
4 by subdivision (1) of this subsection, knowingly and willfully
5 misrepresents his or her authority to obtain any information whose
6 disclosure is restricted by subdivision (1) of this subsection or
7 knowingly and willfully discloses any information whose disclosure
8 is restricted by subdivision (1) of this subsection in violation of
9 subdivision (1) of this subsection, is guilty of a felony and, upon
10 conviction thereof, shall be imprisoned in a state correction
11 facility for not less than one year nor more than ten years, fined
12 not more than \$10,000, or both fined and imprisoned.

13 (3) This subsection does not prohibit disclosure or publication
14 of statistical summaries, abstracts or other records containing
15 information in an aggregate or statistical form that does not
16 disclose any personally-identifying information protected from
17 public disclosure under this subsection.

18 (4) (A) The Superintendent shall furnish to any nonprofit
19 firearm-related or hunting-related educational or issue-advocacy
20 organization exempt from federal income taxation under §501(c) of
21 the Internal Revenue Code that has not obtained records pursuant to
22 this subdivision within the immediate preceding six months, a
23 current list of the names, mailing addresses, telephone numbers,
24 e-mail addresses and county of residence if a resident of this

1 state, of all licensees under this section or section five of this
2 article, in a commonly-used electronic database format acceptable to
3 the requesting organization.

4 (B) The superintendent shall furnish to the state executive
5 committee of any political party, as defined in section eight,
6 article one, chapter three of this code, that has not obtained
7 records pursuant to this subdivision within the immediate preceding
8 six months, a current list of the names, birthdates, mailing
9 addresses, telephone numbers, e-mail addresses and county of
10 residence of all licensees under this section or section five of
11 this article who reside in this state, in a commonly-used electronic
12 database format acceptable to the requesting committee.

13 (C) A personally-identifying information other than the
14 information described in paragraph (A) or (B) of this subdivision,
15 as applicable, may not be disclosed pursuant to this subdivision.

16 (D) The Superintendent shall create and maintain an electronic
17 database of all information described in paragraphs (A) and (B) of
18 this subdivision for the purpose of promptly responding to requests
19 for such information. The superintendent may charge any entity
20 requesting information pursuant to paragraphs (A) or (B) of this
21 subdivision, a reasonable fee, not to exceed the actual marginal
22 cost incurred in fulfilling the request, which may not include any
23 portion of overhead or other fixed costs incurred in creating or
24 maintaining the database required by this paragraph.

1 (E) Before any personally-identifying information of any
2 licensee under this section or section five of this article may
3 disclosed pursuant to this subdivision, the person obtaining the
4 information shall complete and verify under oath a notarized request
5 form prescribed by the Attorney General, which shall be a public
6 record, and file the request form at the headquarters of the State
7 Police in person or by certified mail, return receipt requested.
8 The superintendent shall maintain a record of requests fulfilled
9 under this subdivision for at least five years and not more than
10 seven years. The superintendent shall, upon request of any current
11 or former licensee under this section or section five of this
12 article, notify the current or former licensee of all organizations
13 to which the person's personally-identifying information have been
14 disclosed pursuant to this subdivision during the period for which
15 the superintendent maintains those records and provide a copy of all
16 requests for disclosure made to the superintendent pursuant to this
17 subdivision.

18 **§61-7-5. Emergency licenses to carry concealed weapons.**

19 (a) A sheriff, upon the application of a bona fide resident of
20 this state and the county in which the application is made, has not,
21 except as otherwise provided by subsection (f) of this section, been
22 issued an emergency license to carry concealed weapons under this
23 section within the five-year period immediately preceding the date
24 of the application for an emergency license and who is eligible for

1 licensure under section four of this article except for the
2 requirements of subdivisions (10) and (11), subsection (a) of that
3 section:

4 (1) Shall issue an emergency license to carry concealed weapons
5 to the applicant if the applicant presents evidence of imminent
6 danger; or

7 (2) May issue an emergency license to carry concealed weapons
8 to the applicant if the applicant shows good cause for emergency
9 licensure other than presentment of evidence of imminent danger. Any
10 application under this subdivision shall include a statement from
11 the applicant of the applicant's stated cause for requiring an
12 emergency license, in writing, verified under oath.

13 (b) The sheriff shall, prior to issuing an emergency license to
14 carry concealed weapons, conduct a preliminary background check on
15 the applicant based on available resources for an instant background
16 check to determine the applicant's eligibility for licensure and
17 shall determine whether the applicant has been issued an emergency
18 license to carry concealed weapons under this section within the
19 immediate preceding five years. This preliminary background check
20 shall include the background checks listed in paragraphs (E) through
21 (G), subdivision (3), subsection (b), section four of this article.
22 The sheriff shall make a written statement of the sheriff's findings
23 regarding the sufficiency of the statement of need made by an
24 applicant for an emergency license under subdivision (2), subsection

1 (a) of this section before issuing or denying an emergency license
2 sought under subdivision (2), subsection (a) of this section. An
3 emergency licensee shall, before the sheriff issues an approved
4 emergency license, pay to the sheriff a license fee of \$30, which
5 shall be credited against any fees due if the emergency licensee
6 applies for a license under section four of this article prior to
7 the expiration date of the emergency license.

8 (c) (1) A sheriff shall, upon issuing an emergency license to
9 carry concealed weapons, furnish the emergency licensee with a copy
10 of the current compendium of West Virginia weapons and self-defense
11 laws described in subsection (w), section four of this article if
12 the sheriff did not furnish a copy of it to the emergency licensee
13 during the emergency license application process and immediately
14 transmit to the superintendent a copy of the approved application,
15 a copy of the applicant's evidence of imminent danger submitted in
16 support of the application under subdivision (1), subsection (a) of
17 this section or the applicant's statement of need submitted in
18 support of the application under subdivision (2), subsection (a) of
19 this section and the sheriff's written statement on the sufficiency
20 of the statement of need.

21 (2) A sheriff that issues an emergency license to carry
22 concealed weapons under this section shall retain, for the entire
23 period during which the emergency license to carry concealed weapons
24 is in effect, the evidence of imminent danger or the evidence of

1 other good cause for an emergency license that the emergency license
2 to carry concealed weapons submitted to the issuing sheriff and that
3 was the basis for the license, or a copy of that evidence, as
4 appropriate. Upon the expiration of an emergency license, the
5 sheriff and Superintendent shall destroy all copies of the evidence
6 of imminent danger or the evidence of other good cause for an
7 emergency license that the emergency license to carry concealed
8 weapons submitted to the issuing sheriff and that was the basis for
9 the license, that are in the possession of the sheriff or
10 Superintendent or any agent of the sheriff or Superintendent.

11 (3) The sheriff and Superintendent shall retain for five years
12 the application for an emergency license for the purpose of
13 verifying whether an applicant for an emergency license has been
14 previously issued an emergency license within the immediate past
15 five years, as required by subsection (a) of this section.

16 (d) Upon receiving the information described in subsection (c)
17 of this section, the sheriff shall immediately commence all
18 background checks of the emergency licensee that would be performed
19 upon the emergency licensee's application for a license under
20 section four of this article.

21 (e) If an emergency licensee is found to be disqualified after
22 the emergency license is issued, the issuing sheriff shall revoke
23 the license as provided in section four of this article for licenses
24 issued under that section.

1 (f) An emergency license issued under this section shall expire
2 one hundred eighty days from the date of issue, unless sooner
3 surrendered, suspended, revoked or cancelled, or a regular license
4 is issued. Not earlier than thirty days prior to, nor later than
5 thirty days after, the expiration date of an emergency license under
6 this section that has not been previously renewed, the sheriff shall
7 renew the license for one additional period of one hundred eighty
8 days if the licensee shows good cause, in writing, verified under
9 oath, for why the licensee has been unable to fulfill the
10 requirements of subdivision (10), subsection (a), section four of
11 this article and apply for a regular license under section four of
12 this article.

13 (g) An emergency license may not contain the licensee's
14 photograph. An applicant for an emergency license shall not be
15 required to submit photographs as part of the application for an
16 emergency license. For the purposes of the license classification
17 system under section four of this article, an emergency license
18 issued to a licensee who is at least twenty-one years of age is a
19 Class 3-E license and an emergency license issued to a licensee who
20 is at least 18 years of age but less than twenty-one years of age is
21 a Class 5-E license.

22 (h) Every court of this state shall, upon issuing any domestic
23 violence protective order or other court order enjoining threats or
24 violence against the petitioner or a family or household member of

1 the petitioner, unless the petitioner is known to be disqualified
2 from licensure, offer the petitioner information on obtaining both
3 an emergency license to carry concealed weapons under this section
4 and a regular license to carry concealed weapons under section four
5 of this article.

6 (i) Every West Virginia law-enforcement agency shall, upon
7 taking a police report alleging a person has been the victim of any
8 felony crime of violence, felony sexual offense, misdemeanor crime
9 of violence, stalking or threats of harm to the safety of a person
10 or a family or household member of the person, unless the person is
11 known to be disqualified from licensure, offer the person
12 information on obtaining both an emergency license to carry
13 concealed weapons under this section and a regular license to carry
14 concealed weapons under section four of this article.

15 (j) In this section, "evidence of imminent danger" means:

16 (1) A written, notarized statement by an applicant for an
17 emergency license to carry concealed weapons, signed and sworn
18 before a notary public, made under penalty of false swearing under
19 section two, article five of this chapter, that states that the
20 applicant has reasonable cause to fear a criminal attack upon the
21 applicant or a family or household member of the applicant, such as
22 would justify a prudent person in going armed; or

23 (2) A written document prepared by a governmental entity or
24 public official describing the facts that give the applicant seeking

1 an emergency license to carry concealed weapons reasonable cause to
2 fear a criminal attack upon the applicant or a family or household
3 member of applicant, such as would justify a prudent person in going
4 armed. Written documents of this nature include, but are not
5 limited to, any protective order, as that term is defined in section
6 two hundred nine, article twenty-seven, chapter forty-eight of this
7 code, any protective order issued outside this state that is granted
8 full faith and credit in this state pursuant to section three
9 hundred ten, article twenty-seven, chapter forty-eight of this code,
10 or other court order, any court report and any report filed with or
11 made by a law-enforcement officer or prosecutor. For the purposes of
12 this subdivision, in addition to the definition specified in section
13 two of this article, "prosecutor" includes any officer, employee or
14 agent of this state, the United States or another state, or any
15 political subdivision thereof, who has the power to prosecute
16 criminal actions.

17 **§61-7-7. Persons prohibited from possessing firearms or ammunition**
18 **or carrying concealed weapons; classifications; relief**
19 **from disabilities; offenses; penalties.**

20 (a) Except as otherwise provided in subsection (b) of this
21 section, no person shall ~~may~~ possess a firearm ~~as such is defined in~~
22 ~~section two of this article who~~ or ammunition or, except in the
23 person's residence, temporary place of abode, fixed place of
24 business or other real property owned, leased or lawfully possessed

1 by the person, carry a concealed weapon on his or her person, if the
2 person:

3 (1) Has been convicted in any court within the United States of
4 a crime punishable by imprisonment for a term exceeding one year;

5 (2) Is ~~habitually addicted to alcohol~~ a fugitive from justice;

6 (3) Is an unlawful user of or ~~habitually~~ addicted to any
7 controlled substance;

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

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

19 (6) Has been discharged from the Armed Forces under
20 dishonorable conditions;

21 (7) Having been a citizen of the United States, has renounced
22 his or her citizenship;

23 ~~(7)~~ (8) Is subject to a domestic violence protective court order
24 that:

1 (A) Was issued after a hearing of which ~~such person~~ the
2 respondent received actual notice and at which ~~such person~~ the
3 respondent had an opportunity to participate;

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

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

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

17 ~~(8) Has been convicted of a misdemeanor offense of assault or~~
18 ~~battery either under the provisions of section twenty-eight, article~~
19 ~~two of this chapter or the provisions of subsection (b) or (c),~~
20 ~~section nine of said article in which the victim was a current or~~
21 ~~former spouse, current or former sexual or intimate partner, person~~
22 ~~with whom the defendant has a child in common, person with whom the~~
23 ~~defendant cohabits or has cohabited, a parent or guardian, the~~
24 ~~defendant's child or ward or a member of the defendant's household~~

1 ~~at the time of the offense or has~~

2 (9) Is currently prohibited under 18 U.S.C. §922(g)(9) from
3 possessing, transporting, shipping or receiving firearms by virtue
4 of having been convicted in any court within the United States of
5 ~~any jurisdiction of a comparable~~ misdemeanor crime of domestic
6 violence as defined in 18 U.S.C. §921(a)(33).

7 (b) Subsection (a) of this section does not apply to:

8 (1) Any person who has been granted relief from disability
9 pursuant to subsection (e) of this section or any prior enactment of
10 this section;

11 (2) Any person who is exempt from 18 U.S.C. §922(g) pursuant to
12 18 U.S.C. §925(a), to the extent the exemption under 18 U.S.C.
13 §925(a) pertains to causes for which the person would otherwise be
14 under disability under subsection (a) of this section;

15 (3) Any person who has received relief from disabilities
16 pursuant to 18 U.S.C. §925(b), to the extent the relief granted
17 pertains to causes for which the person would otherwise be under
18 disability under subsection (a) of this section;

19 (4) With respect to any event causing a disability under
20 subsection (a) of this section that occurred in another state, any
21 person who has received relief from disabilities under the laws of
22 the state in which the disabling event occurred, to the extent the
23 relief granted effected the removal of federal firearm disabilities
24 otherwise applicable pursuant to 18 U.S.C. §922(g) and the laws of

1 the state in which relief was granted;

2 (5) With respect to a disability under subdivision (4),
3 subsection (a) of this section, any person who has received relief
4 from disability under the former section five, article seven-a of
5 this chapter, as it existed between June 8, 2008, and its repeal and
6 consolidation with subsection (e) this section, as enacted
7 concurrent with the amendments to this section enacted during the
8 2011 Regular Session of the Legislature, or any other program or
9 procedure that, under Section 105 of the NICS Improvement Amendments
10 Act of 2007, Public Law 110-180, 121 Stat. 2559, 2569-70, removes
11 federal firearm disabilities otherwise applicable pursuant to 18
12 U.S.C. §922(d)(4) or (g)(4); or

13 (6) Any person who has received any combination of the forms of
14 relief described in subdivisions (1) through (5) of this subsection
15 if, as a combined result of all applicable grants of relief the
16 person has received, the person is not subject to any federal
17 firearms disability otherwise applicable under 18 U.S.C. §922(g).

18 (c)(1) Except as otherwise provided in this subsection, no
19 person may knowingly carry a concealed weapon on his or her person
20 while he or she is in any public place if he or she:

21 (A) Has, within the immediate preceding three years, been
22 convicted in any court within the United States of any misdemeanor
23 drug offense, any misdemeanor crime of violence, any misdemeanor
24 under section nine hundred three, article twenty-seven, chapter

1 forty-eight of this code or any offense under federal law or the
2 laws of another state or political subdivision thereof that, if
3 committed within this state, would constitute an offense under
4 section nine hundred three, article twenty-seven, chapter
5 forty-eight of this code;

6 (B) Has, within the immediate preceding three years, received
7 a conditional discharge pursuant to section four hundred seven,
8 article four, chapter sixty-a of this code or the substantially
9 similar law of the United States or any other state for, any
10 misdemeanor drug offense;

11 (C) Has entered into a pretrial diversion agreement for, or had
12 adjudication of guilt withheld or imposition of sentence suspended
13 on, any crime for which a conviction would disqualify the person
14 under this subdivision or subsection (a) of this section from
15 possessing firearms or carrying a concealed weapon in a public
16 place, unless the record has been sealed or expunged or three years
17 have elapsed since probation or any other conditions set by the
18 court have been fulfilled;

19 (D) Is less than thirty years of age and has been adjudicated
20 delinquent as a juvenile in any court within the United States for
21 any act that, if the person had been tried and convicted of
22 committing as an adult, would disqualify the person under paragraph
23 (A) or (E) of this subdivision or subsection (a) of this section
24 from possessing firearms or carrying a concealed weapon in a public

1 place;

2 (E) Has been convicted in any court within the United States of
3 committing any misdemeanor drug offense, any misdemeanor crime of
4 violence, any misdemeanor under section nine hundred three, article
5 twenty-seven, chapter forty-eight of this code, or any offense under
6 federal law or the laws of another state or political subdivision
7 thereof that, if committed within this state, would constitute an
8 offense under section nine hundred three, article twenty-seven,
9 chapter forty-eight of this code, committed subsequent to the entry
10 of any conviction, conditional discharge or pretrial diversion
11 agreement in any court within the United States for any crime
12 punishable by imprisonment by a term exceeding one year, any
13 misdemeanor drug offense, any misdemeanor crime of violence, any
14 misdemeanor under section nine hundred three, article twenty-seven,
15 chapter forty-eight of this code, or any offense under federal law
16 or the laws of another state or political subdivision thereof that,
17 if committed within this state, would constitute an offense under
18 section nine hundred three, article twenty-seven, chapter
19 forty-eight of this code, unless at least ten years have elapsed
20 since the date of conviction and at least five years have elapsed
21 since the completion of any sentence, probation, parole, other
22 supervision and payment in full of all fines, court costs and
23 restitution, whichever last occurs;

24 (F) Is an inebriate as defined in section four, article one,

1 chapter twenty-seven of this code;

2 (G) Is receiving social security disability benefits by reason
3 of alcohol dependence, drug dependence, mental disability or
4 blindness;

5 (H) Presently suffers a mental illness, as defined in section
6 two, article one, chapter twenty-seven of this code, to the extent
7 the person is likely to cause serious harm, as defined in section
8 twelve, article one, chapter twenty-seven of this code;

9 (I) Presently suffers an intellectual disability, as defined in
10 section three, article one, chapter twenty-seven of this code, to
11 the extent the person is likely to cause serious harm, as defined in
12 section twelve, article one, chapter twenty-seven of this code; or

13 (J) Has received treatment in any mental health facility, as
14 defined in section nine, article one, chapter twenty-seven of this
15 code, or any similar institution in any other state, for any mental
16 illness, as defined in section two, article one, chapter
17 twenty-seven of this code, or addiction, as defined in section
18 eleven, article one, chapter twenty-seven of this code, unless a
19 licensed psychiatrist, as defined in section ten, article one,
20 chapter twenty-seven of this code, has issued a certificate
21 attesting that the person has not suffered mental illness or
22 addiction for at least five years immediately preceding the issuance
23 of the certificate.

24 (2) Subdivision (1) of this subsection does not apply to:

1 (A) Any person who is authorized by subsection (c) or (e),
2 section three of this article or subdivision (2), (5), (6), (7) or
3 (9), subsection (d), section three of this article, to carry a
4 concealed weapon;

5 (B) Any person who is at, in or on a gun show, premises of a
6 licensed firearm dealer, hunting or target shooting facility or the
7 woods, fields or waters of this state where the person is present
8 lawfully for the purpose of hunting or target shooting or other
9 lawful activity involving firearms; or

10 (C) Any person who has been granted relief from disability
11 under subsection (e) of this section.

12 (3) It is an affirmative defense to an offense under this
13 subsection that:

14 (A) The defendant was not prohibited from possessing firearms
15 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, and not
16 prohibited by subsection (a) of this section from possessing
17 firearms; and

18 (B) (i) The defendant carried the weapon for defensive purposes
19 while the defendant was engaged in or was going to or from the
20 defendant's lawful business or occupation, which business or
21 occupation was of a character or was necessarily carried on in a
22 manner or at a time or place as to render the defendant particularly
23 susceptible to criminal attack, such as would justify a prudent
24 person in going armed; or

1 (ii) The defendant carried the weapon for defensive purposes
2 while the actor was engaged in a lawful activity and had reasonable
3 cause to fear a criminal attack upon the defendant or any person
4 accompanying the defendant, such as would justify a prudent person
5 in going armed.

6 (4) In this subsection, "public place" means any property
7 owned, leased or controlled by a public agency or private property
8 that is regularly and frequently open to or made available for use
9 by the public in sufficient numbers to give clear notice of the
10 property's current dedication to public use, but does not include a
11 person's dwelling house or premises, the place of business owned or
12 managed by the person, or land possessed by the person; a gun show,
13 premises of a licensed firearm dealer or hunting or target shooting
14 facility, or the woods, fields or waters of this state where the
15 person is present lawfully for the purpose of hunting or target
16 shooting or other lawful activity involving firearms.

17 (d) (1) (A) Any person who:

18 (i) Knowingly and willfully possesses a firearm or carries a
19 concealed weapon in violation of subdivision (1), subsection (a) of
20 this section, when the prohibition on possessing firearms is based
21 in whole or in part upon a conviction for any aggravated felony;

22 (ii) Knowingly possesses a firearm or ammunition or carries a
23 concealed weapon in violation of subdivision (5), subsection (a) of
24 this section;

1 (iii) Carries on or about his or her person a firearm or
2 concealed weapon that the person knowingly and willfully possesses
3 in violation of subsection (a) or (c) of this section while the
4 person commits any aggravated felony; or

5 (iv) Knowingly possesses a firearm or carries a concealed
6 weapon in violation of subsection (a) or (c) of this section after
7 having been previously convicted of possessing a firearm or carrying
8 a concealed weapon in violation of this section, 18 U.S.C. §922(g)
9 or any substantially similar law of any other state, unless at least
10 ten years have elapsed since the date of conviction and at least
11 five years have elapsed since the completion of any sentence,
12 probation, parole, other supervision and payment in full of all
13 fines, court costs and restitution, whichever last occurs, is guilty
14 of a felony and, upon conviction thereof, shall be fined not more
15 than \$100,000, imprisoned in a state correctional facility for not
16 less than one year nor more than ten years, or both fined and
17 imprisoned.

18 (B) The prosecuting attorney shall, in all cases in which a
19 defendant is convicted of a felony punishable under paragraph (A) of
20 this subdivision and has been previously convicted of a felony for
21 which the defendant is eligible for any sentencing enhancement under
22 section eighteen, article eleven of this chapter, obtain and present
23 to the court record evidence of all prior felony convictions against
24 the defendant and seek the maximum recidivist sentencing enhancement

1 for which the defendant is eligible under section eighteen, article
2 eleven of this chapter. A prosecuting attorney shall not have
3 discretion to refuse or fail to act as required by this paragraph or
4 to negotiate or enter into any plea agreement to avoid any
5 recidivist sentencing enhancement required by this paragraph and
6 section eighteen, article eleven of this chapter. Nothing in this
7 paragraph may be construed to prohibit any sentencing order or plea
8 agreement that provides for any sentence for any offense under this
9 section to be served concurrent with any sentence of imprisonment in
10 a federal correctional facility for any offense under Title 18,
11 Chapter 44 of the United States Code (18 U.S.C. §§921 through 931),
12 arising from the same transaction or occurrence.

13 (2) Except as otherwise provided by subdivision (1) of this
14 subsection, any person who knowingly possesses a firearm or carries
15 a concealed weapon in violation of subdivisions (1) or (9),
16 subsection (a) of this section, where the prohibition on possessing
17 firearms or carrying a concealed weapon is based upon one or more
18 misdemeanor convictions from which at least five years have elapsed
19 since the date of conviction, completion of sentence or probation or
20 payment in full of all fines, court costs and court-ordered
21 restitution, whichever last occurs, or who possesses ammunition in
22 violation of subsection (a) of this section, is guilty of a
23 misdemeanor and, upon conviction thereof, shall be fined not more
24 than \$500, confined in jail for not more than thirty days, or both

1 fined and confined.

2 (3) Except when subdivision (1) or (2) of this subsection is
3 applicable, any person who ~~violates this~~ knowingly possesses a
4 firearm or carries a concealed weapon in violation of subsection
5 ~~shall be~~ (a) or (c) of this section is guilty of a misdemeanor and,
6 upon conviction thereof, shall be fined not ~~less than one hundred~~
7 ~~dollars nor more than one thousand dollars or~~ \$2,500, confined in
8 ~~the county jail for not less than ninety days nor more than one~~
9 year, or both fined and confined.

10 ~~(b) Notwithstanding the provisions of subsection (a) of this~~
11 ~~section, any person:~~

12 ~~(1) Who has been convicted in this state or any other~~
13 ~~jurisdiction of a felony crime of violence against the person of~~
14 ~~another or of a felony sexual offense; or~~

15 ~~(2) Who has been convicted in this state or any other~~
16 ~~jurisdiction of a felony controlled substance offense involving a~~
17 ~~Schedule I controlled substance other than marijuana, a Schedule II~~
18 ~~or a Schedule III controlled substance as such are defined in~~
19 ~~sections two hundred four, two hundred five and two hundred six,~~
20 ~~article two, chapter sixty-a of this code and who possesses a~~
21 ~~firearm as such is defined in section two of this article shall be~~
22 ~~guilty of a felony and, upon conviction thereof, shall be confined~~
23 ~~in a state correctional facility for not more than five years or~~
24 ~~fined not more than five thousand dollars, or both. The provisions~~

1 of subsection (c) of this section shall not apply to persons
2 convicted of offenses referred to in this subsection or to persons
3 convicted of a violation of this subsection.

4 ~~(c)~~ (e) (1) Any person resident of this state who is prohibited
5 from possessing a firearm firearms and ammunition or carrying a
6 concealed weapon by the provisions of subsection (a) or (c) of this
7 section may petition the circuit court of the county in which he or
8 she resides to regain the ability to possess a firearm and for
9 relief from disabilities. Any nonresident who is prohibited from
10 possessing firearms and ammunition or carrying a concealed weapon by
11 subsection (a) or (c) of this section may petition the circuit court
12 of any county for relief from disabilities. However, any
13 nonresident who is prohibited from possessing firearms and
14 ammunition or carrying a concealed weapon by subsection (a) or (c)
15 of this section by virtue of any conviction, commitment,
16 adjudication, domestic violence protective order or other act that
17 occurred within this state may petition only the circuit court of
18 Kanawha County or a county in which any disabling event under
19 subsection (a) or (c) of this section occurred for relief from
20 disabilities. The petitioner shall, at the time of filing the
21 petition, pay the clerk of the circuit court a filing fee equal to
22 the filing fee for instituting a civil action pursuant to
23 subdivision (1), subsection (a), section eleven, article one,
24 chapter fifty-nine of this code. The petition shall be verified

1 under oath and include the following information:

2 (A) The petitioner's current name and all other legal names or
3 aliases by which petitioner has been known at any time;

4 (B) All of the petitioner's residence addresses from the date
5 of onset of a disability under this section to the date of the
6 petition;

7 (C) The petitioner's date and place of birth;

8 (D) If the petitioner is under any disability under
9 subdivisions (1) or (9), subsection (a) of this section or paragraph
10 (A), (B), (C), (D) or (E), subdivision (1), subsection (c) of this
11 section:

12 (i) The petitioner's date of arrest, the court of jurisdiction
13 and criminal complaint, indictment, summons or case number;

14 (ii) The statute or statutes and offense or offenses for which
15 the petitioner was charged and for which the petitioner was
16 convicted, placed on pretrial diversion, granted a conditional
17 discharge or adjudicated delinquent as a juvenile;

18 (iii) The names of the victim or victims, if any;

19 (iv) Whether there is a current order, or has ever been, a
20 prior order for restitution, a domestic violence protective order or
21 other restraining order prohibiting the petitioner from contacting
22 the victims. If such an order is currently in effect, the petitioner
23 shall attach a copy of the order to the petition;

24 (v) The court's disposition of the matter and punishment

1 imposed, if any; and

2 (vi) The steps the petitioner has taken since the time of the
3 offenses toward personal rehabilitation, including treatment, work
4 or other personal history that demonstrates rehabilitation;

5 (E) If the petitioner is under any disability under subdivision
6 (4), subsection (a) of this section, the name of the court or other
7 tribunal of jurisdiction, the case or file number and the current
8 status of the matter;

9 (F) Whether the petitioner has ever been granted similar relief
10 by any court in this state or any court, tribunal or other agency of
11 any other state or the United States;

12 (G) Whether the petitioner has previously filed any petitions
13 for relief from disabilities under this section or any prior
14 enactment thereof and, if so, a listing of all petitions, courts in
15 which they were filed, case numbers and their dispositions;

16 (H) A memorandum of law concerning whether the petitioner is
17 currently prohibited by federal law from possessing firearms and
18 what effect, if any, the court granting the petition would have on
19 the petitioner's eligibility under federal law to possess firearms;
20 and

21 (I) Any supporting documents, affidavits or other information
22 supporting the petition.

23 (2) The State of West Virginia shall be named as the respondent
24 to any petition under this subsection. The petitioner shall serve

1 a copy of the petition and any supporting documentation pursuant to
2 the West Virginia Rules of Civil Procedure and the West Virginia
3 Trial Court Rules upon the prosecuting attorney of the county in
4 which the petition is filed and the prosecuting attorney of any
5 county in which the petitioner was convicted, placed on pretrial
6 diversion, granted a conditional discharge or adjudicated delinquent
7 as a juvenile for any criminal offense creating a disability under
8 subdivisions (1) or (9), subsection (a) of this section or paragraph
9 (A), (B), (C), (D) or (E), subdivision (1), subsection (c) of this
10 section, or in which a court order described in subdivision (8),
11 subsection (a) of this section was issued, or the equivalent
12 official of the United States or any other state in which any such
13 conviction occurred or order issued. If the petition pertains to
14 any disability under subdivisions (1), (8) or (9), subsection (a) of
15 this section or paragraph (A), (C), (D) or (E), subdivision (1),
16 subsection (c) of this section, the prosecuting attorney shall serve
17 by first class mail a copy of the petition, accompanying
18 documentation and any proposed order to any identified victims and
19 the prosecuting attorney shall take reasonable steps to locate any
20 identifiable victims, including but not limited to searches of
21 driver's license, voter registration and tax databases to which the
22 prosecuting attorney may have access for official purposes. If
23 there are no identifiable victims or the prosecuting attorney cannot
24 locate and serve an identifiable victim, the prosecuting attorney

1 shall notify the court and the petitioner, and shall have no further
2 duty with respect to the location and service of any victim.

3 (3) The court may require the petitioner to appear before the
4 sheriff of the county in which the petition was filed and submit to
5 fingerprinting for the purpose of a state and national criminal and
6 mental health background check and pay the sheriff the costs of
7 fingerprinting and the background check. Where possible,
8 fingerprinting shall be performed using electronic fingerprint
9 imaging to reduce the time and expense required to process the
10 fingerprints. The sheriff shall provide the results of any
11 court-ordered background check to the court, the petitioner and each
12 party the petitioner was required to serve a copy of the petition.

13 (4) Upon receipt of a petition under this subsection, the
14 prosecuting attorney, the victim or victims of the offense to which
15 the petition pertains and any other interested person or agency that
16 desires to oppose granting relief shall, within thirty days after
17 receipt of the petition or ten days after receipt of a copy of the
18 results of any fingerprint-based background checks conducted
19 pursuant to subdivision (3) of this subsection, whichever last
20 occurs, file a notice of opposition with the court with supporting
21 documentation and sworn statements setting forth the reasons for
22 opposing the petition. The opponent shall serve a copy of any
23 notice of opposition with supporting documentation and sworn
24 statements upon the petitioner in accordance with the West Virginia

1 Rules of Civil Procedure and the West Virginia Trial Court Rules.
2 The prosecuting attorney may, or, if ordered by the court, shall,
3 present a memorandum of law concerning the state's position on
4 whether the petitioner is currently prohibited by federal law from
5 possessing firearms and what effect, if any, the court granting the
6 petition would have on the petitioner's eligibility under federal
7 law to possess firearms. The petitioner shall be granted at least
8 ten business days after service of any notice of opposition to the
9 petition or any memorandum of law to file a reply.

10 (5) Not earlier than fourteen days nor more than thirty days
11 after the expiration of the time period for a party to enter a
12 notice of opposition to the petition and, if applicable, for the
13 petitioner to file a reply with the court, the court shall:

14 (A) Summarily deny the petition if the court determines that
15 the petition is insufficient or, based upon supporting documentation
16 and sworn statements filed in opposition to the petition, the court
17 determines that the petitioner, as a matter of law, is not entitled
18 to relief;

19 (B) Summarily grant the petition if the court does not
20 summarily deny the petition pursuant to paragraph (A) of this
21 subdivision, the petitioner does not request a hearing on the
22 petition, no opposition to the petition has been filed with the
23 court and the court does not desire, upon its own motion, to set the
24 matter for hearing; or

1 (C) In any other case, set the matter for hearing.

2 (6) If the court sets the matter for hearing, the clerk of the
3 court shall notify the petitioner and all interested parties who
4 have filed a notice of opposition. The court, at the hearing, may
5 inquire into the background of the petitioner and shall have access
6 to any reports or records relating to the petitioner that are on
7 file with any law-enforcement authority and other agency which was
8 in any way involved with the events resulting in the petitioner's
9 disability under this section, including any record of arrest or
10 conviction or domestic violence or mental health proceedings in any
11 state or federal court. The court may hear testimony of witnesses
12 and any other matter the court deems proper and relevant to its
13 determination regarding the petition.

14 (7) The court shall grant relief if the court finds by clear
15 and convincing evidence that the person is competent and capable of
16 exercising the responsibility concomitant with the possession of a
17 firearm, the court may enter an order allowing the person to possess
18 a firearm if such possession would not violate any federal law.
19 Provided, That a person prohibited from possessing a firearm by the
20 provisions of subdivision (4), subsection (a) of this section may
21 petition to regain the ability to possess a firearm in accordance
22 with the provisions of section five, article seven-a of this chapter
23 circumstances regarding the disability and the petitioner's record
24 and reputation are such that the petitioner will not be likely to

1 act in a manner dangerous to public safety and that granting relief
2 would not be contrary to the public interest. However, the court
3 may deny the petition or limit the relief granted to exclude
4 firearms, as defined in 18 U.S.C. §921, and regulated under 18
5 U.S.C. §922(g), if it finds that the petitioner is currently
6 prohibited by federal law from possessing firearms and would remain
7 prohibited by federal law from possessing firearms notwithstanding
8 the granting of the petition and removal of disabilities under this
9 section.

10 (8) Any petitioner denied relief under this subsection or
11 granted less than the full relief sought may, from time to time,
12 upon notice to the prosecuting attorney and any parties that entered
13 objections to the petition or which may otherwise be designated by
14 the court, petition the court to reconsider its decision to deny
15 relief or grant limited relief, regardless of whether the petitioner
16 originally appealed the previous order denying relief or granting
17 limited relief or the resolution of that appeal. The court may, in
18 its discretion, in an order denying reconsideration under this
19 subdivision or granting less than full relief upon reconsideration,
20 specify that the petitioner may not seek another reconsideration of
21 the court's decision for a specified period of time, not to extend
22 beyond one year after the date on which the order is entered.

23 (9) Any order granting relief under this subsection does not
24 relieve the petitioner from any disability under subsection (a) or

1 (c) of this section that the petitioner did not completely and
2 accurately disclose to the court in the petition.

3 (10) The court may, at any time upon actual notice to the
4 petitioner and after a reasonable opportunity for the petitioner to
5 be heard, revoke its order granting relief under this subsection
6 upon good cause shown by clear and convincing evidence.

7 (11) The court shall, upon granting, denying or revoking
8 relief, enter in the record an order reflecting its ruling on the
9 petition with appropriate findings of fact and conclusions of law.
10 If the court denies the petition, grants limited relief or revokes
11 any previous grant of relief, it shall clearly indicate in its
12 findings of fact and conclusions of law specific findings and
13 conclusions regarding the petitioner's eligibility under federal law
14 to lawfully possess firearms and whether the petitioner's
15 eligibility under federal law to lawfully possess firearms would
16 have been affected had the court granted the petition or not revoked
17 the prior grant of relief, and shall clearly state whether the court
18 would have granted the petition in full or not revoked the prior
19 grant of relief had it reached a different conclusion on the
20 question of the petitioner's eligibility under federal law to
21 lawfully possess firearms. Upon entry of an order granting, denying
22 or revoking relief under this subsection, the clerk of the court
23 shall transmit certified copies of the order to the petitioner,
24 prosecuting attorney and all parties that entered notices of

1 opposition to the petition.

2 (12) In any appeal of a denial of relief or revocation of any
3 grant of relief, all matters appealed by the petitioner shall be
4 reviewed de novo.

5 (13) If the court grants relief from a disability under
6 subsection (a) or (c) of this section or revokes any grant of relief
7 from any disability under subsection (a) or (c) of this section, the
8 clerk of the court shall transmit a certified copy of the order to
9 the superintendent. If the order grants relief from a disability
10 under subsection (a) of this section or revokes any grant of relief
11 from any disability under subsection (a) of this section, the
12 superintendent shall transmit a certified copy of the order to the
13 Federal Bureau of Investigation or other federal entity operating
14 the National Instant Criminal Background Check System. If the order
15 grants relief from disabilities under subdivision (4), subsection
16 (a) of this section and 18 U.S.C. §922(g)(4), the superintendent
17 shall, immediately upon receipt of the certified copy of the order,
18 remove the petitioner's name and other pertinent information from
19 the central state mental health registry maintained pursuant to
20 article seven-a of this chapter.

21 (14) The Legislature declares that this subsection is the
22 process established by this state pursuant to Section 105 of the
23 NICS Improvement Amendments Act of 2007, Public Law 110-180, 121
24 Stat. 2559, 2569-70, to grant relief from any firearms disability

1 under subdivision (4), subsection (a) of this section or 18 U.S.C.
2 §922(d)(4) or (g)(4).

3 **§61-7-9. Firearms regulated by National Firearms Act; prohibited**
4 **acts; penalties.**

5 ~~It shall be unlawful for any~~ (a) A person ~~to~~ may not knowingly
6 carry, transport or have in his possession, possess any ~~machine gun~~
7 ~~submachine gun, or any other fully automatic weapon~~ firearm that is
8 regulated by the National Firearms Act, 26 U.S.C. Chapter 53, as it
9 exists as of January 1, 2011, unless ~~he or she~~ the person has fully
10 complied with applicable federal statutes the National Firearms Act,
11 as it exists as of January 1, 2011, and all applicable ~~rules and~~
12 ~~regulations of the secretary of the treasury of the United States~~
13 ~~relating to such firearms~~ promulgated pursuant to the National
14 Firearms Act, as they exist as of January 1, 2011.

15 (b) Every chief law-enforcement official and prosecuting
16 attorney is a chief law-enforcement officer in this state for
17 purposes of certification of the transfer and registration of any
18 firearm required to be certified pursuant to the National Firearms
19 Act.

20 (c) A chief law-enforcement official or prosecuting attorney
21 shall, except as otherwise provided by subsection (e) of this
22 section, whenever a resident of the political subdivision served by
23 the chief law-enforcement official or prosecuting attorney presents
24 to the chief law-enforcement official or prosecuting attorney an

1 application for certification of the transfer and registration of a
2 firearm subject to the National Firearms Act, provide the
3 certification; (i) within seven days of receipt of the federal
4 application and the request for certification if the applicant is
5 currently licensed to carry concealed weapons pursuant to section
6 four of this article (other than a temporary, temporary renewal or
7 emergency license) and presents a photocopy of the license to the
8 chief law-enforcement official with the federal application and
9 request for certification or (ii) within forty-five days of receipt
10 of the federal application and request for certification in any
11 other case. The failure of the chief law-enforcement official or
12 prosecuting attorney to notify the applicant in writing, by personal
13 service or certified mail, return receipt requested, of a denial of
14 certification within the applicable time period and the reasons for
15 the denial, constitutes granting the requested certification. A fee
16 may not be charged for providing a certification pursuant to this
17 subsection.

18 (d) (1) A chief law-enforcement official or prosecuting attorney
19 shall deny the certification described in subsection (c) of this
20 section if the applicant is prohibited by federal law or subsection
21 (a), section seven of this article from receiving the firearm.

22 (2) A chief law-enforcement official or prosecuting attorney
23 may deny the certification described in subsection (c) of this
24 section if the chief law-enforcement official or prosecuting

1 attorney has specific, credible, documented information proving that
2 the applicant intends to use the firearm for an unlawful purpose.

3 (3) A chief law-enforcement official or prosecuting attorney
4 may, in his or her discretion, deny the certification described in
5 subsection (c) of this section if the applicant is prohibited by
6 subsection (c), section seven of this article from carrying a
7 concealed weapon in a public place.

8 (e)(1) Any person denied a certification pursuant to
9 subsections (b) through (d) of this section may file in the circuit
10 court of the county in which the certification was requested a
11 petition seeking review of the denial. The petitioner shall file
12 the petition for review within sixty days of the denial.

13 (2) Unless the requested certification was denied pursuant to
14 subdivision (3), subsection (d) of this section, the court shall
15 review de novo all matters appealed by the petitioner, determine
16 whether the petitioner is entitled to receive the requested
17 certification and, unless the chief law-enforcement official or
18 prosecuting attorney who denied the certification proves by clear
19 and convincing evidence that the petitioner is disqualified by
20 subsection (d) of this section from receiving the certification,
21 order the chief law-enforcement official or prosecuting attorney to
22 issue the certification. The court shall view any information
23 described in paragraph (A), subdivision (2), subsection (d) of this
24 section, in the light most favorable to the petitioner.

1 (3) (A) If the chief law-enforcement official or prosecuting
2 attorney denied the requested certification pursuant to subdivision
3 (3), subsection (d) of this section, the court shall:

4 (i) Review de novo the petitioner's eligibility to lawfully
5 carry a concealed weapon in a public place under section seven of
6 this article and all facts relied upon by the chief law-enforcement
7 official or prosecuting attorney in denying the requested
8 certification; and

9 (ii) Order the chief law-enforcement official or prosecuting
10 attorney to issue the certification unless the chief law-enforcement
11 official or prosecuting attorney proves by clear and convincing
12 evidence that the petitioner is prohibited by section seven of this
13 article from carrying a concealed weapon in a public place and
14 proves by a preponderance of evidence that the denial of the
15 requested certification was not arbitrary, capricious or
16 characterized by abuse of discretion or clearly unwarranted exercise
17 of discretion.

18 (B) If the circuit court affirms a denial of a requested
19 certification, the circuit court's decision shall be reviewed de
20 novo on appeal.

21 (f) Every chief law-enforcement official and prosecuting
22 attorney who approves a certification as required by subsection (c)
23 of this section and all employees and agents of any chief
24 law-enforcement official or prosecuting attorney who participate in

1 the investigation of the applicant or the decision on granting the
2 certification, are immune from liability in any civil action
3 resulting from the lawful performance of their duties under
4 subsections (b) through (d) of this section.

5 (g) Any person who violates ~~the provision~~ subsection (a) of
6 this section shall be or willfully fails to certify the transfer and
7 registration of a firearm subject to the National Firearms Act, as
8 required by and within the time limits specified by subsection (c)
9 of this section, is guilty of a misdemeanor and, upon conviction
10 thereof, shall be fined not less than \$1,000 nor more than \$5,000,
11 or shall be confined in the county jail for not less than ninety
12 days, or more than one year, or both fined and confined. Any public
13 officer who is convicted of willfully failing to certify the
14 transfer and registration of a firearm subject to the National
15 Firearms Act, as required by and within the time limits specified by
16 subsection (c) of this section, shall forfeit his or her office
17 pursuant to section nine, article six, chapter six of this code.

18 (h) In addition to any other remedies available by law for a
19 violation of subsection (c) of this section, any violation of
20 subsection (c) of this section is, for the purposes of article six,
21 chapter six of this code, per se official misconduct or neglect of
22 duty by every person subject to the provisions of that article who
23 willfully fails to certify the transfer and registration of a
24 firearm subject to the National Firearms Act, as required by and

1 within the time limits specified by subsection (c) of this section.

2 (i) (1) Notwithstanding any provision of this code or other law
3 of this state to the contrary, except as otherwise provided in this
4 subsection, the names, addresses and other personally-identifying
5 information of persons who apply for or receive a certification of
6 the transfer and registration of any firearm required to be
7 certified pursuant to the National Firearms Act are confidential,
8 are not public records and may be copied or inspected only by:

9 (A) The person to whom the record pertains;

10 (B) The duly qualified conservator or guardian of a person to
11 whom the record pertains;

12 (C) The duly qualified personal representative of a deceased
13 person to whom the record pertains or, if a personal representative
14 has not qualified, the next of kin of a deceased person to whom the
15 record pertains;

16 (D) An attorney, attorney-in-fact or other agent or
17 representative acting pursuant to a written power of attorney or
18 other written authorization signed by the person to whom the record
19 pertains;

20 (E) A duly authorized representative of a law-enforcement
21 agency for any official purpose or any other agency or
22 instrumentality of federal, state or local government seeking the
23 record in the ordinary course of performing its official duties for
24 an official purpose; or

1 (F) (i) A person authorized by an order of any court, based upon
2 a finding of the court that the information is sufficiently
3 necessary to a proceeding before the court to substantially outweigh
4 the importance of maintaining the confidentiality established by
5 this subsection, to copy or inspect information protected by this
6 subsection.

7 (ii) Before any court may grant access to any records pursuant
8 to this paragraph, the court shall order the moving party to give
9 each affected person notice of the proceedings, the request for
10 confidential records under this paragraph and the opportunity of
11 affected persons to confidentially intervene and object to the
12 request by directing the applicable custodian of records to print
13 and mail by first-class mail to each affected person, the costs for
14 which the moving party shall prepay in full to the custodian of
15 records, and perform this notification in a manner not inconsistent
16 with the confidentiality provisions of this subsection.

17 (2) Any person who knowingly misrepresents his or her identity
18 to obtain any information whose disclosure is restricted by
19 subdivision (1) of this subsection, knowingly makes a false
20 statement to obtain any information whose disclosure is restricted
21 by subdivision (1) of this subsection, knowingly and willfully
22 misrepresents his or her authority to obtain any information whose
23 disclosure is restricted by subdivision (1) of this subsection or
24 knowingly and willfully discloses any information whose disclosure

1 is restricted by subdivision (1) of this subsection in violation of
2 subdivision (1) of this subsection, is guilty of a felony and, upon
3 conviction thereof, shall be imprisoned in a state correctional
4 facility for not less than one year nor more than ten years or fined
5 not more than \$10,000, or both fined and imprisoned.

6 (3) This subsection does not prohibit disclosure or publication
7 of statistical summaries, abstracts or other records containing
8 information in an aggregate or statistical form that does not
9 disclose any personally-identifying information protected from
10 public disclosure under this subsection.

11 (j) In this section, "chief law-enforcement official" means the
12 superintendent, the sheriff of any county or the chief of police of
13 any municipality.

14 **§61-7-10. Regulation of the sale or transfer of deadly weapons; sale**
15 **to prohibited persons; penalties; civil remedies.**

16 (a) A person may not publicly display and offer for rent or
17 sale, or, where the person is other than a natural person, knowingly
18 permit an employee thereof to publicly display and offer for rent or
19 sale, to any passersby on any street, road or alley, any deadly
20 ~~weapon machine gun, submachine gun or other fully automatic weapon,~~
21 ~~any rifle, shotgun or ammunition. for same~~

22 ~~(b) Any person who violates the provisions of subsections (a)~~
23 ~~or (c) of this section shall be guilty of a misdemeanor, and, upon~~
24 ~~conviction thereof, shall be fined not more than five thousand~~

~~1 dollars or shall be confined in the county jail for not more than
2 one year, or both fined and confined, except that where the person
3 violating the provisions of said subsections is other than a natural
4 person, such person shall be fined not more than ten thousand
5 dollars.~~

6 (b) A licensed firearm dealer and its employees and agents may
7 not refuse to sell or otherwise transfer a firearm to any person
8 solely on the basis that the person purchased a firearm that was
9 later the subject of a law-enforcement trace request.

10 (c) A licensed firearm dealer and its employees and agents
11 shall, upon completion of a federal firearms transaction record,
12 Form 4473, by a purchaser or other prospective transferee of a
13 firearm subject to the provisions of 18 U.S.C. §922(t), inquire of
14 the purchaser or transferee whether he or she has a license to carry
15 concealed weapons issued pursuant to section four of this article
16 that is a qualifying alternative under 18 U.S.C. §922(t)(3)(A) to
17 the performance of a National Instant Criminal Background Check
18 System check pursuant to 18 U.S.C. §922(t) or other evidence of
19 exemption under 18 U.S.C. §922(t)(3) and verbally inform the person
20 that if he or she has such a license and presents it for inspection
21 as required by federal law, the person may complete the purchase or
22 transfer of the firearm without undergoing a National Instant
23 Criminal Background Check System check. If the person presents an
24 instrument purporting to be a West Virginia license to carry

1 concealed weapons that is a qualifying alternative under 18 U.S.C.
2 §922(t)(3)(A), the licensed dealer or its employee or agent may
3 contact the State Police Concealed Weapons License Verification
4 Service established pursuant to subdivision (2), subsection (1),
5 section four of this article, and verify the validity of the license
6 before completing the sale or transfer without a National Instant
7 Criminal Background Check System check pursuant to 18 U.S.C.
8 §922(t)(3)(A). If the purchaser or transferee presents acceptable
9 evidence of an exemption under 18 U.S.C. §922(t)(3) or applicable
10 federal regulations, the licensed dealer or its employee or agent
11 shall complete the sale or transfer of the firearm without
12 conducting a National Instant Criminal Background Check System check
13 as permitted by federal law.

14 (d) A licensed firearm dealer and its employees and agents
15 shall, upon initiating a sale or transfer of a firearm subject to
16 the provisions of 18 U.S.C. §922(t) in which the licensed firearm
17 dealer or its employee or agent has contacted the National Instant
18 Criminal Background Check System as described in 18 U.S.C.
19 §922(t)(1)(A) and is permitted by 18 U.S.C. §922(t)(1)(B)(ii) based
20 upon the failure of the National Instant Criminal Background Check
21 System to provide a response to the dealer's request within three
22 business days, promptly complete the transfer of the firearm as
23 permitted by federal law.

24 ~~(c)~~ (e) A person may not knowingly and willfully sell, rent,

1 give or lend, or, where the person is other than a natural person,
2 knowingly and willfully permit an employee thereof to knowingly and
3 willfully sell, rent, give or lend, any ~~deadly weapon other than a~~
4 firearm or ammunition to a person prohibited from purchasing or
5 ~~possessing a deadly weapon other than a firearm~~ firearms or
6 ammunition by any provision of this article or by 18 U.S.C. §922(g)
7 or (n), as they exist as of January 1, 2011, or other applicable
8 federal law in effect as of January 1, 2011.

9 ~~(d) A person may not knowingly sell, rent, give or lend, or~~
10 ~~where the person is other than a natural person, knowingly permit an~~
11 ~~employee thereof to knowingly sell, rent give or lend a firearm or~~
12 ~~ammunition to a person prohibited by any provision of this article~~
13 ~~or the provisions of 18 U. S. C. §922.~~

14 ~~(e) Any person who violates any of the provisions of subsection~~
15 ~~(d) of this section is guilty of a felony, and, upon conviction~~
16 ~~thereof, shall be fined not more than \$100,000 imprisoned in a state~~
17 ~~correctional facility for a definite term of years of not less than~~
18 ~~three years nor more than ten years, or both fined and imprisoned,~~
19 ~~except that where the person committing an offense punishable under~~
20 ~~this subsection is other than a natural person, such person shall be~~
21 ~~fined not more than \$250,000.~~

22 (f) Any person who knowingly ~~solicits, persuades, encourages~~
23 ~~or entices a licensed dealer or private seller of firearms or~~
24 ammunition and willfully solicits, persuades, encourages or entices

1 any person to transfer a firearm or ammunition under circumstances
2 which the person knows would violate any federal law in effect as of
3 January 1, 2011, or the laws of this state. ~~or the United States is~~
4 ~~guilty of a felony~~ Any person or who knowingly and willfully
5 procures another to engage in conduct prohibited by this subsection
6 shall be punished as a principal. This subsection does not apply to
7 a law-enforcement officer acting in his or her official capacity
8 within his or her jurisdiction or any person acting under the
9 direction, supervision and control of any such law-enforcement
10 officer as part of a lawful, bona fide law-enforcement investigation
11 designed to detect, apprehend and prosecute violations of federal
12 law or this article.

13 (g) Any person who violates ~~the provisions of this~~ subsection
14 (e) or (f) of this section is guilty of a felony and, upon
15 conviction thereof, shall be fined not more than ~~\$5,000~~ \$100,000, or
16 imprisoned in a state correctional facility for a definite term of
17 not less than ~~one year~~ three years nor more than ~~five~~ ten years, or
18 both fined and imprisoned. If the person committing an offense
19 punishable under this subsection is other than a natural person, the
20 person shall be fined not more than \$250,000.

21 (h) Except as otherwise provided in subsection (g) of this
22 section, any person who knowingly violates any provision of this
23 section is guilty of a misdemeanor and, upon conviction thereof,
24 shall be fined not more than \$10,000, or confined in jail for not

1 more than one year, or both fined and confined, except that where
2 the person is other than a natural person, the person shall be fined
3 not more than \$25,000.

4 (i) In addition to any other person with proper standing to
5 sue, the Attorney General and the prosecuting attorney of any county
6 in which a violation of this section is alleged to have occurred
7 have concurrent authority to bring a civil action in any county in
8 which this section is violated or in which a violation of this
9 section is threatened to enjoin violations of any provision of this
10 section and obtain any other appropriate remedies available by law.

11 **§61-7-11a. Possessing deadly weapons within school safety zones**
12 **prohibited; exceptions; penalties; reports by school**
13 **principals; suspension or revocation of driver's**
14 **license.**

15 ~~(a) The Legislature hereby finds that the safety and welfare of~~
16 ~~the citizens of this state are inextricably dependent upon~~
17 ~~assurances of safety for children attending, and the persons~~
18 ~~employed by, schools in this state and for those persons employed~~
19 ~~with the judicial department of this state. It is for the purpose of~~
20 ~~providing such assurances of safety, therefore, that subsections~~
21 ~~(b), (g) and (h) of this section are enacted as a reasonable~~
22 ~~regulation of the manner in which citizens may exercise those rights~~
23 ~~accorded to them pursuant to section twenty-two, article three of~~

1 ~~the Constitution of the State of West Virginia.~~

2 ~~(b) (1) It shall be unlawful for any person to possess any~~
 3 ~~firearm or any other deadly weapon on any school bus, as defined in~~
 4 ~~section one, article one, chapter seventeen-a of this code, or in or~~
 5 ~~on any public or private primary or secondary education building,~~
 6 ~~structure, facility or grounds thereof, including any vocational~~
 7 ~~education building, structure, facility or grounds thereof where~~
 8 ~~secondary vocational education programs are conducted or at any~~
 9 ~~school-sponsored function.~~

10 ~~(2) This subsection shall not apply to:~~

11 ~~(A) A law enforcement officer acting in his or her official~~
 12 ~~capacity;~~

13 ~~(B) A person specifically authorized by the Board of Education~~
 14 ~~of the county or principal of the school where the property is~~
 15 ~~located to conduct programs with valid educational purposes;~~

16 (a) Except as otherwise provided by subsection (b) of this
 17 section, a person may not knowingly possess one or more deadly
 18 weapons:

19 (1) Within a school safety zone; or

20 (2) Unless the person is a nonstudent adult, at curricular,
 21 cocurricular, extracurricular or supplementary activity or any
 22 school-sponsored function occurring outside a school safety zone.

23 (b) Subsection (a) of this section does not apply to:

24 (1) Any nonstudent adult who is licensed to carry concealed

1 weapons pursuant to section four or five of this article or
2 authorized by subsection (d), section three of this article, to
3 carry a concealed weapon without a license;

4 ~~(C)~~ (2) A person who ~~as otherwise permitted by the provisions~~
5 ~~of this article,~~ possesses, ~~an unloaded firearm~~ carries, transports,
6 or stores any deadly weapon in or on a motor vehicle ~~or leaves an~~
7 ~~unloaded firearm or deadly weapon in a locked motor vehicle~~ other
8 than a school bus that is transporting one or more primary or
9 secondary school students to or from school or school-related
10 activities;

11 ~~(D)~~ (3) Programs or raffles conducted with the approval of the
12 county board of education or school which include the display of
13 ~~unloaded~~ deadly weapons other than loaded firearms; ~~or~~

14 (4) Any person who possesses a deadly weapon as a part of any
15 program sponsored or facilitated by either the school or any
16 organization authorized by the school to conduct its programs either
17 on or off the school premises;

18 (5) Any person who possesses a knife or blade which he or she,
19 uses customarily in his or her occupation, profession or trade;

20 ~~(E)~~ (6) The official mascot of West Virginia University,
21 commonly known as "The Mountaineer", when acting in his or her
22 official capacity;

23 (7) A person traversing school premises for the purpose of
24 gaining access to public or private lands open to hunting;

1 (8) Any person who possesses written authorization by the
2 county school superintendent in the case of a school under the
3 jurisdiction of a county board of education, or the principal or
4 other chief administrative officer of any other school, to carry the
5 weapon;

6 (9) The transitory possession or use of a deadly weapon during
7 an act committed in self-defense or in defense of another person or
8 any other act committed if legally justified or excused, provided
9 such possession or use lasts no longer than is reasonably necessary;
10 or

11 (10) Except with respect to a violation of subsection (a) of
12 this section that punishable under subdivision (2), subsection (e)
13 of this section, any nonstudent adult who possesses a deadly weapon
14 in or on any premises, or portion thereof, that is not in compliance
15 with subdivision (1), subsection (c) of this section.

16 (c) (1) Each principal or other chief administrator of a public
17 or private primary or secondary school shall display at all public
18 entrances to all school buildings, sports arenas, gymnasiums,
19 stadiums and cafeterias; at the corners of school property that make
20 a turn of thirty degrees or more and are not enclosed by fences,
21 walls or other complete barriers with gates or controlled entrances;
22 at the gate or controlled entrances of enclosed school properties;
23 at the entrance of any access road for any real property owned,
24 operated, leased or controlled by a primary or secondary school or

1 board of education to which subsection (a) of this section is
2 applicable; and at any other entrance to real property constituting
3 a school safety zone to which subsection (a) of this section is
4 applicable, signs conforming to the specifications of section
5 fifteen of this article, which shall include the following text:

6 "Unless specifically authorized by law, possession of a weapon
7 in a school safety zone in West Virginia is prohibited by law and
8 may be punishable as a felony. Nonstudent adults who are licensed
9 to carry concealed weapons or authorized by WV Code §61-7-3(d) to
10 carry a concealed weapon without a license are exempt from this
11 prohibition. Posted pursuant to WV Code §61-7-11a."

12 (2) Subsection (e), section fifteen of this article applies to
13 an alleged violation of subsection (a) of this section only when:

14 (A) The defendant is a nonstudent adult; and

15 (B) The alleged violation of subsection (a) of this section is
16 not punishable under subdivision (2), subsection (e) of this
17 section.

18 (d) For the purposes of subsections (a) through (c) of this
19 section, the term "nonstudent adult" means any person who is not:

20 (1) An unemancipated minor;

21 (2) A student of any primary or secondary school, public or
22 private, within or without this state; or

23 (3) (A) Less than twenty-one years of age; and

24 (B) Currently suspended or expelled from any primary or

1 secondary school.

2 (e) (1) Except as otherwise provided by subdivision (2) of this
3 subsection, any person who violates subsection (a) of this section
4 is guilty of a misdemeanor and, upon conviction thereof, shall be
5 fined not more than \$2,500 or confined in jail not more than one
6 year, or both fined and confined.

7 ~~(3)~~ (2) Any person violating who violates subsection (a) of
8 this subsection shall be section with the intent to use the deadly
9 weapon unlawfully or to threaten or endanger another person or cause
10 the deadly weapon to be used unlawfully or to threaten or endanger
11 another person, or actually attempts to use the deadly weapon
12 unlawfully or to threaten or endanger another person, is guilty of
13 a felony and, upon conviction thereof, shall be imprisoned in the
14 penitentiary of this state a state correctional facility for a
15 definite term of years of not less than two years nor more than ten
16 years, or fined not more than five thousand dollars \$100,000, or
17 both fined and imprisoned. However, notwithstanding any provision of
18 this code to the contrary, if the defendant unlawfully discharged a
19 firearm during the commission of an offense punishable under this
20 subdivision, the defendant shall be sentenced to a mandatory minimum
21 term of imprisonment of five years to be served consecutively with
22 any other sentence and shall be ineligible for parole until he or
23 she has served at least five years.

24 ~~(c) It shall be the duty of~~ (f) The principal of each a school

1 subject to the authority of the State Board of Education ~~to~~ shall
2 report any violation of subsection ~~(b)~~ (a) of this section
3 ~~discovered by such principal to~~ the local office of the West
4 Virginia State Police and the State Superintendent of Schools within
5 seventy-two hours after ~~such~~ the principal discovers the violation.
6 ~~occurs~~ The State Board of Education shall keep and maintain ~~such~~
7 reports and may prescribe rules establishing policy and procedures
8 for the making and delivery of ~~the same~~ those reports as required by
9 this subsection. ~~In addition, it shall be the duty of the principal~~
10 ~~of each school subject to the authority of the State Board of~~
11 ~~Education to report any violation of subsection (b) of this section~~
12 ~~discovered by such the principal to the appropriate local office of~~
13 ~~the division of public safety within 72 hours after such violation~~
14 ~~occurs.~~

15 ~~(d)~~ (g) In addition to the methods of disposition provided by
16 article five, chapter forty-nine of this code, any court which
17 adjudicates a ~~person~~ minor who is fourteen years of age or older as
18 delinquent for a violation of subsection ~~(b)~~ (a) of this section
19 may, in its discretion, order the ~~Division~~ Commissioner of Motor
20 Vehicles to suspend any driver's license or instruction permit
21 issued to ~~such person~~ the delinquent minor for ~~such~~ an appropriate
22 period of time ~~as the court may deem appropriate, such suspension,~~
23 ~~however,~~ not to extend beyond ~~such person's~~ the delinquent minor's
24 nineteenth birthday, as specified by the court's order; or, where

1 ~~such person~~ the delinquent minor has not been issued a driver's
2 license or instruction permit by this state, order the ~~Division~~
3 Commissioner of Motor Vehicles to deny ~~such person's~~ the delinquent
4 minor's application for the ~~same~~ driver's license or instruction
5 permit for ~~such~~ an appropriate period of time, as specified by the
6 court's order, ~~as the court may deem appropriate, such denial,~~
7 ~~however~~ not to extend beyond ~~such person's~~ the delinquent minor's
8 nineteenth birthday. Any suspension ordered by the court pursuant to
9 this subsection shall be effective upon the date of entry of ~~such~~
10 the order. Where the court orders the suspension of a driver's
11 license or instruction permit pursuant to this subsection, the court
12 shall confiscate any driver's license or instruction permit in the
13 ~~adjudicated person's~~ delinquent minor's possession and forward ~~the~~
14 ~~same~~ it to the Division of Motor Vehicles with a certified copy of
15 the court's order.

16 ~~(e)~~ (h) (1) If a person eighteen years of age or older is
17 convicted of ~~violating subsection (b) of a felony under subdivision~~
18 (2), subsection (e) of this section and ~~if such person~~ does not act
19 to appeal ~~such~~ the conviction within the time periods described in
20 subdivision (2) of this subsection or fails to prevail in an appeal,
21 ~~such~~ the Commissioner of Motor Vehicles shall revoke the person's
22 driver's license or privilege to operate a motor vehicle in this
23 state ~~shall be revoked~~ in accordance with the provisions of this
24 ~~section~~ subsection.

1 (2) The clerk of the circuit court in which ~~the~~ a person is
2 convicted of a felony under subdivision (2), subsection (e) of this
3 section as described in subdivision (1) of this subsection shall
4 forward to the Commissioner of Motor Vehicles a ~~transcript~~ certified
5 abstract of the judgment of conviction ~~If the conviction is the~~
6 ~~judgment of a magistrate court, the magistrate court clerk shall~~
7 ~~forward such transcript when the person convicted has not requested~~
8 ~~an appeal within twenty days of the sentencing for such conviction.~~
9 ~~If the conviction is the judgment of a circuit court, the circuit~~
10 ~~clerk shall forward such transcript when~~ if the person convicted has
11 defendant does not filed file a notice of intent to file ~~a petition~~
12 ~~for an appeal or writ of error~~ within thirty days after the judgment
13 was entered, if the defendant fails to file an appeal within the
14 time limits prescribed by the West Virginia Rules of Appellate
15 Procedure or if the conviction is affirmed on appeal.

16 (3) If, upon examination of the ~~transcript~~ certified abstract
17 of the judgment of conviction transmitted to the Commissioner of
18 Motor Vehicles pursuant to subdivision (2) of this subsection, the
19 Commissioner ~~shall determine~~ of Motor Vehicles determines that the
20 person was convicted as described in subdivision (1) of this
21 subsection, the Commissioner of Motor Vehicles shall make and enter
22 an order revoking ~~such~~ the person's license or privilege to operate
23 a motor vehicle in this state for the greater of: (i) a period of
24 one year or in the event (ii) if the person is a student enrolled in

1 a secondary school, for a period of one year or until the person's
2 twentieth birthday. ~~whichever is the greater period~~ The order shall
3 contain the reasons for the revocation and the revocation period.
4 The order of ~~suspension~~ revocation shall advise the person that
5 because of the receipt of the court's transcript, a presumption
6 exists that the person named in the order of ~~suspension~~ revocation
7 is the same person named in the ~~transcript~~ certified abstract of
8 judgment. The Commissioner of Motor Vehicles may grant an
9 administrative hearing which substantially complies with the
10 requirements of the provisions of section two, article five-a,
11 chapter seventeen-c of this code upon a preliminary showing that a
12 possibility exists that the person named in the notice of conviction
13 is not the same person whose license is being ~~suspended~~ revoked.
14 ~~Such request for~~ A person seeking a hearing pursuant to this
15 subdivision shall ~~be made~~ request the hearing within ten days after
16 receipt of a copy of the order of ~~suspension~~ revocation. The sole
17 purpose of this hearing shall be for the person requesting the
18 hearing to present evidence that ~~he or she~~ the person is not the
19 person named in the notice. ~~In the event~~ If the Commissioner of
20 Motor Vehicles grants an administrative hearing, the Commissioner of
21 Motor Vehicles shall stay the license ~~suspension~~ revocation pending
22 the Commissioner's order resulting from the hearing.

23 ~~(4) For the purposes of this subsection, a person is convicted~~
24 ~~when such person enters a plea of guilty or is found guilty by a~~

1 ~~court or jury.~~

2 ~~(f) (1) It shall be unlawful for~~

3 ~~(i) Any parent(s), guardian(s) or custodian(s) of a person less~~
4 ~~than eighteen years of age~~ an unemancipated minor who knows that
5 ~~said person~~ the unemancipated minor child or ward is in violation of
6 subsection ~~(b)~~ (a) of this section, or who has reasonable cause to
7 believe that ~~said person's violation of said~~ the unemancipated minor
8 child or ward will imminently violate subsection ~~is imminent~~ (a) of
9 this section, ~~to fail to~~ shall immediately report such knowledge or
10 belief to the appropriate school or law-enforcement officials.

11 ~~(2) Any person violating this~~ who knowingly and willfully
12 violates this subsection ~~shall be~~ is guilty of a misdemeanor and,
13 upon conviction thereof, shall be fined not more than \$1,000, or
14 shall be confined in jail for not more than one year, or both fined
15 and confined.

16 ~~(g) (1) It shall be unlawful for any person to possess any~~
17 ~~firearm or any other deadly weapon on any premises which houses a~~
18 ~~court of law or in the offices of a family law master.~~

19 ~~(2) This subsection shall not apply to:~~

20 ~~(A) A law enforcement officer acting in his or her official~~
21 ~~capacity; and~~

22 ~~(B) A person exempted from the provisions of this subsection by~~
23 ~~order of record entered by a court with jurisdiction over such~~
24 ~~premises or offices.~~

1 ~~(3) Any person violating this subsection shall be guilty of a~~
2 ~~misdemeanor, and, upon conviction thereof, shall be fined not more~~
3 ~~than one thousand dollars, or shall be confined in jail not more~~
4 ~~than one year, or both.~~

5 ~~(h) (1) It shall be unlawful for any person to possess any~~
6 ~~firearm or any other deadly weapon on any premises which houses a~~
7 ~~court of law or in the offices of a family law master with the~~
8 ~~intent to commit a crime.~~

9 ~~(2) Any person violating this subsection shall be guilty of a~~
10 ~~felony, and, upon conviction thereof, shall be imprisoned in the~~
11 ~~penitentiary of this state for a definite term of years of not less~~
12 ~~than two years nor more than ten years, or fined not more than five~~
13 ~~thousand dollars, or both.~~

14 ~~(i) Nothing in this section may be construed to be in conflict~~
15 ~~with the provisions of federal law.~~

16 **§61-7-11b. Possessing deadly weapons in court proceedings and**
17 **chambers prohibited; exceptions; penalties; posting of**
18 **signs; secure weapon storage areas.**

19 (a) Except as otherwise provided by subsections (b) and (c) of
20 this section, a person may not knowingly:

21 (1) Possess one or more deadly weapons within the chambers of
22 any justice, judge or magistrate without the express permission and
23 authorization of that justice, judge or magistrate;

24 (2) Convey or attempt to convey one or more deadly weapons into

1 the chambers of any justice, judge or magistrate without the express
2 permission and authorization of that justice, judge or magistrate;

3 (3) Possess one or more deadly weapons within any courtroom
4 during any court proceeding without the express permission and
5 authorization of the presiding justice, judge or magistrate; or

6 (4) Convey or attempt to convey one or more deadly weapons into
7 any courtroom with the intent to cause that weapon to be present in
8 the courtroom during any court proceeding without the express
9 permission and authorization of the presiding justice, judge or
10 magistrate.

11 (b) Subsection (a) of this section does not apply to:

12 (1) Any justice, judge, magistrate, prosecutor or
13 law-enforcement officer, while acting in his or her official
14 capacity;

15 (2) A person exempted from the provisions of subsection (a) of
16 this section by order of record entered by a court with jurisdiction
17 over the applicable courtroom or chambers;

18 (3) A person who possesses, conveys or attempts to convey a
19 weapon to the extent reasonably necessary to convey the weapon to a
20 secure weapon storage area established pursuant to subsection (f) of
21 this section upon entering a restricted area under subsection (a) of
22 this section, check and store the weapon in the secure weapon
23 storage area during the person's presence in the restricted area
24 under subsection (a) of this section and remove the weapon from the

1 secure weapon storage area and convey the weapon outside the
2 restricted area under subsection (a) of this section upon the
3 person's departure from the restricted area under subsection (a) of
4 this section;

5 (4) The transitory possession or use of a deadly weapon during
6 an act committed in self-defense or in defense of another person or
7 any other act committed if legally justified or excused, provided
8 such possession or use lasts no longer than is reasonably necessary;
9 or

10 (5) Any premises that is not in full compliance with the
11 requirements of secure weapon storage areas under subsection (d) of
12 this section and the signage requirements of subsection (e) of this
13 section.

14 (c) Notwithstanding subdivisions (1) and (2), subsection (b) of
15 this section, any justice, judge or magistrate may prohibit any
16 person from possessing or carrying any weapon in his or her
17 courtroom or chambers and subdivisions (1) and (2), subsection (b)
18 of this section, do not apply to any person who possesses or carries
19 any weapon in any courtroom or chambers of any justice, judge or
20 magistrate in violation of the order of the applicable justice,
21 judge or magistrate.

22 (d) The authority in control of each place into which the
23 possession or conveyance of a deadly weapon is prohibited by
24 subsection (a) of this section shall make available at each public

1 entrance to any place into which the possession or conveyance of a
2 deadly weapon is prohibited by subsection (a) of this section a
3 secure weapon storage area for the temporary checking of concealable
4 weapons by persons entering the place into which the possession or
5 conveyance of a deadly weapon is prohibited by subsection (a) of
6 this section. The person who takes custody of any checked weapon or
7 other personal property shall issue an itemized receipt for the
8 checked items to the person who checked those items, unless those
9 items were checked by being deposited directly in a self-service
10 storage locker by the person who checked those items. Receipts or
11 record keeping are not required for weapons and other items directly
12 placed and retrieved from a self-service storage locker by the
13 person who checked the weapon or other property. The Administrator
14 of the Supreme Court of Appeals shall promulgate a uniform form for
15 receipts required under this subsection and distribute copies of
16 this form to all court security officers in sufficient quantities to
17 ensure compliance with this subsection. All officers, employees or
18 other agents of this state or any political subdivision of this
19 state who maintain records of checked weapons and other personal
20 property for which receipts are issued under this subsection shall
21 purge each record within a reasonable amount of time, not to exceed
22 two business days, after the weapon and other checked personal
23 property have been retrieved by the person who checked the weapon
24 and other personal property. The Supreme Court of Appeals shall

1 propose in its annual budget request pursuant to Article VIII, §3
2 and Article VI, §51(b)(5) of the state Constitution, sufficient
3 funds to establish and upgrade self-service keyed storage lockers
4 for all court facilities in sufficient numbers to meet the general
5 demand for weapon storage so as to minimize the incidence of
6 designated court security officials taking possession of weapons
7 where self-service keyed storage lockers are not available in
8 sufficient quantities to fulfill the usual and customary demand.
9 The authority in control of each place into which the possession or
10 conveyance of a deadly weapon is prohibited by subsection (a) of
11 this section shall post a notice of the location of each secure
12 weapon storage facility as required by subsection (e) of this
13 section.

14 (e) The authority in control of each place into which the
15 possession or conveyance of a deadly weapon is prohibited by
16 subsection (a) of this section shall cause to be displayed at all
17 public entrances to the place into which the possession or
18 conveyance of a deadly weapon is prohibited by subsection (a) of
19 this section, signs conforming to the specifications of section
20 fifteen of this article, which shall contain the following text:

21 "Possessing a deadly weapon within [insert appropriate
22 description of place into which the possession or conveyance of a
23 deadly weapon is prohibited by subsection (a) of this section] or
24 conveying or attempting to convey a deadly weapon into [insert

1 appropriate description of place into which the possession or
2 conveyance of a deadly weapon is prohibited by subsection (a) of
3 this section] in West Virginia is prohibited by WV Code §61-7-11b
4 and punishable as a MISDEMEANOR.

5 A license to carry a concealed weapon is NOT an exception to
6 this provision.

7 Posted pursuant to WV Code §61-7-11b."

8 (f) If a place into which the possession or conveyance of a
9 deadly weapon is prohibited by subsection (a) of this section is
10 within a permanent secure restricted access area established
11 pursuant to section eleven-c of this article, the secure weapon
12 storage areas required by subsection (d) of this section may be
13 supplanted by the secure weapon storage areas required by section
14 eleven-c of this article and the signs required by subsection (e) of
15 this section may be supplanted by the signs required by section
16 eleven-c of this article.

17 (g) Except as otherwise provided by subsection (h) of this
18 section, any person who violates subsection (a) of this section is
19 guilty of a misdemeanor and, upon conviction thereof, shall be fined
20 not more than \$2,500 or confined in jail for not more than one year,
21 or both fined and confined.

22 (h) Any person who is licensed under section four or five of
23 this article to carry concealed weapons or who is authorized by
24 subsection (d), section three of this article, to carry a concealed

1 weapon without a license, who violates subsection (a) of this
2 section, is guilty of a misdemeanor and, upon conviction thereof,
3 shall be fined not more than \$500; for a second offense occurring
4 within one year of the date on which the first offense was committed
5 and subsequent to a conviction for the first offense, fined not more
6 than \$1,000, confined in jail for not more than six months, or both
7 fined and confined; and, for a third or subsequent offense within
8 one year and subsequent to the second prior conviction, punished as
9 provided in subsection (g) of this section.

10 (i) For the purposes of this section, "courtroom" includes any
11 regularly-appointed courtroom located within any courthouse in this
12 state and any other room or outdoor premises in which court may be
13 temporarily held while court is in session.

14 **§61-7-11c. Establishment of secure restricted access areas in public**
15 **buildings; procedures; prohibition of deadly weapons**
16 **in secure restricted access area; penalty; secure**
17 **weapon storage areas; posting of signs; reporting**
18 **requirements.**

19 (a) A public agency that has jurisdiction and control over any
20 public building or any portion of a public building may designate
21 all or part of any area of any public building under its
22 jurisdiction and control as a secure restricted access area and
23 restrict or prohibit the possession of firearms and other deadly

1 weapons within the secure restricted access area if:

2 (1) Prior to establishing the secure restricted access area:

3 (A) The public agency drafts and publishes a written plan
4 specifying:

5 (i) The name (if any), address and other descriptive
6 information about the public building for which the secure
7 restricted access area is proposed;

8 (ii) The portions of the public building contained within the
9 secure restricted access area;

10 (iii) All current public entrances and exits to or from the
11 public building and, if different, the proposed secure restricted
12 access area, and, with regard to public entrances and exits, the
13 general days and hours those entrances and exits are currently open
14 to public access and will be open to public access under the plan;

15 (iv) The anticipated cost of equipping every entrance to the
16 secure restricted access area with the storage lockers and metal
17 detectors or other electronic weapon screening devices required by
18 subdivision (2) of this subsection;

19 (v) The anticipated cost of maintaining law-enforcement
20 officers or other security personnel at the security screening
21 stations at each entrance to the secure restricted access area
22 required by subdivision (2) of this subsection;

23 (vi) The funding sources for the costs specified in
24 subparagraphs (iv) and (v) of this paragraph;

1 (vii) Whether licensees under sections four and five of this
2 article and individuals authorized by subsection (d), section three
3 of this article, to carry a concealed weapon without a license, will
4 be exempted from or subject to a weapons restriction pursuant to
5 subdivision (2), subsection (b) of this section;

6 (viii) That the public agency has good and substantial reason,
7 based upon specific and articulated facts and reasoning, for
8 establishing the secure restricted access area and accompanying
9 weapons restrictions, in light of:

10 (I) Other provisions of this article and federal laws
11 regulating firearms;

12 (II) The strong public policy presumption of this state in
13 favor of an individual's right to keep and bear arms, either openly
14 or concealed, at all times and places, including within all public
15 buildings other than correctional facilities as provided by
16 subdivision (1), subsection (c), section eight, article five of this
17 chapter, school safety zones as provided by section eleven-a of this
18 article, certain portions of court facilities as provided by section
19 eleven-b of this article and in secure restricted access areas as
20 provided by this section; and

21 (III) The statistically insignificant incidence of crimes
22 involving the misuse of deadly weapons committed by individuals
23 licensed to carry concealed weapons pursuant to section four or five
24 of this article or authorized to carry a concealed weapon without a

1 license pursuant to subsection (d), section three of this article,
2 or who exercise their right to open carry;

3 (ix) The public agency's plan for implementing adequate
4 security measures in and around the secure restricted access area to
5 guarantee the safety of all persons inside the secure restricted
6 access area from felony crimes of violence and detect and prevent
7 the unauthorized possession or carrying of weapons within the secure
8 restricted access area. For the purposes of this subparagraph,
9 "adequate security measures" include the use of electronic equipment
10 and personnel to detect and restrict the carrying of any weapons
11 into the secure restricted access area, including, but not limited
12 to, the minimum security measures required by subdivision (2) of
13 this subsection;

14 (B) The public agency forwards a copy of the plan specified in
15 paragraph (A) of this subdivision and public hearing notice
16 specified in paragraph (C) of this subdivision to the Attorney
17 General, who shall publish a copy of those documents on the Internet
18 and notify interested organizations and persons in communication
19 with the Attorney General about firearm law issues;

20 (C) The public agency holds a public comment period of not less
21 than thirty days in length, followed by a public hearing, on the
22 plan specified in paragraph (A) of this subdivision, which shall be
23 preceded by the publication of the plan and a notice of the public
24 comment period and public hearing:

1 (i) On the Attorney General's web site as provided by paragraph
2 (B) of this subdivision;

3 (ii) In a Class III-0 legal advertisement in accordance with
4 the provisions of article three, chapter fifty-nine of this code,
5 whose publication area shall be each county and municipality in
6 which a public building subject to the proposed plan is located, and
7 whose last publication shall be not less than seven nor more than
8 fourteen days before the public hearing; and

9 (iii) The State Register, if the public building is owned,
10 leased or controlled by an agency as defined in section two, article
11 one, chapter twenty-nine-a of this code;

12 (D) If the public agency modifies or revises the plan following
13 the public comment period and public hearing, the public agency
14 submits the modified or revised plan to the Attorney General in the
15 same manner as required for the original plan by paragraph (B) of
16 this subdivision and conducts a public comment period and public
17 hearing on the modified or revised plan in the same manner as
18 required for the original plan by paragraph (C) of this subdivision;

19 (E) If the affected public building is owned, leased or
20 controlled by:

21 (i) A county or municipality, the applicable county commission
22 or municipal governing body enacts an ordinance granting final
23 approval for the plan and the establishment of the secure restricted
24 access area; or

1 (ii) A county board of education, the county board of education
2 adopts a resolution granting final approval for the plan and the
3 establishment of the secure restricted access area;

4 (iii) The Legislature or either house thereof, the Legislature
5 adopts a concurrent resolution or the affected house (if a single
6 house) adopts a resolution granting final approval for the plan and
7 the establishment of the secure restricted access area; or

8 (iv) A state institution of higher education, the board of
9 governors of that institution adopts a resolution granting final
10 approval for the plan and receives the written approval of the
11 governor for the plan; or

12 (v) An agency, as defined in section two, article one, chapter
13 twenty-nine-a of this code, of the executive branch of state
14 government, the Governor grants approval for the plan in writing;
15 and

16 (F) Any secure restricted access area established pursuant to
17 this subdivision shall be established for not more than two years at
18 a time and may be reestablished only through the same process
19 required for its initial establishment; and

20 (2) At all times the secure restricted access area is in
21 effect:

22 (A) Signs conforming to the specifications of section fifteen
23 of this article that clearly describe the applicable weapons
24 restriction or prohibition, the availability of a secure weapon

1 storage area and the misdemeanor penalties for violating subsection
2 (c) of this section shall be displayed at every entrance to the
3 secure restricted access area. The text of the sign shall conclude,
4 "Posted pursuant to WV Code §61-7-11c.";

5 (B) Armed, uniformed security personnel and electronic weapons
6 screening devices shall be permanently in place at each entrance to
7 the secure restricted access area that is not secured as provided by
8 paragraph (F) of this subdivision;

9 (C) Security personnel shall electronically screen every person
10 not exempted under subsection (b) of this section who enters the
11 secure restricted access area through a point of entry described in
12 paragraph (B) of this subdivision and all handbags, briefcases and
13 other personal effects of those persons to determine whether each
14 nonexempt person who enters the secure restricted access area is
15 carrying a deadly weapon of any kind;

16 (D) The public agency shall maintain at each security station
17 described in paragraphs (B) and (C) of this subdivision a secure
18 weapon storage area consisting of self-service storage lockers in
19 which individuals entering the secure restricted access area may
20 check and store deadly weapons and other objects excluded from the
21 secure restricted access area and other personal effects the person
22 may elect to store if the storage locker will contain those items.
23 However, the public agency may provide for the checking and secure
24 storage of deadly weapons by other means if all self-service storage

1 lockers at the applicable location are in use or otherwise
2 unavailable. The person who takes custody of any weapon or other
3 personal property not placed in a self-service storage locker shall
4 issue an itemized receipt for the checked items to the person who
5 checked those items. All officers, employees or other agents of any
6 public agency who maintain records of checked weapons and other
7 personal property for which receipts are issued under this paragraph
8 shall purge each record within a reasonable amount of time, not to
9 exceed two business days, after the weapon and other checked
10 personal property have been retrieved by the person who checked the
11 weapon and other personal property;

12 (E) Security personnel shall require each person who is
13 carrying a deadly weapon of any kind and not exempted under
14 subsection (b) of this section to leave the weapon in a secure
15 weapon storage area described in paragraph (D) of this subdivision
16 while the nonexempt person is in the secure restricted access area.
17 The security personnel may require every person who carries a
18 concealed weapon in a place described in subsection (b), section
19 three of this article, regardless of whether that person is exempted
20 from this section by subsection (b) of this section, to display the
21 documents described in subdivision (3), subsection (h), section
22 three of this article or evidence of entitlement to an exemption
23 under subsection (d), section three of this article; and

24 (F) All points of ingress or egress to the secure restricted

1 access area that are not open to public or employee access and which
2 are not subject to the security measures required by paragraphs (B)
3 through (E) of this subdivision shall be secured by biometric entry
4 locking devices and monitored and recorded by high-definition video
5 surveillance equipment through which all points of ingress or egress
6 to the secure restricted access area are monitored at all times by
7 on-duty law-enforcement officers or armed, uniformed security
8 personnel who are stationed on the premises and able to promptly
9 respond to any apparent security breach. The signs posted pursuant
10 to paragraph (A) of this subdivision at each point of ingress or
11 egress secured pursuant to this paragraph shall include a notice of
12 the location or locations of entrances to the secure restricted
13 access area that are open to public or employee access and subject
14 to paragraphs (B) through (E) of this subdivision.

15 (b)(1) When acting in an official capacity and upon
16 presentation of a government-issued photo identification showing
17 that the person is described in subdivision (2), (3), (4), (5) or
18 (6), subsection (d), section three of this article, a person
19 described in subdivision (2), (3), (4), (5) or (6), subsection (d),
20 section three of this article, is exempt from weapons screenings and
21 prohibitions or restrictions under subsection (a) of this section
22 when the person is acting in an official capacity.

23 (2) The public agency in control of any public building that
24 designates a secure restricted access area under subsection (a) of

1 this section may, in writing, exempt from weapons restrictions and
2 screenings under subsection (a) of this section certain classes of
3 persons not described in subdivision (1) of this subsection or
4 specific named individuals and shall cause a copy of a list of all
5 exemptions granted under this subdivision to be maintained by the
6 security personnel at each entrance to the applicable secure
7 restricted access area.

8 (3) Any individual authorized by subdivisions (1) or (2),
9 subsection (b), section eleven-b of this article, to possess or
10 convey a deadly weapon into a court facility, shall be permitted to
11 convey any weapon to and from a court facility as permitted by
12 section eleven-b of this article.

13 (c) (1) Except as otherwise provided by subsection (b) of this
14 section, a person may not knowingly and willfully:

15 (A) Possess one or more deadly weapons within a secure
16 restricted access area of a public building established under
17 subsection (a) of this section, beyond the security checkpoints and
18 designated secure weapon storage area; or

19 (B) Convey or attempt to convey one or more deadly weapons into
20 a secure restricted access area of a public building established
21 under subsection (a) of this section, beyond the security
22 checkpoints and designated secure weapon storage area.

23 (2) Except as otherwise provided by subdivision (3) of this
24 subsection, any person who violates subdivision (1) of this

1 subsection is guilty of a misdemeanor and, upon conviction thereof,
2 shall be fined not more than \$2,500 or confined in jail for not more
3 than one year, or both fined and confined.

4 (3) Any person who is licensed under section four or five of
5 this article to carry concealed weapons or authorized by subsection
6 (d), section three of this article, to carry a concealed weapon
7 without a license, who violates subdivision (1) of this subsection,
8 is guilty of a misdemeanor and, upon conviction thereof, shall be
9 fined not more than \$500.

10 (d) For the purposes of section sixteen of this article, this
11 section is a specific statutory authorization of restrictions or
12 prohibitions on the possession and carrying of concealable weapons,
13 firearms and parts, components and ammunition for firearms.

14 (e) Together with section sixteen of this article, this section
15 is the sole and exclusive means by which any public agency may
16 restrict or prohibit the possession or carrying of deadly weapons
17 within a public building unless the Legislature has, in some other
18 provision of this code, specifically and expressly:

19 (1) Restricted or prohibited the possession or carrying of
20 deadly weapons within the type of public building involved and
21 prescribed a criminal penalty for violations of the applicable
22 restriction or prohibition; or

23 (2) Authorized the public agency to restrict or prohibit the
24 possession or carrying of deadly weapons, prescribed a criminal

1 penalty for violations of the applicable restriction or prohibition
2 and, if the restriction or prohibition pertains to a public
3 building, the express statutory authorization for the restriction or
4 prohibition includes the type of public building involved and
5 authorization for the restriction or prohibition without the public
6 agency implementing the security and electronic weapon screening
7 requirements of subsection (a) of this section.

8 (f) This section does not apply to any weapon restriction or
9 prohibition established pursuant to subdivisions (5) through (10),
10 subsection (d), section sixteen of this article, or any federal law.
11 This section does not apply to any public building security plan
12 under which the otherwise lawful possession or carrying of deadly
13 weapons is not restricted or prohibited except as otherwise provided
14 by subsection (e) of this section.

15 (g) On the first day of each regular session of the
16 Legislature, each public agency of state government that establishes
17 any secure restricted access area pursuant to this section shall
18 issue to the Governor, the Attorney General and the Legislative
19 Librarian a report enumerating, for the prior calendar year:

20 (1) All individual public buildings in which secure restricted
21 access areas were established or maintained pursuant to this
22 section, including the county and municipality, if any, in which
23 each applicable public building is located and the street address of
24 each applicable public building; and

1 (2) With regard to each individual location identified pursuant
2 to subdivision (1) of this subsection:

3 (A) Any resulting reduction in the number of public entrances
4 maintained at each location or the hours of operation of those
5 public entrances;

6 (B) Statistical data for the number of individuals who checked
7 their weapons as provided by subdivision (3), subsection (a) of this
8 section, including the mean, sixty-seventh percentile, eightieth
9 percentile and ninety-fifth percentile daily figures for each
10 location;

11 (C) The number of keyed, self-service weapon storage lockers
12 provided at each location;

13 (D) The number of arrests and resulting dispositions for
14 violations of subsection (c) of this section or other violations of
15 this article discovered at the security checkpoints at each
16 location; and

17 (E) The costs of establishing and maintaining each secure
18 restricted access area and the funding source for those costs.

19 (h) Not later than February 1 of each year, each county or
20 municipal public agency that establishes any secure restricted
21 access area pursuant to this section shall issue to the Governor,
22 the Attorney General, the Legislative Librarian and the appropriate
23 county commission or municipal governing body, a report enumerating,
24 for the prior calendar year, the same information as is required of

1 public agencies of state government under subsection (g) of this
2 section.

3 (i) All reports under subsections (g) and (h) of this section
4 shall be of public record. The Attorney General shall publish on
5 the Internet for public viewing all reports transmitted to the
6 Attorney General pursuant to subsections (g) and (h) of this
7 section. Any person may also obtain one print copy of each report
8 free of charge but the issuing agency may charge the actual marginal
9 cost of printing to provide additional copies of any report provided
10 in print.

11 **§61-7-12. Wanton endangerment involving a firearm.**

12 Any person who discharges one or more rounds of live ammunition
13 from a firearm in a manner that wantonly performs any act with a
14 firearm which creates a substantial risk of death or serious bodily
15 injury to ~~another shall be~~ one or more other persons is guilty of a
16 felony and, upon conviction thereof, shall be ~~confined in the~~
17 penitentiary imprisoned in a state correctional facility for a
18 definite term ~~of years~~ of not less than one year nor more than five
19 years, or, in the discretion of the court, confined in ~~the county~~
20 jail for not more than one year, or fined not ~~less than two hundred~~
21 ~~fifty dollars nor~~ more than \$2,500, or both fined and imprisoned.

22 ~~For purposes of this section, the term "firearm" shall have the~~
23 ~~same meaning ascribed to such term as set forth in section two of~~
24 ~~this article.~~

1 §61-7-13. Criminal misconduct involving weapons; classifications;
2 offenses; penalties.

3 (a) Except to the extent that a greater minimum sentence is
4 otherwise provided by this section, any person who, during and in
5 relation to any aggravated felony, including any aggravated felony
6 that provides for an enhanced punishment if committed by the use of
7 a deadly or dangerous weapon or device, uses or carries a firearm,
8 or who, in furtherance of any aggravated felony, possesses a
9 firearm, is guilty of a felony and, upon conviction thereof, shall
10 be:

11 (1) Imprisoned in a state correctional facility for life
12 without parole, life or any definite term of not less than a
13 mandatory minimum sentence of:

14 (A) If the firearm is discharged, ten years;

15 (B) If the firearm is brandished and paragraph (A) of this
16 subdivision does not apply, seven years. For purposes of this
17 paragraph, the term "brandish" means, with respect to a firearm, to
18 display all or part of the firearm, or otherwise make the presence
19 of the firearm known to another person, in order to intimidate that
20 person, regardless of whether the firearm is directly visible to
21 that person; or

22 (C) In any other case, five years; and

23 (2) Fined not more than \$250,000.

24 (b) If the firearm possessed by a person convicted of a

1 violation of subsection (a) of this section is a firearm, as defined
2 in 26 U.S.C. §5845(a), as it exists as of January 1, 2011, that is
3 regulated by the National Firearms Act, 26 U.S.C. Chapter 53, as it
4 exists as of January 1, 2011, the minimum term of imprisonment under
5 subdivision (1), subsection (a) of this section, shall be doubled.

6 (c) If there is a second or subsequent conviction under
7 subsection (a) or (b) of this section, including convictions under
8 a law of another state or the United States that would constitute
9 such an offense if committed in this state, for an act occurring
10 after conviction and imposition of sentence for the prior offense,
11 the person shall:

12 (1) Be sentenced to a mandatory term of imprisonment of:

13 (A) Life without parole or life if the firearm involved is a
14 firearm, as defined in 26 U.S.C. §5845(a), as it exists as of
15 January 1, 2011, that is regulated by the National Firearms Act, 26
16 U.S.C. Chapter 53, as it exists as of January 1, 2011; or

17 (B) Otherwise, life without parole, life or a definite term of
18 not less than 25 years; and

19 (2) Fined not more than \$250,000.

20 (d) A person may not, while unlawfully possessing any Schedule
21 I or II controlled substance, knowingly possess a firearm or
22 concealable weapon.

23 (e) A person may not, while unlawfully possessing any Schedule
24 I or II controlled substance, knowingly carry about his or her

1 person a loaded firearm or concealed weapon.

2 (f) A person may not knowingly and willfully carry about his or
3 her person any deadly weapon with the specific intent to use the
4 weapon to commit a felony crime of violence.

5 (g) Subsections (d) through (f) of this section do not apply to
6 the possession or carrying of a firearm in a manner punishable under
7 subsection (a), (b) or (c) of this section.

8 (h) A person may not wear or otherwise be equipped with body
9 armor while committing a felony crime of violence.

10 (i) Any person who violates subsection (d), (f) or (h) of this
11 section is guilty of a felony and, upon conviction thereof, shall be
12 imprisoned for a definite term of not less than one year nor more
13 than ten years, fined not more than \$100,000, or both fined and
14 imprisoned. Any person who violates subsection (e) of this section
15 is guilty of a felony and, upon conviction thereof, shall be
16 imprisoned for not less than two years nor more than twenty years
17 and fined not more than \$250,000. However, notwithstanding any
18 provision of this code to the contrary, if the defendant unlawfully
19 discharged a firearm during the commission of an offense punishable
20 under this section, the defendant shall be sentenced to a mandatory
21 minimum term of imprisonment of five years.

22 (j) Notwithstanding any provision of this code to the contrary:

23 (1) Each offense under this section is a separate and distinct
24 offense from any other crime that may constitute a predicate offense

1 for any offense under this section.

2 (2) The sentences of imprisonment for any felony under this
3 section are mandatory sentences.

4 (3) Each sentence of imprisonment for any felony under this
5 section shall be served consecutively to any other sentence,
6 including any sentence for any other crime in the course of which a
7 person committed an offense under this section.

8 (4) A person is not eligible for probation for any felony under
9 this section.

10 (5) A person is not eligible for parole for any felony under
11 this section until he or she has served the minimum sentence
12 prescribed under this section.

13 (6) The prosecuting attorney shall, in all cases in which a
14 defendant is convicted of a felony punishable under this section and
15 has been previously convicted of a felony for which the defendant is
16 eligible for any sentencing enhancement under section eighteen,
17 article eleven of this chapter, obtain and present to the court
18 record evidence of all prior felony convictions against the
19 defendant and seek the maximum recidivist sentencing enhancement for
20 which the defendant is eligible under section eighteen, article
21 eleven of this chapter. A prosecuting attorney may not refuse or
22 fail to act as required by this subdivision or to negotiate or enter
23 into any plea agreement to avoid any recidivist sentencing
24 enhancement required by this subdivision and section eighteen,

1 article eleven of this chapter. Nothing in this subdivision may be
2 construed to prohibit any sentencing order or plea agreement that
3 provides for any sentence for any offense under this section to be
4 served concurrent with any sentence of imprisonment in a federal
5 correctional facility for any offense under Title 18, Chapter 44 of
6 the United States Code (18 U.S.C. §§921 through 931), arising from
7 the same transaction or occurrence.

8 (k) Any person who knowingly and willfully carries about his or
9 her person any deadly weapon with the specific intent to use the
10 weapon to commit a misdemeanor crime of violence is guilty of a
11 misdemeanor and, upon conviction thereof, shall be confined in jail
12 for not more than one year or fined not more than \$2,500, or both
13 fined and confined.

14 (l) For the purposes of subsections (f) and (k) of this
15 section, the intent to use a weapon unlawfully shall not be inferred
16 from the mere possession, carrying or concealment of a loaded or
17 unloaded firearm or any other weapon.

18 **§61-7-14. Right of private property owners to limit carrying of**
19 **deadly weapons on private property.**

20 ~~Notwithstanding the provisions of this article, any owner,~~
21 ~~lessee or other person charged with the care, custody and control of~~
22 ~~real~~

23 (a) Except as otherwise provided in this section, a private
24 property owner in possession of private property may restrict or

1 prohibit the carrying, openly or concealed, of any ~~firearm or~~ deadly
2 weapon on private property under ~~his or her~~ the domain ~~Provided,~~
3 ~~That for purposes of this section "person" means an individual or~~
4 ~~any entity which may acquire title to real property and control of~~
5 the private property owner in accordance with the provisions of this
6 section and section fifteen of this article. A landlord may not
7 restrict or prohibit the otherwise lawful possession or carrying of
8 any deadly weapon by a tenant or a tenant's guests.

9 (b) A private property owner who establishes any restriction or
10 prohibition on the carrying of a deadly weapon pursuant to
11 subsection (a) of this section shall give notice of the restriction
12 or prohibition in writing by posting signs in the form required by
13 section fifteen of this article. A property owner, employer or
14 other person may not subject any person who violates any restriction
15 or prohibition on carrying a deadly weapon unless the private
16 property owner gave notice of the restriction or prohibition by
17 posting signs in the specific form required by this subsection or
18 the person who violated the restriction or prohibition carried the
19 weapon in violation of federal law or a provision of this article
20 other than this section. The signage requirements of this
21 subsection are mandatory, technical requirements that a person may
22 not waive under any circumstance. Any contractual provision waiving
23 the right to notice in the form required by this subsection violates
24 public policy and is unlawful and unenforceable.

1 (c) Any private property owner who establishes a restriction or
2 prohibition on the carrying of deadly weapons pursuant to subsection
3 (a) of this section and gives notice of the restriction or
4 prohibition in accordance with subsection (b) of this section and
5 section fifteen of this article, may, upon discovering that a person
6 is carrying a deadly weapon on the private property owner's premises
7 in violation of the restriction or prohibition established and
8 posted by the private property owner in accordance with subsection
9 (b) of this section and section fifteen of this article, personally
10 demand either that the person leave the premises or that the person
11 leave the premises or temporarily relinquish custody of the deadly
12 weapon while the person remains on the premises.

13 (d) A person who carries a deadly weapon on a private property
14 owner's premises in violation of a restriction or prohibition
15 established and posted by the private property owner pursuant to
16 subsection (b) of this section and section fifteen of this article
17 and complies with the personal demand of the private property owner
18 under subsection (c) of this section upon being confronted about the
19 violation, is immune from criminal and civil liability for the
20 violation and may not be subjected to any other form of adverse
21 action by the private property owner.

22 (e) Subsections (b) through (d) of this section do not apply to
23 private residences. The lawful possessor of a private residence may
24 restrict or prohibit the carrying of deadly weapons and provide

1 notice thereof in any lawful manner.

2 Any (f) (1) A person carrying or possessing may not knowingly
3 and willfully carry a firearm or other deadly weapon on the property
4 premises of another who refuses to temporarily relinquish possession
5 of such firearm or other deadly weapon, upon being requested to do
6 so, or to leave such premises, while in possession of such firearm
7 or other deadly weapon, shall be a private property owner in
8 violation of a restriction or prohibition established and, except as
9 otherwise provided by subsection (e) of this section, posted by the
10 private property owner pursuant to this section and section fifteen
11 of this article, and knowingly and willfully defy a personal demand
12 of the private property owner under subsection (c) of this section
13 upon being confronted about the violation.

14 (2) Except as otherwise provided in subdivisions (3) and (4) of
15 this subsection, any person who knowingly and willfully violates
16 subdivision (1) of this subsection is guilty of a misdemeanor and,
17 upon conviction thereof, shall be fined not more than \$1,000, or
18 confined in the county jail for not more than six months, or both
19 fined and confined. Provided, That the provisions of

20 (3) Except as otherwise provided in subdivision (4) of this
21 subsection, any person who is licensed under section four or five of
22 this article to carry concealed weapons or who is authorized by
23 subsection (d), section three of this article, to carry a concealed
24 weapon without a license, who knowingly and willfully violates

1 subdivision (1) of this subsection, is guilty of a misdemeanor and,
2 upon conviction thereof, shall be fined not more than \$25; for a
3 second offense occurring within one year of the date on which the
4 first offense was committed and subsequent to a conviction for the
5 first offense, fined not more than \$100; and, for a third or
6 subsequent offense within one year and subsequent to the second
7 prior conviction, punished as provided in subdivision (2) of this
8 subsection.

9 (4) Any person who violates subdivision (1) of this subsection
10 in a vehicle or vessel or in any parking lot or parking facility is
11 subject only to liability in a civil action for trespass on the case
12 and may not be criminally prosecuted.

13 (g) Any restriction or prohibition on carrying any weapon under
14 this section shall not apply to: ~~those persons set forth in~~
15 ~~subsections (3) through (6) of section six of this code while such~~
16 ~~persons are acting in an official capacity: Provided, however, That~~
17 ~~under no circumstances may any person possess or carry or cause the~~
18 ~~possession or carrying of any firearm or other deadly weapon on the~~
19 ~~premises of any primary or secondary educational facility in this~~
20 ~~state unless such person is a law enforcement officer or he or she~~
21 ~~has the express written permission of the county school~~
22 ~~superintendent~~

23 (1) Any officer, employee or agent of the United States, this
24 state, any political subdivision of this state or any other state or

1 political subdivision thereof, when that person is acting in an
2 official capacity;

3 (2) Any person serving any summons, subpoena or other legal
4 process for any proceeding before any court or administrative agency
5 of this state, the United States or another state; or

6 (3) Any person who possesses, carries, transports or stores any
7 firearm, part of a firearm, ammunition, ammunition component or any
8 other deadly weapon in a motor vehicle pursuant to section
9 fourteen-a of this article.

10 (h) Notwithstanding article three-b of this chapter or the
11 common law of this state relating to trespassing, this section and
12 section fifteen of this article set forth the exclusive criteria to
13 provide for the exclusion of firearms and other deadly weapons from
14 private property and the exclusive criminal penalties that may
15 attach to violations thereof. Notwithstanding any provision of this
16 code or the common law of this state to the contrary, the provisions
17 of subsections (b) through (d) of this section and section fifteen
18 of this article shall apply to any action of any private property
19 owner to, in any manner, directly or indirectly, prohibit, restrict
20 or attempt to restrict or prohibit the carrying of firearms or other
21 weapons on private property, other than a private residence, or to
22 exclude any person from private property, other than a private
23 residence, where that exclusion is based, in whole or in part,
24 directly or indirectly, on the person's carrying of firearms or

1 other weapons. This subsection shall be liberally construed to
2 protect the right of a person otherwise lawfully carrying a firearm
3 or other weapon to notice in the form required by subsection (b) of
4 this section and section fifteen of this article, confrontation and
5 a demand to desist prior to incursion of civil or criminal liability
6 or any other legal consequences pursuant to subsection (c) of this
7 section and immunity from civil or criminal liability or other
8 consequences upon complying with personal demand to desist pursuant
9 to subsection (d) of this section.

10 (i) This section does not apply to any offense under subsection
11 (b), section three of this article.

12 (j) A private property owner who voluntarily refrains from
13 restricting or prohibiting persons who are licensed under section
14 four or five of this article to carry concealed weapons or
15 authorized by subsection (d), section three of this article to carry
16 a concealed weapon without a license, from carrying deadly weapons
17 on the private property owner's premises:

18 (1) Has no duty of care with respect to the acts or omissions
19 of persons who are licensed under section four or five of this
20 article to carry concealed weapons or authorized by subsection (d),
21 section three of this article, to carry a concealed weapon without
22 a license, resulting from any alleged discharge of a firearm or any
23 alleged unlawful or tortious use of a deadly weapon, unless the
24 private property owner knowingly and willfully and expressly

1 solicited, requested, commanded, encouraged or aided the person in
2 discharging a firearm or unlawfully using a deadly weapon;

3 (2) Shall be immune from liability in a civil action for any
4 injury, death or loss to any person or property that allegedly was
5 caused by or related to a person licensed under section four or five
6 of this article to carry concealed weapons or authorized by
7 subsection (d), section three of this article, to carry a concealed
8 weapon without a license, bringing a firearm or other deadly weapon
9 onto the premises or property of the private property owner,
10 including motor vehicles owned by the private property owner, unless
11 the private property owner acted with malicious purpose; and

12 (3) Is immune from liability in a civil action for any injury,
13 death or loss to any person or property that allegedly was caused by
14 or related to the private property owner's decision to permit a
15 person licensed under section four or five of this article to carry
16 concealed weapons or authorized by subsection (d), section three of
17 this article, to carry a concealed weapon without a license, to
18 bring a firearm or other deadly weapon onto the premises or property
19 of the private property owner.

20 (k) A private employer who voluntarily refrains from
21 restricting or prohibiting employees who are licensed under section
22 four or five of this article to carry concealed weapons or
23 authorized by subsection (d), section three of this article to carry
24 a concealed weapon without a license, from carrying deadly weapons

1 while acting in the course of their employment:

2 (1) Has no duty of care with respect to the acts or omissions
3 of employees who are licensed under section four or five of this
4 article to carry concealed weapons or authorized by subsection (d),
5 section three of this article, to carry a concealed weapon without
6 a license, resulting from any alleged discharge of a firearm or any
7 alleged unlawful or tortious use of a deadly weapon, unless the
8 private employer knowingly and willfully and expressly solicited,
9 requested, commanded, encouraged or aided the person in discharging
10 a firearm or unlawfully using a deadly weapon;

11 (2) Shall be immune from liability in a civil action for any
12 injury, death or loss to any person or property that allegedly was
13 caused by or related to an employee who is licensed under section
14 four or five of this article to carry concealed weapons or
15 authorized by subsection (d), section three of this article, to
16 carry a concealed weapon without a license, bringing a firearm or
17 other deadly weapon onto the premises or property of the private
18 employer, including vehicles owned by the private employer, unless
19 the private employer acted with malicious purpose; and

20 (3) Is immune from liability in a civil action for any injury,
21 death or loss to any person or property that allegedly was caused by
22 or related to the private employer's decision to permit a person
23 licensed under section four or five of this article to carry
24 concealed weapons or authorized by subsection (d), section three of

1 this article, to carry a concealed weapon without a license, to
2 bring a firearm or other deadly weapon onto the premises or property
3 of the private employer.

4 (l) The immunities from civil liability conferred by
5 subsections (j) and (k) of this section shall be liberally construed
6 to promote the public policy of this state of encouraging private
7 property owners and private employers to voluntarily refrain from
8 restricting or prohibiting the lawful possession or carrying of
9 deadly weapons by any individual who is licensed under section four
10 or five of this article to carry concealed weapons or authorized by
11 subsection (d), section three of this article, to carry a concealed
12 weapon without a license.

13 (m) (1) A private property owner who restricts or prohibits any
14 person who is licensed under section four or five of this article to
15 carry concealed weapons or authorized by subsection (d), section
16 three of this article, to carry a concealed weapon without a
17 license, from carrying a deadly weapon on private property
18 constituting a place of employment or a place of public
19 accommodation, shall be strictly liable for any damages resulting
20 from any felony crime of violence or felony sexual offense occurring
21 on the restricted premises.

22 (2) In this subsection:

23 (A) "Place of employment" includes any premises owned, leased,
24 operated or controlled by an employer as defined by section

1 fourteen-a of this article, in or on which any employee, as defined
2 by section fourteen-a of this article, regularly works.

3 (B) "Place of public accommodation" includes any place defined
4 as such by section three, article eleven, chapter five of this code,
5 or, except for the element of "affecting commerce," 42 U.S.C.
6 §12181(7), as it exists as of January 1, 2011.

7 **§61-7-14a. Right of employees and other persons to possess firearms**

8 **in vehicle; exceptions; remedies.**

9 (a) Notwithstanding any law of this state to the contrary,
10 except as otherwise provided in subsection (f) of this section:

11 (1) A public or private employer, higher education institution
12 or property owner may not prohibit any customer, employee, student
13 or invitee from possessing any legally owned firearm or concealable
14 weapon when the firearm or concealable weapon is lawfully possessed
15 and locked inside or locked to a private motor vehicle in a parking
16 lot and when the customer, employee, student or invitee is lawfully
17 in such area.

18 (2) A public or private employer, higher education institution
19 or property owner may not make any verbal or written inquiry
20 regarding the presence of a firearm or concealable weapon inside or
21 locked to a private motor vehicle in a parking lot or solicit
22 consent to search or search a private motor vehicle in a parking lot
23 to ascertain the presence of a firearm or concealable weapon within
24 the vehicle or take any action against a customer, employee, student

1 or invitee based upon verbal or written statements of any party
2 concerning possession of a firearm or concealable weapon stored
3 inside a private motor vehicle in a parking lot for lawful purposes.
4 A search of a private motor vehicle in the parking lot of a public
5 or private employer or higher education institution to ascertain the
6 presence of a firearm or concealable weapon within the vehicle may
7 only be conducted by an on-duty law-enforcement officer who strictly
8 complies with all applicable Constitutional, statutory and common
9 law protections against unreasonable searches and seizures.

10 (3) A public or private employer or higher education
11 institution may not condition employment or enrollment upon any
12 agreement by a current or prospective employee or student that
13 prohibits an employee or student from keeping a legal firearm or
14 concealable weapon locked inside or locked to a private motor
15 vehicle in a parking lot when the firearm or concealable weapon is
16 kept for lawful purposes.

17 (4) A public or private employer, higher education institution
18 or property owner may not prohibit or attempt to prevent any
19 customer, employee, student or invitee from entering any motor
20 vehicle parking lot because the private motor vehicle owned, leased,
21 operated or controlled by a customer, employee, student or invitee
22 contains a legal firearm or concealable weapon being carried for
23 lawful purposes, that is out of sight within a private motor vehicle
24 owned, leased, operated or controlled by a customer, employee,

1 student or invitee.

2 (5) A public or private employer or higher education
3 institution may not terminate the employment or enrollment of or
4 otherwise take any form of adverse action against an employee or
5 student, or expel a customer, student or invitee for exercising his
6 or her legal right to keep and bear arms or for exercising the right
7 of self-defense as long as a firearm or concealable weapon is not
8 publicly exhibited on private property for any reason other than
9 lawful defensive purposes.

10 (b) Subsection (a) of this section applies to all public agency
11 employers, public property owners and state institutions of higher
12 education, including those already prohibited from regulating
13 firearms under the provisions of section sixteen of this article,
14 and is in addition to and not in lieu of the provisions of section
15 sixteen of this article.

16 (c) (1) When subject to the provisions of subsection (a) of this
17 section, a public or private employer, higher education institution
18 or property owner has no duty of care related to the actions
19 prohibited under subsection (a) of this section.

20 (2) A public or private employer, higher education institution
21 or property owner is immune from liability in a civil action based
22 on actions or inactions taken in compliance with this section. The
23 immunity provided in this subdivision does not apply to civil
24 actions based on actions or inactions of public or private

1 employers, higher education institutions or property owners that are
2 unrelated to compliance with this section.

3 (3) Nothing contained in this section may be construed to
4 expand any existing duty or create any additional duty on the part
5 of any public or private employer, property owner, higher education
6 institution or any agent of any such entity.

7 (d) In addition to any other person who may have standing to
8 sue, the Attorney General shall enforce the protections of this
9 section on behalf of any customer, employee, student or invitee
10 aggrieved under this section who requests the Attorney General's
11 assistance. If there is reasonable cause to believe that the
12 aggrieved person's rights under this section have been violated by
13 a public or private employer, higher education institution or
14 property owner, the Attorney General shall commence a civil or
15 administrative action for damages, injunctive relief and civil
16 penalties, and such other relief as may be appropriate under the
17 laws of this state, or may negotiate a settlement with any employer,
18 higher education institution or property owner on behalf of any
19 person aggrieved under the section. However, nothing in this
20 subsection may be construed to impair the right of a person
21 aggrieved under this section to bring a civil action for violation
22 of rights protected under the section. In any successful action
23 brought by a customer, employee, student or invitee aggrieved under
24 this section, in addition to any other relief to which the person

1 may be entitled, the court shall award all reasonable personal costs
2 and losses suffered by the aggrieved person as a result of the
3 violation of his or her rights under this section. The court shall,
4 except when otherwise requested by the plaintiff, assign any civil
5 action brought under this section a high priority on its civil
6 docket and hear the case on an expedited basis.

7 (e) Any person who willfully violates subsection (a) of this
8 section is guilty of a felony and, upon conviction thereof, shall be
9 imprisoned in a state correctional facility for not less than one
10 year nor more than five years or fined not more than \$50,000, or
11 both fined or imprisoned. Any person who otherwise violates
12 subsection (a) of this section is guilty of a misdemeanor and, upon
13 conviction thereof, shall be confined in jail for not more than one
14 year or fined not more than \$10,000, or both fined and confined. In
15 all cases, any public officer who is convicted of violating
16 subsection (a) of this section shall forfeit his or her office
17 pursuant to section nine, article six, chapter six of this code.

18 (2) Except as required by the provisions of the state
19 Constitution or the United States Constitution, no public funds may
20 be used to defend the unlawful conduct of any person charged with a
21 violation of this section, except where such funds are obligated or
22 paid after the final dismissal of charges against such person or
23 acquittal at trial. Notwithstanding the foregoing provisions of this
24 subdivision, public funds may be expended to provide the services of

1 the office of public defender or court-appointed counsel as
2 otherwise provided by law.

3 (3) Any public agency in whose service or employ any provision
4 of this section is violated may be assessed a civil penalty of not
5 more than \$5,000,000 if the court determines that the violation was
6 willful and that any person at the public agency with oversight of
7 the offending official, designee, contractee or employee knew or in
8 the exercise of ordinary care should have known the act was a
9 violation of this section. The Attorney General, any person
10 aggrieved by a violation of this section or any organization whose
11 members have been aggrieved by a violation of this section may bring
12 a civil action to enforce the civil penalties assessed under this
13 subdivision.

14 (4) The prosecuting attorney shall investigate complaints of
15 criminal violations of this section occurring within his or her
16 county and, where evidence indicates a violation may have occurred,
17 shall prosecute violators.

18 (f) Subsection (a) of this section does not apply to:

19 (1) Any motor vehicle owned by a private employer, private
20 higher education institution or private property owner to which the
21 otherwise proscribed policy pertains;

22 (2) Any property owned, leased or occupied by the United States
23 government, upon which the possession or carrying of firearms is
24 prohibited or controlled by federal law or regulation; or

1 (3) Any other property owned or leased by a public or private
2 employer or the landlord of a public or private employer upon which
3 possession of a firearm or other legal product by a customer,
4 employee or invitee is prohibited pursuant to any federal law or
5 regulation, contract with a federal government entity or the laws of
6 this state.

7 (g) In this section:

8 (1) "Parking lot" includes any property that is used for
9 parking motor vehicles and is available to customers, employees,
10 students or invitees for temporary or long-term parking or storage
11 of motor vehicles.

12 (2) "Employee" includes any person who:

13 (A) Works for salary, wages or other remuneration;

14 (B) Is an independent contractor; or

15 (C) Is a volunteer, intern or other similar individual for an
16 employer.

17 (3) "Employer" includes any business that is a sole
18 proprietorship, partnership, corporation, limited liability company,
19 cooperative, joint venture, trust, firm, institution or association,
20 or public agency, that has one or more employees in this state.

21 (4) "Invitee" includes any business invitee, including a
22 customer or visitor, who is lawfully on the premises of a public or
23 private employer or higher education institution.

24 **§61-7-15a. Requirements for signage indicating weapons prohibitions;**

1 **failure to post constitutes defense.**

2 (a) All signs indicating a prohibition or restriction on
3 possessing or carrying handguns or other deadly weapons shall be in
4 the form prescribed by this section.

5 (b) A sign regulated by this section shall not be valid or
6 enforceable unless the sign:

7 (1) Expresses the prohibition in both written language
8 interdict and universal sign language;

9 (2) Is posted at every entrance into a building where any
10 person is prohibited or restricted from possessing or carrying a
11 weapon, including every separate entry door at any entrance equipped
12 with more than one door, and shall:

13 (A) Except as provided otherwise by paragraph (D) of this
14 subdivision, have an opaque white background;

15 (B) Be not less than 11 inches wide by 17 inches tall or, if
16 larger, in substantially similar proportions, except as otherwise
17 provided by paragraph (F) of this subdivision;

18 (C) Be bounded by a red rectangle not less than one-half of an
19 inch in width, whose corners may be squared or rounded, which shall
20 be surrounded on each side by not less than one-half of an inch of
21 the white background specified in paragraph (A) of this subdivision;

22 (D) Contain at the top of the inside of the area bounded by the
23 rectangular border described in paragraph (C) of this subdivision,
24 in bold, opaque, white, underscored, uppercase, 72-point or larger

1 type, the word "WARNING", centered between the lateral edges of the
2 rectangular border, imposed on an opaque red background that shall
3 extend not less than one-half of an inch in each direction from the
4 lettering and underscoring, with at least one-half of an inch of the
5 white background between those letters and the rectangle or any
6 other text or graphics;

7 (E) Contain immediately below the text described in paragraph
8 (D) of this subdivision, a graphic consisting of:

9 (i) A red circle with a red diagonal line that runs from the
10 upper left to the lower right at a 45 degree angle from the
11 horizontal, commonly known as the international "No" symbol, which
12 shall have circumference and diagonal line widths of not less than
13 one inch and an overall diameter equal to the width of the sign
14 minus two inches;

15 (ii) A black silhouette of a handgun inside the symbol
16 described in subparagraph (i) of this paragraph, which shall be
17 pointed facing right and, along its greatest dimension, occupy at
18 least 80 percent of the enclosed space within the symbol described
19 in subparagraph (i) of this paragraph; and

20 (iii) No text anywhere within the area beginning one inch above
21 the graphic and extending to one inch below the graphic;

22 (F) Contain below the graphic described in paragraph (E) of
23 this subdivision, in black 28-point or larger type, centered between
24 the lateral edges of the rectangular border described in paragraph

1 (B) of this subdivision, words indicating the nature of the
2 prohibition and any exemptions applicable thereto, including the
3 statement required by subsection (c) of this section, and the name,
4 physical street address and mailing address of the person under
5 whose authority the sign is posted and, if available, that person's
6 telephone number, e-mail address and Internet web site. If the
7 headline text described in paragraph (D) of this subdivision and the
8 graphic described in paragraph (E) of this subdivision leave
9 inadequate space, the sign's vertical dimensions may be increased to
10 accommodate the requirements of this paragraph without increasing
11 the width of the sign or the size of the graphic described in
12 paragraph (E) of this subdivision;

13 (G) Be placed so that the base of the sign is not less than 40
14 inches nor more than 60 inches from the bottom of the building's
15 entrance door; and

16 (H) Be posted in sufficient quantities to be clearly visible
17 and readable from a distance of at least 30 feet;

18 (3) If the designated premises does not have doors, the signs
19 required by this subsection shall:

20 (A) Except as provided otherwise by paragraph (D) of this
21 subdivision, have an opaque white background;

22 (B) Be not less than 36 inches wide by 48 inches tall or, if
23 larger, in substantially similar proportions, except as otherwise
24 provided by paragraph (F) of this subdivision;

1 (C) Be bounded by a red rectangle not less than one inch in
2 width, whose corners may be squared or rounded, which shall be
3 surrounded on each side by not less than one inch of the white
4 background specified in paragraph (A) of this subdivision;

5 (D) Contain at the top of the inside of the area bounded by the
6 rectangular border described in paragraph (C) of this subdivision,
7 in bold, opaque, white, underscored, uppercase type not less than
8 three inches tall, the word "WARNING", centered between the lateral
9 edges of the rectangular border, imposed on an opaque red background
10 that shall extend not less than one inch in each direction from the
11 lettering and underscoring, with at least one inch of the white
12 background between those letters and the rectangle or any other text
13 or graphics;

14 (E) Contain immediately below the text described in paragraph
15 (D) of this subdivision, a graphic consisting of:

16 (i) A red circle with a red diagonal line that runs from the
17 upper left to the lower right at a 45 degree angle from the
18 horizontal, commonly known as the international "No" symbol, which
19 shall have circumference and diagonal line widths of not less than
20 two inches and an overall diameter equal to the width of the sign
21 minus two inches;

22 (ii) A black silhouette of a handgun inside the symbol
23 described in subparagraph (i) of this paragraph, which shall be
24 pointed facing right and, along its greatest dimension, occupy at

1 least eighty percent of the enclosed space within the symbol
2 described in subparagraph (i) of this paragraph; and

3 (iii) No text anywhere within the area beginning two inches
4 above the graphic and extending to two inches below the graphic;

5 (F) Contain below the graphic described in paragraph (E) of
6 this subdivision, in black one-inch tall or larger type, centered
7 between the lateral edges of the rectangular border described in
8 paragraph (B) of this subdivision, words indicating the nature of
9 the prohibition and any exemptions applicable thereto, including the
10 statement required by subsection (c) of this section, and the name,
11 physical street address and mailing address of the person under
12 whose authority the sign is posted and, if available, that person's
13 telephone number, e-mail address and Internet web site. If the
14 headline text described in paragraph (D) of this subdivision and the
15 graphic described in paragraph (E) of this subdivision leave
16 inadequate space, the sign's vertical dimensions may be increased to
17 accommodate the requirements of this paragraph without increasing
18 the width of the sign or the size of the graphic described in
19 paragraph (E) of this subdivision;

20 (G) Be placed so that the base of the sign is not less than
21 forty inches nor more than sixty inches above the ground; and

22 (H) Be posted at every entry to the premises in sufficient
23 quantities to be clearly visible and readable from a distance of at
24 least thirty feet by any person entering the premises; and

1 (4) All text on any sign shall be in English or in identical
2 form in English and one or more other languages, at the option of
3 the person or entity responsible for posting the sign.

4 (c) Any sign regulated by this section shall clearly and
5 expressly state whether persons licensed under section four or five
6 of this article to carry concealed weapons or authorized by
7 subsection (d), section three of this article, to carry a concealed
8 weapon without a license, are exempt from the indicated restriction
9 or prohibition. For this purpose, the words "concealed weapons
10 license holders are not exempt," in which the word "not" is
11 boldfaced and underscored, immediately following the general
12 explanation of the indicated restriction or prohibition, shall be
13 sufficient to effectively state that persons licensed under section
14 four or five of this article to carry concealed weapons or
15 authorized by subsection (d), section three of this article, to
16 carry a concealed weapon without a license, are not exempt from the
17 indicated restriction or prohibition. Notwithstanding any provision
18 of this code to the contrary, the omission from any sign regulated
19 by this section of a clear and express statement that a person
20 licensed under section four or five of this article to carry
21 concealed weapons or authorized by subsection (d), section three of
22 this article, to carry a concealed weapon without a license, is not
23 exempt from the indicated restriction or prohibition, constitutes an
24 express exemption from the restriction or prohibition for persons

1 licensed under section four or five of this article to carry
2 concealed weapons or authorized by subsection (d), section three of
3 this article, to carry a concealed weapon without a license.

4 (d) The requirements of this section are mandatory, technical
5 requirements with which any entity subject to this section shall
6 strictly comply.

7 (e) Except as specifically and expressly provided otherwise by
8 a more specific provision of this code, it is an exception to any
9 criminal offense under this code prohibiting or restricting the
10 possession or carrying of deadly weapons in specified locations, a
11 defense to any civil action for trespassing and a bar to termination
12 from public or private employment or any other adverse action taken
13 against a person by a property owner resulting from an alleged
14 violation of a restriction or prohibition on carrying deadly
15 weapons, that signage required to be posted under this section was
16 not properly posted. In any criminal case, the state, or in any
17 other context, the party attempting to enforce the prohibition or
18 restriction on the possession or carrying of deadly weapons to which
19 the signage requirements of this section are applicable, has the
20 burden of negating the existence of the exception specified in the
21 preceding sentence.

22 **§61-7-16. Uniform law; preemption; exceptions; construction.**

23 (a) This article is uniformly applicable throughout this state
24 and in all of its political subdivisions.

1 (b) Except as otherwise provided in this section and
2 notwithstanding any provision of this code, the Code of State Rules,
3 the common law of this state or other applicable law of this state
4 to the contrary:

5 (1) The Legislature fully occupies and preempts the entire
6 field of regulation of concealable weapons, firearms and parts,
7 components and ammunition for any firearm within this state, to the
8 exclusion of all other public agencies within this state;

9 (2) Except as specifically provided otherwise by the United
10 States Constitution, the Constitution of this state, federal law or
11 a specific provision of this code, any person, without further
12 license, permission, restriction, delay or process, may own,
13 possess, carry, purchase, sell, transfer, transport, store and keep
14 any concealable weapon, firearm and parts, components and ammunition
15 for any firearm, anywhere in this state, including without
16 limitation anywhere within or upon any public building or any other
17 real or personal property owned, leased or controlled by any public
18 agency; and

19 (3) Any ordinance, resolution, motion, rule, policy, condition
20 of public employment, condition of public contracting, public
21 employee or contractor code of conduct, higher education institution
22 student code of conduct, administrative action or any other action
23 of any public agency, direct or indirect, other than those expressly
24 exempted by subsection (d) of this section, pertaining, either

1 directly or indirectly, to concealable weapons, firearms or parts,
2 components or ammunition for any firearm, or otherwise inconsistent
3 with this subsection, regardless of whether the same is adopted
4 before, on or after the effective date of this section, and
5 regardless of whether the public agency is acting in a police,
6 proprietary, employment or contracting capacity, is void.

7 (c) In this section:

8 (1) The possession, transportation or carrying of concealable
9 weapons, firearms and parts, components and ammunition for any
10 firearm include, but are not limited to, the possession,
11 transporting or carrying, openly or concealed, on or about the
12 person, of a concealable weapon, a firearm or parts, components or
13 ammunition for any firearm.

14 (2) The ownership, possession, carrying, purchase, sale,
15 transfer, transportation, storage or keeping of any concealable
16 weapon, firearm or parts, components or ammunition for any firearm,
17 include, but are not limited to, any decision by an owner or other
18 person in possession of any concealable weapon, firearm or parts,
19 components or ammunition for any firearm, to report or refrain from
20 reporting the loss or theft of any concealable weapon, firearm or
21 parts, components or ammunition for any firearm, to any
22 law-enforcement agency.

23 (d) Subsection (b) of this section does not apply to:

24 (1) A county or municipal planning or zoning ordinance that

1 regulates or prohibits the commercial sale of concealable weapons,
2 firearms and parts, components and ammunition for any firearm, in
3 areas zoned for residential or agricultural uses;

4 (2) A county or municipal planning or zoning ordinance that
5 regulates the hours of operation or the geographic areas where the
6 commercial sale of concealable weapons, firearms and parts,
7 components and ammunition for any firearm may occur, if the
8 ordinance:

9 (A) Is consistent with planning or zoning ordinances for other
10 retail businesses in the same geographic area;

11 (B) Does not result in a de facto prohibition of, or unduly
12 frustrate, the commercial sale or other transfer of concealable
13 weapons, firearms or parts, components and ammunition for any
14 firearm, in areas zoned for commercial, retail or industrial uses;
15 and

16 (C) Does not prohibit or restrict the commercial sale or other
17 transfer of concealable weapons, firearms or parts, components and
18 ammunition for any firearm, in areas zoned for commercial, retail or
19 industrial uses, based on the day of the week or time of the day of
20 the sale or other transaction, at any time between the hours of
21 eight o'clock antemeridian and ten o'clock postmeridian on any day;

22 (3) A municipal ordinance regulating trade in secondhand sales
23 or consignments of firearms or concealable weapons by pawn shops,
24 licensed firearm dealers and other businesses dealing in secondhand

1 goods, to the extent the ordinance furthers the interests of
2 recovering stolen property, returning stolen property to its
3 rightful owners and apprehending, prosecuting and convicting
4 individuals responsible for committing any offense under sections
5 thirteen, eighteen or nineteen, article three of this chapter, or
6 any other criminal offense under the laws of this state, the United
7 States or any other state, with respect to stolen property;

8 (4) Rules established by the Director of the Division of
9 Natural Resources pursuant to chapter twenty of this code regulating
10 hunting to the extent those rules do not contain more restrictive
11 provisions regulating the possession, carrying or transportation of
12 firearms than provided by the Legislature in article two, chapter
13 twenty of this code;

14 (5) The otherwise lawful, temporary disarming of any person who
15 has been contacted by a law-enforcement officer, subject to section
16 eighteen of this article;

17 (6) The otherwise lawful disarming of any person lawfully
18 detained by or in the lawful custody of any mental health facility
19 as defined in section nine, article one, chapter twenty-seven of
20 this code;

21 (7) Firearm safety rules applicable to any shooting range
22 owned, leased or controlled by, or to the conduct of participants in
23 any firearm safety or training class or hunter safety class
24 conducted or supervised by or conducted on property owned, leased or

1 controlled by, the public agency that establishes and enforces those
2 rules;

3 (8) Any resolution, motion, rule or policy adopted by the State
4 Board of Education, a county board of education, a primary or
5 secondary school or a higher education institution relating to:

6 (A) Students receiving military training in the Reserved
7 Officers' Training Corps or other military training program
8 administered by the educational institution;

9 (B) Athletic events involving firearms or concealable weapons;
10 or

11 (C) Authorizing a resident of a dormitory located at a higher
12 education institution to request in writing only a roommate who will
13 not possess deadly weapons within the dormitory room, providing for
14 the exclusion of deadly weapons from any dormitory room whose
15 residents make the election described in this paragraph in writing,
16 reserving to the residents of any such room the right to mutually
17 agree in writing to make or change an election under this paragraph
18 at any time, and to enforce any valid, written election under this
19 paragraph;

20 (9) Any regulation of the possession, carrying, storage,
21 transportation, use, care or maintenance of weapons owned by any
22 public agency;

23 (10) Any regulation of the possession, carrying, storage,
24 transportation, use, care or maintenance of weapons in the course of

1 employment by a public agency by individuals who are:

2 (A) Employed as law-enforcement officers or security personnel;

3 or

4 (B) Required by the public agency to possess, carry, transport

5 or store a weapon; or

6 (11) Any otherwise lawful action that is specifically and

7 expressly authorized by the Legislature in this code. For the

8 purposes of this subdivision, a provision of this code that does not

9 specifically and directly refer to concealable weapons, firearms or

10 parts, components or ammunition for firearms, or to deadly weapons,

11 shall not be construed to provide specific, express authorization.

12 (e) In addition to any other persons who may have proper

13 standing to sue, the prosecuting attorney of any county in which a

14 violation of this section has been alleged to have occurred, the

15 Attorney General, any person aggrieved by any alleged violation of

16 this section and any organization whose members are adversely

17 affected by any alleged violation of this section shall have

18 concurrent power to bring a civil action to enforce this section and

19 obtain declaratory and injunctive relief, actual and consequential

20 damages attributable to any violation of this section, attorney's

21 fees pursuant to section twenty of this article, liquidated damages

22 of three times the attorney's fees awarded pursuant to section

23 twenty of this article and any other relief to which the plaintiff

24 may be entitled under any other law of this state. The court shall,

1 except when otherwise requested by the plaintiff, assign any civil
2 action brought under this section a high priority on its civil
3 docket and hear the case on an expedited basis. Notwithstanding any
4 provision of this code or other law of this state to the contrary,
5 and except as specifically provided by the United States
6 Constitution, federal law or the Constitution of this state, when
7 any person, group or entity challenges any ordinance, resolution,
8 motion, rule, policy, administrative action or any other act of any
9 public agency as being in conflict with this section:

10 (1) The court shall presume that the challenged ordinance,
11 resolution, motion, rule, policy, administrative action or other act
12 is in conflict with this section unless the public agency proves
13 beyond a reasonable doubt that the challenged ordinance, resolution,
14 motion, rule, policy, administrative action or other act is not
15 preempted by and does not otherwise conflict with this section;

16 (2) The court shall liberally construe the provisions of this
17 subsection and subsections (b) and (c) of this section and narrowly
18 construe the provisions of subsection (d) of this section and any
19 provision of this code purporting to provide express authorization
20 as described in subdivision (11), subsection (d) of this section, in
21 favor of a presumption of an individual's right to keep and bear
22 arms at all times and all places for defense of self, family, home
23 and state, for lawful hunting and recreational uses and for any
24 other lawful purpose; and

1 (3) In any appeal of a case arising under this section, every
2 decision of the trial court in favor of the public agency and the
3 challenged action shall be reviewed de novo.

4 (f) (1) Any person who willfully violates subsection (b) of this
5 section is guilty of a felony and, upon conviction thereof, shall be
6 imprisoned in a state correctional facility for not less than one
7 year nor more than five years or fined not more than \$50,000, or
8 both fined and imprisoned. Any person who otherwise violates
9 subsection (b) of this section is guilty of a misdemeanor and, upon
10 conviction thereof, shall be confined in jail for not more than one
11 year or fined not more than \$10,000, or both fined and confined. In
12 all cases, any public officer who is convicted of violating
13 subsection (b) of this section shall forfeit his or her office
14 pursuant to section nine, article six, chapter six of this code.

15 (2) Except as required by the provisions of the state
16 Constitution or the United States Constitution, public funds may not
17 be used to defend the unlawful conduct of any person charged with a
18 violation of this section, except where such funds are obligated or
19 paid after the final dismissal of charges against such person or
20 acquittal at trial. Notwithstanding the foregoing provisions of this
21 subdivision, public funds may be expended to provide the services of
22 the office of public defender or court-appointed counsel as
23 otherwise provided by law.

24 (3) Any public agency in whose service or employ any provision

1 of this section is violated may be assessed a civil penalty of not
2 more than \$5 million if the court determines that the violation was
3 willful and that any person at the public agency with oversight of
4 the offending official, designee, contractee or employee knew or in
5 the exercise of ordinary care should have known the act was a
6 violation of this section. The Attorney General, any person
7 aggrieved by a violation of this section or any organization whose
8 members have been aggrieved by a violation of this section may bring
9 a civil action to enforce the civil penalties assessed under this
10 subdivision.

11 (4) The prosecuting attorney shall investigate complaints of
12 criminal violations of this section occurring within his or her
13 county and, where evidence indicates a violation may have occurred,
14 shall prosecute violators.

15 (g) In addition to any other remedies available by law for a
16 violation of this section, any violation of subsection (b) of this
17 section is, for the purposes of article six, chapter six of this
18 code, per se official misconduct by every person who engages in
19 conduct that violates subsection (b) of this section.

20 (h) This section is supplemental and additional to existing
21 rights to bear arms now guaranteed by the Constitution and laws of
22 this state and decisions of the courts of this state, and nothing in
23 this section may be construed to impair or diminish those rights.

24 **§61-7-17. Prohibition of registration of firearms and concealable**

1 **weapons; exceptions; penalty.**

2 (a) Legislative Findings And Intent.--The Legislature intends
3 through the provisions of this section to:

4 (1) Protect the right of individuals to keep and bear arms as
5 protected by both the Second Amendment to the United States
6 Constitution and Article III, §22 of the state Constitution;

7 (2) Protect the privacy rights of law-abiding owners of
8 firearms and concealable weapons; and

9 (3) Establish protections from registration of firearms,
10 concealable weapons or law-abiding owners thereof supplemental to
11 section sixteen of this article.

12 (b) Prohibitions.--A public agency or any other person, public
13 or private, may not keep or cause to be kept any list, record or
14 registry of privately-owned firearms, concealable weapons or any
15 list, record or registry of the owners thereof.

16 (c) Exceptions.--The provisions of subsection (b) of this
17 section do not apply to:

18 (1) Records of weapons that have been used in committing any
19 crime;

20 (2) Records relating to any person who has been convicted of a
21 crime;

22 (3) Records of weapons that have been reported stolen that are
23 retained for a period not in excess of ten days after such weapons
24 are recovered. Official documentation recording the theft of a

1 recovered weapon may be maintained no longer than the balance of the
2 year entered, plus two years;

3 (4) Firearm records that must be retained by licensed firearm
4 dealers under federal law, including copies of such records
5 transmitted to law-enforcement agencies. However, no public agency
6 or any other person, private or public, may accumulate, compile,
7 computerize or otherwise collect or convert such written records
8 into any form of list, registry or database for any purpose;

9 (5) Records of an insurer that, as a condition to providing
10 insurance against theft or loss of a firearm or concealable weapons,
11 identify the weapon. These records may not be sold, commingled with
12 records relating to other weapons or transferred to any other person
13 or entity. The insurer may not keep a record of such weapon more
14 than sixty days after the policy of insurance expires or after
15 notification by the insured that the insured is no longer the owner
16 of the weapon;

17 (6) Lists of customers of a dealer in firearms or concealable
18 weapons retained by the dealer, provided that the lists do not
19 disclose the particular weapons purchased and the lists, or any
20 parts thereof, are not to be sold, commingled with records relating
21 to other weapons or transferred to any other person or entity;

22 (7) Sales receipts retained by the seller of firearms or
23 concealable weapons or by a person providing credit for the
24 purchase, provided that the receipts may not serve as or be used for

1 the creation of a database for registration of firearms or
2 concealable weapons;

3 (8) Personal records of firearms or concealable weapons
4 maintained by the owner of such firearms or concealable weapons;

5 (9) Records maintained by a business that stores or acts as the
6 selling agent of firearms or concealable weapons on behalf of the
7 lawful owner of the weapons;

8 (10) Membership lists of organizations comprised of owners of
9 firearms or concealable weapons;

10 (11) Records maintained by an employer or contracting entity of
11 the firearms or concealable weapons owned by its officers, employees
12 or agents, if the weapons are used in the course of business
13 performed on behalf of the employer;

14 (12) Records maintained pursuant to sections four and five of
15 this article pertaining to any person who is or was a licensee or
16 applicant under section four or five of this article;

17 (13) Records of weapons involved in criminal investigations,
18 criminal prosecutions, criminal appeals and postconviction motions,
19 civil proceedings relating to the surrender or seizure of firearms
20 or concealable weapons including protective injunctions, commitments
21 to mental institutions and sheriff's levies pursuant to court
22 judgments, and voluntary surrender by the owner or custodian of the
23 weapon;

24 (14) (A) Records relating to purchases, sales, trades,

1 consignments or other acquisitions or dispositions of firearms or
2 concealable weapons on the secondhand market by any pawn shop,
3 licensed firearm dealer or other business dealing in secondhand
4 goods, created or maintained pursuant to any municipal ordinance
5 described in subdivision (3), subsection (d), section sixteen of
6 this article. Records described in this subdivision may be
7 maintained for not more than one year after the firearm or
8 concealable weapon was transferred from the pawn shop, licensed
9 firearm dealer or other business dealing in secondhand goods.

10 (B) Except as required by federal law, any firearm records kept
11 pursuant to paragraph (A) of this subdivision may not, at any time,
12 be electronically transferred to any public or private entity,
13 agency, business or enterprise, nor may any such records be copied
14 or transferred for purposes of accumulation of such records into
15 lists, registries, or databases.

16 (15) Paper documents relating to weapons involved in criminal
17 cases, criminal investigations and criminal prosecutions, civil
18 proceedings relating to the surrender or seizure of weapons
19 including protective injunctions, commitments to mental institutions
20 and sheriff's levies pursuant to court judgments, and voluntary
21 surrender by the owner or custodian of the weapon; or

22 (16) Noncriminal records relating to the receipt, storage or
23 return of concealable weapons, including, but not limited to,
24 records relating to weapons impounded for storage or safekeeping,

1 receipts proving that a weapon was returned to the rightful owner
2 and supporting records of identification and proof of ownership, or
3 records relating to weapons impounded pursuant to levies or court
4 orders: *Provided*, That these records may not be compiled, sorted,
5 or otherwise arranged into any lists, indexes or registries of
6 concealable weapons or owners thereof.

7 (d) *Civil and criminal penalties and other remedies.*--

8 (1) Any person who willfully violates subsection (b) of this
9 section is guilty of a felony and, upon conviction thereof, shall be
10 imprisoned in a state correctional facility for not less than one
11 year nor more than five years or fined not more than \$50,000, or
12 both fined and imprisoned. Any person who otherwise violates any
13 provision of this section is guilty of a misdemeanor and, upon
14 conviction thereof, shall be confined in jail for not more than one
15 year or fined not more than \$10,000, or both fined and confined. In
16 all cases, any public officer who is convicted of any violation of
17 this section shall forfeit his or her office pursuant to section
18 nine, article six, chapter six of this code.

19 (2) Except as required by the provisions of the state
20 Constitution or the United States Constitution, no public funds may
21 be used to defend the unlawful conduct of any person charged with a
22 violation of this section, except where such funds are obligated or
23 paid after the final dismissal of charges against such person or
24 acquittal at trial. Notwithstanding the foregoing provisions of

1 this subdivision, public funds may be expended to provide the
2 services of the office of public defender or court-appointed counsel
3 as otherwise provided by law.

4 (3) The public agency, or the designee of a public agency, in
5 whose service or employ, a list, record or registry was compiled in
6 violation of this section may be assessed a civil penalty of not
7 more than \$5 million if the court determines that the evidence shows
8 that the list, record or registry was compiled or maintained with
9 the knowledge or complicity of the management of the public agency.
10 The Attorney General, any person aggrieved by a violation of this
11 section or any organization whose members have been aggrieved by a
12 violation of this section may bring a civil action to enforce the
13 civil penalties assessed under this subdivision.

14 (4) The prosecuting attorney shall investigate complaints of
15 criminal violations of this section occurring within his or her
16 county and, where evidence indicates a violation may have occurred,
17 shall prosecute violators.

18 (5) In addition to any other persons who may have proper
19 standing to sue, the prosecuting attorney of any county where a
20 violation of this section has been alleged, the Attorney General,
21 any person aggrieved by any alleged violation of this section and
22 any organization whose members are adversely affected by any alleged
23 violation of this section shall have concurrent power to bring a
24 civil action to enforce this section and obtain declaratory and

1 injunctive relief, actual and consequential damages attributable to
2 any violation of this section, attorney's fees pursuant to section
3 twenty of this article, liquidated damages of three times the
4 attorney's fees awarded pursuant to section twenty of this article
5 and any other relief to which the plaintiff may be entitled under
6 any other law of this state. The court shall, except when otherwise
7 requested by the plaintiff, assign any civil action brought under
8 this section a high priority on its civil docket and hear the case
9 on an expedited basis.

10 (6) In addition to any other remedies available by law for a
11 violation of this section, any violation of subsection (b) of this
12 section is, for the purposes of article six, chapter six of this
13 code, per se official misconduct by every person subject to the
14 provisions of that article who engages in conduct that violates
15 subsection (b) of this section.

16 (e) Construction. -- This section shall be liberally construed
17 to effectuate its remedial and deterrent purposes. This section may
18 not be construed to grant any substantive, procedural or privacy
19 right or civil claim to any criminal defendant, and a violation of
20 this section may not be grounds for the suppression of evidence in
21 any criminal case.

22 (f) Closed Records.--Information specified in subdivisions (3),
23 (4), (11), (12), (13), (14) and (15), subsection (c) of this section
24 is exempt from disclosure pursuant to chapter twenty-nine-b of this

1 code and shall be kept confidential. However, this subsection may
2 not be construed to prevent:

3 (1) The inspection or copying of any record or other
4 information made confidential by this subsection:

5 (A) By the person to whom the record pertains;

6 (B) By the duly qualified conservator or guardian of a person
7 to whom the record pertains;

8 (C) By the duly qualified personal representative of a deceased
9 person to whom the record pertains or, if a personal representative
10 has not qualified, the next of kin of a deceased person to whom the
11 record pertains;

12 (D) By an attorney, attorney-in-fact or other agent or
13 representative acting pursuant to a written power of attorney or
14 other written authorization signed by the person to whom the record
15 pertains;

16 (E) By a duly authorized representative of a law-enforcement
17 agency for any official purpose or any other agency or
18 instrumentality of federal, state or local government seeking the
19 record in the ordinary course of performing its official duties for
20 an official purpose; or

21 (F) (i) Pursuant to an order of any court based upon a finding
22 of the court that the information is sufficiently necessary to a
23 proceeding before the court to substantially outweigh the importance
24 of maintaining the confidentiality of records established by this

1 subsection.

2 (ii) Before any court may grant access to any records pursuant
3 to this paragraph, the court shall order the party seeking access to
4 those records to give each affected person notice of the
5 proceedings, the request for confidential records under this
6 paragraph and the opportunity of affected persons to confidentially
7 intervene and object to the request by:

8 (I) Publishing a Class III-O legal advertisement in accordance
9 with the provisions of article three, chapter fifty-nine of this
10 code, whose publication area shall be every county in which any
11 person affected by the request is known to reside. For this
12 purpose, the custodian of records shall provide the court and the
13 party seeking access to those records a list, in writing, verified
14 under oath, of all counties in which the custodian of records has
15 information indicating that persons affected by the request reside;
16 and

17 (II) Directing any applicable custodian of records to print and
18 mail by first-class mail to each affected person, if any are known,
19 the costs for which the moving party shall prepay in full to the
20 sheriff or other applicable custodian of records, and perform this
21 notification in a manner not inconsistent with the confidentiality
22 provisions of this subsection.

23 (iii) Any affected person may, either in person or by counsel,
24 enter a confidential appearance before the court to object to the

1 request for disclosure and present evidence and arguments against
2 the proposed disclosure. The court shall take appropriate measures
3 to protect the confidentiality of individuals entering appearances
4 and objections to disclosures pursuant to this subparagraph;

5 (2) The disclosure of any information pertaining to current or
6 former applicants or licensees under section four or five of this
7 article in a manner expressly authorized by those sections; or

8 (3) Disclosure or publication of statistical summaries,
9 abstracts or other records containing information in an aggregate or
10 statistical form that does not disclose any personally-identifying
11 information.

12 (g) Grace Periods.--

13 (1) Any list, record or registry maintained or under
14 construction on the effective date of this section shall, unless
15 prohibited by law, be destroyed not later than midnight, September
16 30, 2011. Thereafter, failure to destroy any list, record or
17 registry maintained or under construction on the effective date of
18 this section shall result in civil and criminal liability under this
19 section.

20 (2) When any list, record or registry exempt under subsection
21 (c) of this section ceases to qualify for its exemption, it shall be
22 destroyed within sixty days of becoming nonexempt. Thereafter,
23 failure to destroy any such list, record or registry shall result in
24 civil and criminal liability under this section.

1 §61-7-18. Seizures of weapons during law-enforcement contacts;
2 restrictions; exceptions; preservation and care of
3 seized weapons.

4 (a) In addition to any other restrictions imposed by the
5 Constitution of the United States, federal law, the Constitution of
6 this state or any other law of this state, a law-enforcement officer
7 may disarm a person who is lawfully carrying a deadly weapon in
8 connection with any stop or detention only when that person is
9 contacted by a law-enforcement officer, as defined in section two of
10 this article.

11 (b) If a person who is contacted by a law-enforcement officer
12 surrenders a firearm or concealable weapon to the officer, either
13 voluntarily or pursuant to a request or demand of the officer, the
14 officer does not charge the person with a violation of this article
15 or arrest the person for any offense, the person is not otherwise
16 prohibited by law from possessing the firearm or concealable weapon
17 and the firearm or concealable weapon is not contraband, the officer
18 shall return the firearm or concealable weapon to the person at the
19 termination of the stop in the same condition and configuration as
20 it was at the time of surrender.

21 (c) If a person surrenders a firearm or concealable weapon to
22 a law-enforcement officer, either voluntarily or pursuant to a
23 request or demand of the officer and the law-enforcement officer did
24 not return the firearm or concealable weapon to the person at the

1 termination of the stop or otherwise promptly return the firearm or
2 concealable weapon to the person after the seizure of the firearm or
3 concealable weapon, the officer or other personnel at the officer's
4 law-enforcement agency having custody of the firearm or concealable
5 weapon shall maintain the integrity and identity of the firearm or
6 concealable weapon in such a manner that if the firearm or
7 concealable weapon subsequently is to be returned to the person from
8 which it was seized, it can be identified and returned to the person
9 in the same condition as when it was seized.

10 (d) The court shall, except when otherwise requested by the
11 plaintiff, assign any civil action brought under this section a high
12 priority on its civil docket and hear the case on an expedited
13 basis.

14 (e) In this section, "law-enforcement officer" means any
15 law-enforcement officer, as defined in section two of this article,
16 who is employed by a West Virginia law-enforcement agency, or any
17 other officer, agent or employee of this state or any political
18 subdivision of this state who possesses arrest powers.

19 **§61-7-19. Requirements for public agency gun buy-back programs;**
20 **disposition of firearms by public agencies.**

21 (a) A county, county commission, sheriff or any employee, agent
22 or any other instrumentality of any county, county commission or
23 sheriff may not participate in a gun buy-back program unless the
24 county commission of that county has enacted an ordinance

1 authorizing the participation of the county, county commission,
2 sheriff or applicable employee or agent in the program.

3 (b) A municipality or any employee, agent or other
4 instrumentality of a municipality may not participate in a gun
5 buy-back program unless the governing body of that municipality has
6 enacted an ordinance authorizing the participation of that
7 municipality or applicable employee or agent in the program.

8 (c) Every public agency that participates in a gun buy-back
9 program or other program in which firearms or ammunition are
10 purchased or voluntarily surrendered for any purpose shall assure
11 that:

12 (1) The firearm is transferred to a West Virginia
13 law-enforcement agency, which shall check the serial number of each
14 firearm that is purchased or surrendered to the program against
15 local, state and federal records of stolen firearms and, if the West
16 Virginia law-enforcement agency finds that the firearm is a stolen
17 firearm, prevent the firearm from being sold or otherwise disposed
18 of as required by subsection (e) of this section without the express
19 written permission of the lawful owner of the firearm and, if the
20 lawful owner of the firearm does not give express written permission
21 for the firearm to be sold or otherwise disposed of as required by
22 subsection (e) of this section, return the firearm to its lawful
23 owner except as otherwise required by subsection (d) of this
24 section;

1 (2) If the West Virginia law-enforcement agency determines that
2 a firearm that is purchased by, or surrendered to, the gun buy-back
3 program is stolen, the West Virginia law-enforcement agency, in
4 cooperation with the prosecuting attorneys of the appropriate
5 counties and other law-enforcement agencies with appropriate
6 jurisdiction, shall make a reasonable and diligent effort to
7 identify, arrest and prosecute any person who committed any offense
8 under section thirteen, eighteen or nineteen, article three of this
9 chapter, or any other criminal offense under the laws of this state,
10 the United States or any other state, with respect to the stolen
11 firearm;

12 (3) Prior to the disposition of any firearm that is purchased
13 by or surrendered to a gun buy-back program, the West Virginia
14 law-enforcement agency shall make a written determination as to
15 whether probable cause exists to believe the firearm was used in a
16 crime, and if the West Virginia law-enforcement agency finds
17 probable cause to believe the firearm was used in a crime, retain
18 the firearm for evidence, or, if the West Virginia law-enforcement
19 agency does not find probable cause to believe the firearm was used
20 in a crime and the firearm is a rifled firearm, fire a test bullet
21 from the firearm and retain the fired bullet and fired cartridge
22 case for possible use as evidence, or, if the firearm is a smooth
23 bore firearm, fire a test bullet from the firearm and retain the
24 fired cartridge case for possible use as evidence; and

1 (4) The firearm is disposed of as required by subsections (d)
2 and (e) of this section.

3 (d) Prior to returning a stolen firearm to its owner, the West
4 Virginia law-enforcement agency shall determine whether the owner of
5 the firearm is prohibited from possessing a firearm under federal
6 law and the laws of the state in which the owner resides. If the
7 owner of the firearm is prohibited from possessing a firearm under
8 federal law or the laws of the state in which the owner resides, the
9 law-enforcement agency shall take appropriate actions to permit the
10 owner of the firearm to direct its sale or other lawful disposition
11 and protect the owner's property rights in the firearm in light of
12 the applicable prohibition on possession.

13 (e) Every public agency that disposes of any firearm, including
14 any firearm owned by that agency or which was acquired through a gun
15 buy-back program or forfeiture, shall offer that firearm for sale by
16 public auction or sealed bids to a licensed firearm dealer. The
17 public agency shall publish a Class III-0 legal advertisement in
18 accordance with the provisions of article three, chapter fifty-nine
19 of this code, whose last publication shall be at least 21 days but
20 not more than 28 days before the date of the auction or the opening
21 of sealed bids, whose publication area shall be the county in which
22 the firearms to be sold are located. Each advertisement shall
23 include a notice of the sale, the name, address, telephone number
24 and electronic contact information of the agency conducting the sale

1 and the availability of a list of the firearms to be sold and the
2 opportunity to inspect the firearms to be sold prior to the date of
3 the auction or opening of sealed bids. Any firearm remaining in
4 possession of the public agency after not less than three attempts
5 to sell at public auction or by sealed bids may be disposed of in
6 any lawful manner. This subsection does not apply to any firearm
7 that is transferred to an honorably retired law-enforcement officer,
8 as authorized by any provision of this code providing for the sale
9 or other transfer of the service weapon of an honorably-retired
10 law-enforcement officer to that officer.

11 (f) A court or law-enforcement agency may not improperly retain
12 a firearm for an alleged official use for the purpose or intent of
13 evading the required sale of the firearm to a licensed firearm
14 dealer pursuant to subsection (e) of this section. Any firearm that
15 is not in active use for official law-enforcement purposes or
16 retained for evidentiary purposes in an active criminal
17 investigation or pending civil or criminal case shall be presumed,
18 subject to rebuttal by clear and convincing evidence, to be subject
19 to a public sale as required by subsection (e) of this section.

20 (g) In addition to any other person who may have standing to
21 sue, any citizen or taxpayer of this state or licensed firearm
22 dealer in this state has standing to bring a private cause of action
23 to enforce subsections (e) and (f) of this section.

24 (h) In this section, "gun buy-back program" includes any

1 program in which any person is enticed to permanently surrender
2 possession and ownership of any firearm to any public agency or
3 designee of a public agency with a promise of any thing of value,
4 including but not limited to, immunity from criminal prosecution or
5 investigation of the circumstances of the person's possession or
6 acquisition of a surrendered firearm, in exchange for surrendering
7 a firearm.

8 **§61-7-20. Attorney's fees.**

9 (a) Notwithstanding any provision of this code or other law of
10 this state to the contrary, in addition to any other relief to which
11 a person may be entitled, the court shall award court costs,
12 attorney's fees and other reasonable expenses of litigation, to any
13 person who:

14 (1) Is an applicant or licensee under section four or five of
15 this article who prevails in any appeal of a denial, suspension or
16 revocation of any license, a petition for a writ of mandamus to
17 compel a sheriff to perform any duty under section four or five of
18 this article or any other action to compel a sheriff to comply with
19 section four or five of this article;

20 (2) Prevails in a civil action brought pursuant to paragraph
21 (I), subdivision (1), subsection (p), section four of this article;

22 (3) Is a licensee under section four or five of this article
23 who prevails against a civil action brought pursuant to subdivision
24 (9), subsection (q), section four of this article;

1 (4) Prevails in a petition under subsection (f), section nine
2 of this article or in a petition for a writ of mandamus or any other
3 civil action to enforce subsections (c) through (e), section nine of
4 this article;

5 (5) Prevails in a civil action to enforce subsections (b), (c),
6 (d) or (f), section ten of this article;

7 (6) Is a private property owner or employer who prevails
8 against a civil action based upon the immunity from liability
9 conferred by subsection (i) or (j), section fourteen of this
10 article;

11 (7) Is a private property owner or employer who prevails
12 against a civil action based upon the immunity from liability
13 conferred by subsection (c), section fourteen-a of this article;

14 (8) Prevails in a civil action against any public or private
15 employer or property owner to enforce subsections (b) through (d),
16 section fourteen of this article or section fourteen-a or fifteen of
17 this article;

18 (9) Prevails in a challenge to any ordinance, resolution,
19 motion, rule, policy, administrative action or any other act of any
20 public agency as being in conflict with section sixteen of this
21 article;

22 (10) Prevails in an action for a writ of mandamus to compel a
23 prosecuting attorney to act pursuant to subdivision (4), subsection
24 (e), section fourteen-a of this article, subdivision (4), subsection

1 (f), section sixteen of this article or subdivision (4), subsection
2 (d), section seventeen of this article;

3 (11) Prevails in a civil action to enforce section seventeen or
4 eighteen of this article;

5 (12) Prevails in a civil action under subsection (g), section
6 nineteen of this article, to enforce subsections (e) or (f) of that
7 section;

8 (13) Prevails in an action to remove a public officer from
9 office under article six, chapter six of this code based upon any
10 act of official misconduct or neglect of duty arising from any
11 violation of sections sixteen or seventeen of this article or any
12 other act that violated an individual's right to keep and bear arms
13 under the Constitution of the United States or the Constitution or
14 laws of this state; or

15 (14) Prevails against any public agency in a civil action to
16 vindicate his or her individual right to keep and bear arms under
17 the Constitution of the United States or the Constitution or laws of
18 this state.

19 (b) This section shall be liberally construed to promote the
20 vigorous pursuit of civil litigation to enforce the individual
21 rights described in subsection (a) of this section.

22 (c) This section shall apply retroactively to all cases pending
23 on the effective date of this section, including without limitation
24 any cases which may have been rendered moot by the enactment of this

1 legislation during the 2011 Regular Session of the Legislature,
 2 including without limitation, any cases in which any act of any
 3 state or local governmental entity that was being challenged on
 4 federal law or Constitutional grounds was resolved on new state law
 5 grounds under section sixteen of this article or any other provision
 6 of this legislation as enacted during the 2011 Regular Session of
 7 the Legislature.

8 **ARTICLE 7A. CENTRAL STATE MENTAL HEALTH REGISTRY OF PERSONS**
 9 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**
 10 **CONDITION.**

11 **§61-7A-2. Definitions.**

12 ~~As used In this article: and as the terms are deemed to mean in~~
 13 ~~18 U. S. C. §922(g) and section seven, article seven of this chapter~~
 14 ~~as each exists as of the thirty-first day of January, two thousand~~
 15 ~~eight~~

16 (1) ~~"A person Adjudicated as a mental defective" means a person~~
 17 ~~who has been determined by a duly authorized court, tribunal, board~~
 18 ~~or other entity to be mentally ill to the point where he or she has~~
 19 ~~to:~~

20 (A) Have been found by the final order of a court to be
 21 incompetent to stand trial due to mental illness or insanity, has as
 22 provided in section three, article six-a, chapter twenty-seven of
 23 this code, unless the person is subsequently restored to competency

1 to stand trial and completes the proceedings in a state of
2 competence;

3 (B) Have been found not guilty in a criminal proceeding by
4 reason of mental illness or insanity or has been determined to be
5 unable to handle his or her own affairs due to mental illness or
6 insanity as provided in section four, article six-a, chapter
7 twenty-seven of this code;

8 (C) Presently be a mentally incompetent ward under article
9 fifteen, chapter forty-four of this code;

10 (D) Presently be a protected person under guardianship pursuant
11 to a final order of guardianship entered by a circuit court pursuant
12 to section thirteen, article two, chapter forty-four-a of this code;
13 or

14 (E) Have been found by a court or mental hygiene commissioner
15 in a proceeding under section six, article five, chapter
16 twenty-seven of this code, to be prohibited by 18 U.S.C. §922(g)(4)
17 or subdivision (4), subsection (a), section seven, article seven of
18 this chapter, from possessing firearms or ammunition.

19 (2) "Involuntarily committed to a mental institution" means to
20 have been involuntarily committed to a mental health facility, as
21 defined in section nine, article one, chapter twenty-seven of this
22 code, for treatment pursuant to the provisions of a final commitment
23 order issued by a circuit court in a proceeding under section four,
24 article five, chapter twenty-seven of this code.

1 ~~(3) "Mental institution" means any facility or part of a~~
2 ~~facility used for the treatment of persons committed for treatment~~
3 ~~of mental illness or addiction.~~

4 **§61-7A-3. Persons whose names are to be supplied to the central**
5 **state mental health registry.**

6 (a) The Superintendent of the West Virginia State Police and
7 the Secretary of the Department of Health and Human Resources, or
8 their designees, shall cooperate with the circuit clerk of each
9 county and Administrator of the West Virginia Supreme Court of
10 Appeals in compiling and maintaining a database containing the names
11 and identifying information of persons who ~~have~~ are currently
12 prohibited from possessing firearms by 18 U.S.C. §922(g)(4) or
13 subdivision (4), subsection (a), section seven, article seven of
14 this chapter, by reason of having been adjudicated ~~to be mentally~~ as
15 a mental defective or ~~who have been~~ involuntarily committed for
16 ~~treatment of~~ to a mental illness pursuant to the provisions of
17 ~~chapter twenty-seven of this code~~ institution. The registry shall be
18 ~~maintained by the Administrator of the Supreme Court of Appeals or~~
19 the Superintendent of the West Virginia State Police shall maintain
20 this registry.

21 (b) The name of any person who ~~has~~ is prohibited from
22 possessing firearms by 18 U.S.C. §922(g)(4) or subdivision (4),
23 subsection (a), section seven, article seven of this chapter, by
24 reason of having been adjudicated ~~to be mentally~~ as a mental

1 defective or ~~who has been~~ involuntarily committed ~~for treatment of~~
2 to a mental illness ~~pursuant to the provisions of chapter~~
3 ~~twenty-seven of this code which~~ institution, shall be provided to
4 the Superintendent of the West Virginia State Police for inclusion
5 in the central state mental health registry. Upon receipt of the
6 information ~~being received~~ by the central state mental health
7 registry, it may be transmitted to the National Instant Criminal
8 Background Check System and ~~to~~ county sheriffs.

9 (c) The Secretary of the Department of Health and Human
10 Resources and the circuit clerk of each county shall ~~as soon as~~
11 ~~practicable after the effective date of this article,~~ supply to the
12 Superintendent of the West Virginia State Police for inclusion in
13 the central state mental health registry the name and identifying
14 information required by the provisions of subsection (d) of this
15 section of all persons ~~covered by the provisions of this article~~
16 known to be currently prohibited from possessing firearms by 18
17 U.S.C. §922(g)(4) or subdivision (4), subsection (a), section seven,
18 article seven of this chapter, by reason of having been adjudicated
19 as a mental defective or involuntarily committed to a mental
20 institution, and shall, on an ongoing basis, continue to provide
21 ~~such~~ and update this information as it is developed.

22 (d) The central state mental health registry shall contain the
23 name, address at the time of commitment or adjudication, date of
24 birth, date of commitment or adjudication and of all persons who

1 ~~have~~ are currently prohibited from possessing firearms by 18 U.S.C.
 2 §922(g)(4) or subdivision (4), subsection (a), section seven,
 3 article seven of this chapter, by reason of having been adjudicated
 4 ~~to be mentally~~ as a mental defective or ~~who have been~~ involuntarily
 5 committed ~~for treatment of~~ to a mental illness pursuant to the
 6 ~~provisions of chapter twenty-seven of this code~~ institution.

7 (e) The central state mental health registry shall provide only
 8 such information about a person on the registry to county sheriffs
 9 and the National Instant Criminal Background Check System as is
 10 necessary to identify registrants. ~~and~~

11 (f) ~~On or before the first day of January, two thousand ten,~~
 12 The central state mental health registry shall contain the name,
 13 address at the time of commitment or adjudication, date of birth,
 14 date of commitment or adjudication and any other identifying
 15 characteristics of all persons who ~~have~~ are currently prohibited
 16 from possessing firearms by 18 U.S.C. §922(g)(4) or subdivision (4),
 17 subsection (a), section seven, article seven of this chapter, by
 18 reason of having been adjudicated ~~to be mentally~~ as a mental
 19 defective or ~~who have been~~ involuntarily committed ~~for treatment of~~
 20 to a mental illness pursuant to the ~~provisions of chapter~~
 21 ~~twenty-seven of this code~~ institution. Under no circumstances shall
 22 may the registry contain any information relating to any person's
 23 diagnosis or treatment. ~~provided~~

24 **§61-7A-4. Confidentiality; limits on use of registry information.**

1 (a) Notwithstanding any provision of this code to the contrary,
2 the Superintendent of the State Police, the Secretary of the
3 Department of Health and Human Resources and the circuit clerks and
4 the Administrator of the Supreme Court of Appeals may provide notice
5 to the central state mental health registry and the National Instant
6 Criminal Background Check System established pursuant to Section
7 103(d) of the Brady Handgun Violence Protection Act, Public Law
8 103-159, §103, 107 Stat. 1536 (1993), reprinted in 18 U.S.C. §922
9 notes, that a person:

10 ~~(i) (1) Has been involuntarily committed as provided in chapter~~
11 ~~twenty-seven of this code~~ to a mental institution;

12 ~~(ii) (2) Has been adjudicated mentally incompetent in a~~
13 ~~proceeding under article six a, of this chapter~~ as a mental
14 defective; or

15 ~~(iii) (3) Has regained the ability to possess a firearm~~ been
16 granted relief from disability by order of a circuit court in a
17 proceeding under subsection (e), section seven, article seven of
18 this chapter or the former enactment of section five of this
19 article, as it existed between June 8, 2008, and its repeal and
20 consolidation with the current enactment of subsection (e), section
21 seven, article seven of this chapter, as enacted concurrent with the
22 amendments to this section enacted during the 2011 Regular Session
23 of the Legislature.

24 (b) The information contained in the central state mental

1 health registry ~~is to~~ shall be used solely for the purpose of
2 records checks related to federal firearm licenses, firearms
3 purchases and for eligibility for ~~a state~~ any license or permit in
4 this state or any other state to purchase, possess, ~~or~~ carry or
5 transport a concealed firearm or concealed weapon, or to determine
6 in the course of a legitimate law-enforcement investigation whether
7 a specific, named individual who has possessed a firearm or carried
8 a concealed weapon is prohibited by subdivision (4), subsection (a),
9 section seven, article seven of this chapter or 18 U.S.C. §922(g) (4)
10 from possessing or carrying the weapon.

11 (c) Whenever a person's name and other identifying information
12 ~~has~~ have been added to the central state mental health registry, ~~a~~
13 the Superintendent of the State Police shall review ~~of~~ the state
14 concealed ~~handgun~~ weapons license registry ~~shall be undertaken~~
15 maintained pursuant to subdivision (2), subsection (1), section
16 four, article seven of this chapter and, if ~~such~~ this review reveals
17 that the person possesses a current ~~concealed handgun~~ license to
18 carry concealed weapons, the superintendent shall immediately notify
19 the issuing sheriff of the county issuing the concealed handgun
20 license shall be informed of the person's change in status
21 licensee's addition to the central state mental health registry and
22 probable disqualification from continued licensure. Before the
23 sheriff may initiate suspension or revocation proceedings against
24 the named licensee, the sheriff shall independently verify that the

1 information provided by the superintendent pertains to the named
2 licensee and not another person and that the information proves the
3 named licensee is actually disqualified from continued licensure, as
4 required by subsection (q), section four, article seven of this
5 chapter.

6 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

7 **§61-11-9. Limitation of prosecution; lost indictment.**

8 (a) Except as otherwise provided by subsection (d) of this
9 section, a prosecution for committing or procuring another person to
10 commit perjury, any felony under section eight, article five of this
11 chapter, any felony under article seven of this chapter or any
12 conspiracy or attempt to commit any of the foregoing offenses, shall
13 be commenced within three years next after the perjury offense was
14 committed.

15 (b) Except as otherwise provided by subsection (d) of this
16 section, a prosecution for a misdemeanor shall be commenced within
17 one year after the offense was committed.

18 (c) Except as otherwise provided by subsection (d) of this
19 section, failure to commence a prosecution within the time periods
20 required by this section or other applicable statute of limitations
21 in this code shall be a bar to prosecution. The periods of
22 limitation created in this section apply to crimes committed both
23 before and after the effective date of this subsection. ~~Provided,~~
24 ~~That whenever~~

1 (d) If the indictment in any case shall be stolen, lost or
 2 destroyed, a new indictment may be found for the same offense
 3 mentioned in the former indictment, at the first term of the court
 4 after such theft, loss or destruction is discovered, or at the next
 5 term thereafter, and as often as any such new indictment is stolen,
 6 lost or destroyed, another indictment for the same offense may be
 7 found at the first term of the court after such theft, loss or
 8 destruction is discovered, or at the next term thereafter. ~~and~~ The
 9 court shall, in every case where any ~~such~~ indictment has been
 10 stolen, lost or destroyed, enter ~~such~~ the fact of the theft, loss or
 11 destruction on its record. Whenever ~~such~~ a new indictment is found,
 12 the clerk shall add to the entry of the finding thereof the
 13 following: "This is the second (or third, etc., as the case may be)
 14 indictment found against the said for the same
 15 offense"; and the same proceedings shall be had in all respects on
 16 any such new indictment as might have been had on the first
 17 indictment if it had not been stolen, lost or destroyed. ~~And~~ If the
 18 offense mentioned in any ~~such~~ replacement indictment is barred by
 19 the statute of limitations, the time between the finding of the
 20 first and last of such indictments shall not be computed or taken
 21 into consideration in the computation of the time in which any such
 22 indictment, after the first, should have been found.

23 **§61-11-27. Set aside and expungement of convictions of certain**
 24 **misdemeanor crimes of domestic violence; procedures;**

1 **effect.**

2 (a) Any person convicted of a misdemeanor crime of domestic
3 violence in this state may, pursuant to the provisions of this
4 section, petition the circuit court of the county in which the
5 conviction occurred to set aside and expunge the conviction and the
6 records associated therewith. The petitioner shall, at the time of
7 filing the petition, pay the clerk of the circuit court a filing fee
8 equal to the filing fee for instituting a civil action pursuant to
9 subdivision (1), subsection (a), section eleven, article one,
10 chapter fifty-nine of this code. The petition shall be verified
11 under oath and include the following information:

12 (1) Petitioner's current name and all other legal names or
13 aliases by which petitioner has been known at any time;

14 (2) All of petitioner's addresses from the date of the
15 commission or alleged commission of the offenses for which a set
16 aside and expungement order is sought to the date of the petition;

17 (3) Petitioner's date and place of birth;

18 (4) Petitioner's date of arrest, the court of jurisdiction and
19 criminal complaint, indictment, summons or case number;

20 (5) The statute or statutes and offense or offenses for which
21 petitioner was charged and of which petitioner was convicted;

22 (6) The names of the victim or victims;

23 (7) Whether there is any current order for restitution,
24 protection, restraining order or other, no contact order prohibiting

1 the petitioner from contacting the victims or whether there has ever
2 been a prior order for restitution, protection or restraining order
3 prohibiting the petitioner from contacting the victim. If there is
4 such a current order, petitioner shall attach a copy of that order
5 to the petition;

6 (8) The court's disposition of the matter and punishment
7 imposed, if any;

8 (9) Why the petitioner seeks to have the conviction and
9 associated records set aside and expunged, such as, but not limited
10 to, employment or licensure purposes or regaining the right to
11 possess firearms, and why it should be granted;

12 (10) The steps the petitioner has taken since the time of the
13 offenses toward personal rehabilitation, including treatment, work
14 or other personal history that demonstrates rehabilitation;

15 (11) Whether petitioner has ever been granted expungement or
16 similar relief regarding a criminal conviction by any court in this
17 state, any other state or by any federal court; and

18 (12) Any supporting documents, affidavits or other information
19 supporting the petition to set aside and expunge the conviction.

20 (b) The State of West Virginia shall be named as the respondent
21 to any petition under this section. The petitioner shall serve a
22 copy of the petition and any supporting documentation pursuant to
23 the West Virginia Rules of Civil Procedure and the West Virginia
24 Trial Court Rules upon the prosecuting attorney of the county in

1 which the petitioner was convicted of the offense to which the
2 petition pertains. The prosecuting attorney shall serve by first
3 class mail a copy of the petition, accompanying documentation and
4 any proposed order to any identified victims. The prosecuting
5 attorney shall take reasonable steps to locate any identifiable
6 victims, including but not limited to, searches of driver's license,
7 voter registration and tax databases to which the prosecuting
8 attorney may have access for official purposes. If there are no
9 identifiable victims or the prosecuting attorney cannot locate and
10 serve an identifiable victim, the prosecuting attorney shall notify
11 the court and the petitioner and shall have no further duty with
12 respect to the location and service of any victim.

13 (c) Upon receipt of a petition under this section, the
14 prosecuting attorney, the victim or victims of the offense to which
15 the petition pertains and any other interested person or agency that
16 desires to oppose the petition to set aside and expungement of the
17 conviction shall, within thirty days after receipt of the petition
18 or ten days after receipt of a copy of the results of any
19 fingerprint-based background checks ordered by the court pursuant to
20 subsection (d) of this section, whichever later occurs, file a
21 notice of opposition with the court with supporting documentation
22 and sworn statements setting forth the reasons for opposing the
23 petition. The opponent shall serve a copy of any notice of
24 opposition with supporting documentation and sworn statements upon

1 the petitioner in accordance with trial court rules. The petitioner
2 shall be granted at least ten business days after service of any
3 notice of opposition to the petition for expungement to file a
4 reply.

5 (d) The court may require the petitioner to be fingerprinted
6 and submit to fingerprint-based state and national criminal
7 background checks and pay the costs thereof. If the court requires
8 a petitioner to be fingerprinted, the court shall arrange to have
9 the petitioner fingerprinted by a law-enforcement agency that has
10 the necessary equipment to take fingerprints by electronic imaging
11 to reduce the time and expense required to process the fingerprints.
12 The sheriff shall provide the results of any court-ordered
13 background check to the court, the prosecuting attorney and the
14 petitioner.

15 (e) Not earlier than the expiration of the time period for a
16 party to enter a notice of opposition to the petition and, if
17 applicable, for the petitioner to file a reply with the court, and
18 not later than thirty days after that date, the court shall:

19 (1) Summarily deny the petition if the court determines that
20 the petition is insufficient or, based upon supporting documentation
21 and sworn statements filed in opposition to the petition, the court
22 determines that the petitioner, as a matter of law, is not entitled
23 to relief under this section;

24 (2) Summarily grant the petition if the court does not

1 summarily deny the petition pursuant to paragraph (A) of this
2 subdivision, the petitioner does not request a hearing on the
3 petition, no opposition to the petition has been filed with the
4 court and the court does not desire, upon its own motion, to set the
5 matter for hearing; or

6 (3) Set the matter for hearing.

7 (f) If the court sets the matter for hearing, the clerk of the
8 court shall notify all interested parties who have filed a notice of
9 opposition. At the hearing, the court may inquire into the
10 background of the petitioner and shall have access to any reports or
11 records relating to the petitioner that are on file with any
12 law-enforcement authority and other agency which was in any way
13 involved with the petitioner's arrest, conviction, sentence and
14 post-conviction supervision, including any record of arrest or
15 conviction in any other state or federal court. The court may hear
16 testimony of witnesses and any other matter the court deems proper
17 and relevant to its determination regarding the petition. The court
18 shall enter an order reflecting its ruling on the petition with
19 appropriate findings of fact and conclusions of law. Upon entry of
20 an order granting or denying a petition under this section, the
21 clerk of the court shall transmit certified copies of the order to
22 the petitioner, prosecuting attorney and all parties that entered
23 notices of opposition to the petition.

24 (g) The following presumptions and burdens of proof shall apply

1 to any petition under this section:

2 (1) If fifteen years have elapsed since the date of conviction
3 and the petitioner has not been convicted within the last fifteen
4 years of any misdemeanor crime of domestic violence, there shall be
5 a strong presumption in favor of granting the petition unless an
6 opponent of the petition demonstrates by clear and convincing
7 evidence that the circumstances regarding the conviction and the
8 petitioner's record and reputation are such that the petitioner will
9 likely act in a manner dangerous to public safety and that the
10 granting of the petition would be contrary to the public welfare.

11 (2) If the offense is not subject to subdivision (1) of this
12 subsection, at least ten years have elapsed since the date of
13 conviction, at least five years have elapsed since completion of
14 sentence, probation, payment of all fines, court costs and
15 restitution and discharge from supervision by the court, whichever
16 last occurs, and, subsequent to the conviction, the petitioner has
17 not been convicted within the last ten years of any misdemeanor
18 crime of domestic violence, there shall be a presumption in favor of
19 granting the petition unless an opponent of the petition
20 demonstrates by a preponderance of evidence that the circumstances
21 regarding the conviction and the petitioner's record and reputation
22 are such that the petitioner will likely act in a manner dangerous
23 to public safety and that the granting of the petition would be
24 contrary to the public welfare.

1 (3) If the offense is not subject to subdivisions (1) or (2) of
2 this subsection, at least five years have elapsed since the date of
3 conviction and at least two years have elapsed since completion of
4 sentence, probation, payment of all fines, court costs and
5 restitution and discharge from supervision by the court, whichever
6 last occurs, and the petitioner has not been subsequently convicted
7 of any misdemeanor crime of domestic violence, the petitioner shall
8 demonstrate by a preponderance of evidence that the circumstances
9 regarding the conviction and the petitioner's record and reputation
10 are such that the petitioner not be likely to act in a manner
11 dangerous to public safety and that the granting of the petition
12 would not be contrary to the public welfare.

13 (4) In any other case, there is a presumption against granting
14 the petition unless the petitioner demonstrates by clear and
15 convincing evidence that the circumstances regarding the conviction
16 and the petitioner's record and reputation are such that the
17 petitioner will not be likely to act in a manner dangerous to public
18 safety and that the granting of the petition would not be contrary
19 to the public welfare.

20 (h) If the court grants the petition, the court shall order
21 that the conviction be set aside and that all records in the custody
22 of the court or any other agency or official, including
23 law-enforcement records, be expunged. If the court grants the
24 petition, the clerk of the court shall transmit a certified copy of

1 the order to every federal, state and local agency the court knows
2 or has reason to believe has records relating to the arrest, charge
3 or other matters arising out of the arrest or conviction covered by
4 the expungement order. Every agency with records relating to the
5 arrest, charge or other matters arising out of the arrest or
6 conviction that is ordered to expunge records shall certify to the
7 court within sixty days of the entry of the expungement order that
8 the required expungement has been completed. All orders enforcing
9 the expungement procedure shall be sealed and may be inspected only
10 upon order of the court. However, for the purposes of this section,
11 "records" do not include the records of the Governor, the
12 Legislature or the Secretary of State that pertain to a grant of
13 pardon and records that pertain to a grant of pardon are not subject
14 to an order of expungement.

15 (i) If the court grants a petition pursuant to this section,
16 notwithstanding any provision of this code or other law of this
17 state to the contrary:

18 (1) For all purposes under the laws of this state, the
19 conviction shall be set aside, the criminal proceedings in which the
20 petitioner was convicted of the expunged offense shall be considered
21 as having never occurred and the petitioner shall be treated as if
22 he or she had never been prosecuted for or convicted of the offense
23 to which the petition pertained; and

24 (2) The expungement shall have all necessary force and effect

1 to cause the expunged conviction or convictions to be considered
2 "set aside" and "expunged" in accordance with the usage of those
3 terms in 18 U.S.C. §921(a) (33) (B) (ii).

4 (j) In any appeal of a denial of a petition under this section,
5 all matters appealed by the petitioner shall be reviewed de novo.

6 (k) In this section, "misdemeanor crime of domestic violence"
7 means:

8 (1) Any misdemeanor offense of domestic assault or domestic
9 battery under the provisions of section twenty-eight, article two of
10 this chapter;

11 (2) Any misdemeanor offense of assault or battery under the
12 provisions of subsection (b) or (c), section nine, article two of
13 this chapter, brandishing a deadly weapon in violation of section
14 eleven, article seven of this chapter, or any misdemeanor offense
15 that has, as an element, the use or attempted use of physical force
16 or the threatened use of a deadly weapon, in which the victim was a
17 family or household member, as defined in section two hundred four,
18 article twenty-seven, chapter forty-eight of this code, of the
19 petitioner; or

20 (3) Any other offense that arguably constitutes a misdemeanor
21 crime of domestic violence as defined in 18 U.S.C. §921(a) (33) (A),
22 without regard to whether any of the exceptions specified in 18
23 U.S.C. §921(a) (33) (B) apply, for which the record of conviction may
24 reasonably be construed to cast doubt upon the petitioner's

1 eligibility to lawfully possess firearms under 18 U.S.C. §922(g)(9)
2 and subdivision (9), subsection (a), section seven, article seven of
3 this chapter.

4 **CHAPTER 62. CRIMINAL PROCEDURE.**

5 **ARTICLE 12. PROBATION AND PAROLE.**

6 **§62-12-6. Powers and duties of probation officers.**

7 (a) Each probation officer shall investigate all cases which
8 the court refers to the officer for investigation and shall report
9 in writing on each case. The probation officer shall furnish to
10 each person released on probation under the officer's supervision a
11 written statement of the probationer's conditions of probation
12 together with a copy of the rules prescribed by the court for the
13 supervision of probationers. The probation officer shall stay
14 informed concerning the conduct and condition of each probationer
15 under the officer's supervision and shall report on the conduct and
16 condition of each probationer in writing as often as the court
17 requires. The probation officer shall use all practicable and
18 suitable methods to aid and encourage the probationer to improve his
19 or her conduct and condition. The probation officer shall maintain
20 detailed work records and shall perform any other duties the court
21 requires. The probation officer has authority, with or without an
22 order or warrant, to arrest any probationer as provided in section
23 ten of this article, and to arrest any person on supervised release
24 when there is reasonable cause to believe that the person on

1 supervised release has violated a condition of release. A person on
2 supervised release so arrested shall be brought before the court for
3 a prompt and summary hearing.

4 ~~(b) Notwithstanding any provision of this code to the contrary:~~

5 (b) (1) Any A probation officer ~~appointed on or after July 1,~~
6 ~~2002,~~ may carry ~~handguns~~ concealed weapons without a license in the
7 course of the officer's official duties after meeting specialized
8 qualifications established by the Governor's Committee on Crime,
9 Delinquency and Correction, which ~~qualifications~~ shall include the
10 successful completion of handgun training, including a minimum of
11 four hours' training in handgun safety and comparable to the handgun
12 training provided to law-enforcement officers by the West Virginia
13 State Police.

14 (2) ~~Probation officers may only carry handguns in the course of~~
15 ~~their official duties after meeting the specialized qualifications~~
16 ~~set forth in Subdivision (1) of this subsection~~ may not be construed
17 to diminish the right of a probation officer to keep and bear arms
18 in the same manner as he or she may lawfully do so as a private
19 citizen.

20 (3) Nothing in this subsection ~~includes~~ may be construed to
21 include probation officers within the meaning of law-enforcement
22 officers as defined in section one, article twenty-nine, chapter
23 thirty of this code.

1 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**
2 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

3 **§64-5-1a. Health and Human Resources; child care centers licensing.**

4 The legislative rule contained in title seventy-eight, series
5 one, and filed in the State Register on April 25, 2007, under the
6 authority of section four, article two-b, chapter forty-nine of this
7 code, relating to Department of Health and Human Resources (Child
8 Care Centers Licensing, 78 CSR 1) is reauthorized with the following
9 amendment:

10 On page seventy, section one, by striking subsection 20.3.a in
11 its entirety and renumbering subsequent subsections.

12 **§64-5-1b. Health and Human Resources; child-care and treatment**
13 **facilities.**

14 The legislative rule contained in title seventy-eight, series
15 three, and filed in the State Register on May 2, 2007, under the
16 authority of section three, article seventeen, chapter twenty-seven,
17 sections four, six and seven of article one-a, chapter twenty-seven
18 and article two-b, chapter forty-nine of this code, relating to the
19 Department of Health and Human Resources (Minimum Licensing
20 Requirements for Residential Child Care and Treatment Facilities for
21 Children and Transitioning Adults in West Virginia, 78 CSR 3) is
22 reauthorized with the following amendment:

23 On page thirty-one, section three, by striking subsection

1 12.5.c in its entirety and renumbering subsequent subsections
2 accordingly.

3 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO**
4 **PROMULGATE LEGISLATIVE RULES.**

5 **§64-7-3a. Lottery Commission; limited gaming facility rule.**

6 The legislative rule contained in title eighty-seven, series
7 four, filed in the State Register on April 20, 2000, under the
8 authority of section five, article twenty-five, chapter twenty-nine
9 of this code, relating to the West Virginia Lottery Commission
10 (Limited Gaming Facility Rule 179 CSR 4) is reauthorized with the
11 following amendment:

12 On page twelve, section four, by striking subsection 3.12 in
13 its entirety and renumbering subsequent subsections accordingly.

14 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE**
15 **LEGISLATIVE RULES.**

16 **§64-10-3a. Division of Natural Resources; commercial whitewater**
17 **outfitters.**

18 The legislative rule contained in title fifty-eight, series
19 twelve and filed in the State Register on March 27, 2008, under the
20 authority of section twenty-three-a, article two, chapter twenty of
21 this code, relating to the Division of Natural Resources (Commercial
22 Whitewater Outfitters 58 CSR 12) is reauthorized with the following
23 amendment:

1 On page seven, section twelve, by striking subsection 9.13 in
2 its entirety and renumbering subsequent subsections accordingly.

3 **§64-10-3b. Division of Natural Resources; public use of state**
4 **parks.**

5 The legislative rule contained in title fifty-eight, series
6 thirty-one and filed in the State Register on May 4, 2006, under the
7 authority of section seven, article one, chapter twenty of this
8 code, relating to the Division of Natural Resources (Public use of
9 West Virginia State Parks, State Forests, and State Wildlife
10 Management Areas Under the Division of Natural Resources 58 CSR 31)
11 is reauthorized with the following amendment:

12 On page two, section thirty-one, subsection 2.14 by striking
13 “uncased firearms,” and inserting in lieu thereof “a loaded or
14 uncased rifle, a loaded or uncased shotgun,”.

15 **ARTICLE 12. RACING COMMISSION.**

16 **§64-12-1. Thoroughbred racing.**

17 The legislative rule contained in title one hundred
18 seventy-eight, series one and filed in the State Register on April
19 6, 2007, under the authority of sections five, six, eight and
20 thirteen, article twenty-three, chapter nineteen of this code,
21 relating to the Racing Commission (Thoroughbred Racing 178 CSR 1) is
22 reauthorized with the following amendment:

23 On page thirty, section one, subsection 37.6 by striking

1 "firearm, or other deadly weapon".

2 **§64-12-2. Greyhound racing.**

3 The legislative rule contained in title one hundred
4 seventy-eight, series two and filed in the state Register on May 5,
5 2006, under the authority of sections six, article twenty-three,
6 chapter nineteen of this code, relating to the Racing Commission
7 (Greyhound Racing 178 CSR 2) is reauthorized with the following
8 amendment:

9 On page twenty-nine, section two, subsection 40.6 by striking
10 "carries or exhibits a deadly weapon".

NOTE: The purpose of this bill is to regulate firearms and other deadly weapons. The bill attempts to deal with this issue in every provision of the Code where firearms and carrying or exhibiting a deadly or dangerous weapon is mentioned. This bill is to be known as "The West Virginia Gun Owners' Protection Act of 2011". Otherwise, the bill regulates firearms and other deadly weapons; it provides uniform statutory definition of "business days" for purposes of computation of time; it provides that the rights of local conservators of the peace and reserve deputy sheriffs to keep and bear arms as private citizens are neither enlarged nor diminished by virtue of their positions. The bill clarifies various grants of authority to certain state officers and agents to carry firearms and concealed weapons while on duty. It codifies common law arrest powers of prosecuting attorneys and assistant prosecuting attorneys and repeals special fees for fingerprinting services for applicants for federal firearm licenses. The bill repeals the authority of municipalities to prohibit the carrying of certain weapons and limits access to records pertaining to licenses to carry concealed weapons, qualified retired law-enforcement officers qualified to carry concealed firearms pursuant to the federal Law Enforcement Officers Safety Act of 2004 and licensed hunters, trappers and fishermen. The bill requires qualifying law-enforcement officers employed by a West Virginia law-enforcement agency to receive certification to carry a concealed firearm nationwide as provided in the federal Law Enforcement Officers

Safety Act of 2004 and establishes a procedure for a retired or medically discharged member of the State Police to appeal a denial of a letter of authorization to carry concealed handguns; it provides that certain methods of authorization for retired or medically discharged members of the State Police to carry concealed handguns are cumulative, that a letter of authorization for a retired or medically discharged member of the State Police to carry concealed weapons shall be considered a West Virginia license to carry concealed weapons for the purpose of participating in reciprocity with other states; that law-enforcement agencies are neither prohibited from nor required to permit an officer to carry his or her service weapon off-duty; and requires West Virginia law-enforcement agencies to offer access to training and certification for honorably retired officers to be permitted to carry a concealed firearm nationwide as a qualified retired law-enforcement officer as provided in the federal Law Enforcement Officers Safety Act of 2004. The bill establishes a program for issuing special qualified retired law-enforcement officer concealed firearm license by the State Police, authorizing legislative rules and provides that special qualified retired law-enforcement officer concealed firearm license is cumulative and supplemental. The bill prohibits state financial assistance to higher education institutions that infringe upon an individual's right to keep and bear arms as provided by law, expands prohibition on interference with hunters, trappers and fishermen to include the lawful possession or control of lawfully-taken wildlife, prohibits certain harassment, intimidation or threats against hunters, trappers or fishermen, provides exemptions to prohibited acts relating to interference with hunters, trappers and fishermen, provides exemption from prohibited acts relating to interference with hunters, trappers and fishermen for Constitutionally-protected activities, increases criminal penalties for interference with hunters, trappers and fishermen, provides civil remedies for unlawful interference with hunters, trappers and fishermen, clarifies that hunting statutes generally do not prohibit the otherwise lawful carrying of handguns for self-defense purposes and exempts persons who are licensed or otherwise authorized to lawfully carry concealed weapons from certain limitations on how firearms may be carried or transported. The bill provides additional lawful means for the transportation of rifles and shotguns in or on vehicles and vessels. The bill clarifies language on Sunday hunting local option election ballots to accurately state the nature of the question propounded. It modifies restrictions relating to discharging firearms near residences, parks and certain other public places and consolidates and clarifies certain penalty provisions. The bill requires notice of a guardianship or conservatorship hearing to include a warning of the potential consequences of the

guardianship or conservatorship action on the alleged protected person's ability to lawfully possess firearms. It requires domestic violence protective orders to contain certain warnings about implications of order on legality of firearms possession and clarifies the effect of protective orders on legality of firearms possession. The bill prohibits an adoption agency or entity from making suitability determinations based on, requiring disclosure relating to, or restricting the lawful possession, storage or use of a firearm or ammunition. The bill provides immunity from civil liability for certain firearms safety instructors, course providers, sponsoring organizations and participants. It modifies the area covered by prohibition on transporting restricted articles on correctional facility premises. The bill prohibits the taking of lawfully possessed arms and ammunition during a declared state of emergency or riot. It repeals the prohibition on bringing weapons upon the State Capitol Complex. The bill declares legislative findings and intent and defines terms. It limits the requirement of license to carry concealed weapons to enumerated locations, provides additional exemptions to requirement of license to carry concealed weapons, grants full faith and credit to all qualified out-of-state license or permit to carry concealed weapons held by qualifying out-of-state licensees, requires certain persons who lawfully carry a concealed weapon without a license to inform the law-enforcement officer and submit to certain requests by the law-enforcement officer when the person is contacted by a law-enforcement officer and provides procedures for ascertaining the existence of a license or other lawful authorization to carry a concealed weapon. The bill establishes certain rebuttable presumptions regarding the existence or absence of evidence of a license or other lawful authorization to carry a concealed weapon, establishes multiple classes of licenses to carry concealed weapons, prescribing eligibility criteria for each class of license, repeals limitation of licenses to carry concealed weapons to pistols and revolvers only, repeals license to carry concealed weapons fee surcharge for Courthouse Facilities Improvement Fund; requiring the inclusion of certain information on applications for licenses to carry concealed weapons, modifies eligibility criteria for licenses to carry concealed weapons and specifies information to be provided in application for license to carry concealed weapons. The bill requires applicants for licenses to carry concealed weapons to provide specified documentation with application, specifies required components of background investigations of applicants for licenses to carry concealed weapons, requires background check on applicants for licenses to carry concealed weapons to determine an applicant's eligibility to possess or transport firearms under state and federal law and requires fingerprint-based state and national criminal and mental health background checks on applicants for Class 1 licenses. The

bill establishes a State Police Concealed Weapons License Background Check Administration Fund, provides for the source of funds use of funds and authorizes expenditures from collections. The bill converts county concealed weapons license administration funds to perpetual revolving accounts and repeals authority of sheriff to expend surplus funds in county concealed weapons license administration fund. The bill establishes additional means of fulfilling requirement of demonstrating basic competence with a handgun, prescribes additional requirement for Class 1, 2 and 4 licenses of completing certain live fire shooting exercises and passing live fire shooting proficiency test and requires instructors of live fire shooting proficiency tests to maintain records on students. The bill modifies time limit for sheriffs to act on applications for licenses to carry concealed weapons. It conforms requirements for Social Security number solicitations on applications for licenses to carry concealed weapons to Section 7 of the federal Privacy Act of 1974, establishes a uniform system of numbering and indexing all licenses to carry concealed weapons throughout the state, specifies the form and contents of licenses to carry concealed weapons, establishes provisions governing the change of a licensee's name or address, modifies the license expiration and renewal cycle, prorates license fees and extends licenses of active-duty members of the Armed Forces while deployed. The bill requires Commissioner of Motor Vehicles to produce license cards upon request of sheriff, provides for the payment of cost of producing license cards, transfers responsibility for preparing license applications and other forms from Superintendent to Attorney General and requires sheriffs to accept certain methods of payment for fees for licenses to carry concealed weapons. The bill establishes procedure for appealing the suspension or revocation of a license to carry concealed weapons; specifying form of notice of denial, suspension or revocation of a license to carry concealed weapons. It specifies whether a license to carry concealed weapons shall be suspended or revoked, establishes optional procedure for reconsidering denial, suspension or revocation of license prior to judicial appeal, closing proceedings and sealing records in judicial appeals of denials, suspension and revocations of licenses to carry concealed weapons and modifies immunity from civil liability for certain acts relative to concealed weapons licensing. The bill declares licensing statute to be comprehensive and preemptive. It requires courts to determine whether individuals in proceedings resulting in disqualification from licensure are licensed to carry a concealed weapon and to notify issuing agency upon a licensee becoming disqualified for certain causes from continued licensure to carry concealed weapons. It requires sheriffs to issue notice of license expiration and renewal process and provides contents of notice. The bill provides criminal penalties for fraudulently

obtaining or unlawfully disclosing confidential information about individuals who have applied for or been issued licenses to carry concealed weapons. It establishes provisions for the use of an alternate address by certain classes of protected persons. It requires the Attorney General to periodically notify the Attorney General and licensing authority of each state of this state's recognition of qualified out-of-state license or permit to carry concealed weapons held by qualifying out-of-state licensees and to negotiate and execute reciprocity agreements to secure recognition of West Virginia licenses when required by other states as a condition of recognizing West Virginia licenses. It further requires the Attorney General and the Superintendent of the State Police to provide certain annual reports to the Legislature, requiring the Attorney General to publish and annually revise a compendium of firearm and use of force laws. The bill provides for the disposition of applications for licenses to carry concealed weapons filed before and pending on the effective date of this article. The bill provides for classification of licenses to carry concealed weapons in effect on the effective date of this article, specifies procedures for upgrading or modifying class of license to carry concealed weapons, establishes emergency license to carry concealed weapons, eligibility criteria, license fee and creating uniform rule concerning the requirement to carry and exhibit license when carrying a concealed weapon for both West Virginia licensees and qualified out-of-state licensees. The bill conforms classes of persons prohibited from possessing firearms to federal law, clarifies conflicting statutory language, prohibits certain persons from carrying a concealed weapon in a public place and provides additional procedures for relief from weapons disabilities. The bill designates officials authorized to certify the transfer and registration of firearms subject to the National Firearms Act. It establishes time limit for designated officials to act on requests for certification, establishes uniform standard for approving or denying requested certifications and provides immunity from civil liability for lawfully performing required certifications. The bill prohibits licensed firearm dealers from refusing to sell or otherwise transfer a firearm to any person solely on the basis that the person purchased a firearm that was later the subject of a law-enforcement trace request, requires licensed firearms dealers to perform certain acts incident to firearm sales or transfers and prohibits the purchase or attempt to purchase a firearm from a firearm dealer by certain persons. The bill increases criminal penalties for any person other than a law-enforcement officer who knowingly solicits, persuades, encourages or entices any other person to violate firearm sales laws. It provides civil remedies for unlawful denial or delay of firearm sale or transfer. It specifies areas subject to prohibition on possession of deadly

weapons on school premises, with exceptions, creates separate offense for possessing deadly weapon in school safety zone with the intent to use the deadly weapon unlawfully or to threaten or endanger another person and provides criminal penalties. The bill reduces criminal penalties for unlawful possession of deadly weapon in school safety zones without the intent to use the deadly weapon unlawfully or to threaten or endanger another person. It modifies requirements and procedures for suspending or revoking driver's license of person convicted of or adjudicated a juvenile delinquent for such offenses. It prohibits the possession or conveyance of deadly weapons into certain areas of courthouses and other places where judicial proceedings are held and declares certain persons exempt. It requires establishment of secure weapon storage areas and posting of signs and provides for the consolidation of required signage and secure weapon storage areas when premises contained within secure restricted access area. It provides for the establishment of secure restricted access areas in certain public buildings, procedures for establishment and prohibits the possession of or conveyance of deadly weapons into secure restricted access areas. The bill provides criminal penalties for possessing or conveying deadly weapons into restricted premises, signage requirements and requires the provision of secure weapon storage areas at secure restricted access areas for individuals to lawfully store firearms before entering secure restricted access area. The bill provides additional criminal penalties for the use or possession of firearms or other weapons during the commission of specified crimes. It exempts certain officers, employees and agents of the United States, this state or a political subdivision of this state from restrictions or prohibitions on possessing weapons imposed by private property owners, requiring all private property owners that have legally restricted or prohibited the possession or carrying of weapons on their premises to give notice of such prohibitions or restrictions by posting specified signs, provides the format of signs, effect of failure to properly post signs indicating such prohibition or restriction and provides immunity from civil liability to private property owners and private employers for certain acts or omissions of individuals licensed to carry concealed weapons or authorized to carry concealed weapons without a license if the private property owner or private employer voluntarily refrains from restricting the possession or carrying of deadly weapons by individuals licensed to carry concealed weapons or authorized to carry concealed weapons without a license. The bill prohibits a public or private employer from prohibiting a customer, employee or invitee from possessing any legally owned firearm or concealable weapon that is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and prohibits a public or private employer from violating the privacy rights of a

customer, employee or invitee by verbal or written inquiry regarding the presence of a firearm or concealable weapon inside or locked to a private motor vehicle in a parking lot or by the search of a private motor vehicle in a parking lot to ascertain the presence of a firearm or concealable weapon within the vehicle. It prohibits actions by a public or private employer against a customer, employee or invitee based upon verbal or written statements concerning possession of a firearm or concealable weapon stored inside a private motor vehicle in a parking lot for lawful purposes. It provides conditions under which a search of a private motor vehicle in the parking lot of a public or private employer may be conducted, prohibits a public or private employer from conditioning employment upon specified licensure status or upon a specified agreement, prohibits a public or private employer from attempting to prevent or prohibiting any customer, employee or invitee from entering the parking lot of the employer's place of business because the private motor vehicle of a customer, employee or invitee contains a legal firearm or concealable weapon and prohibits public or private employers from terminating the employment of or otherwise discriminating against an employee, or expelling a customer or invitee, for exercising his or her right to keep and bear arms or for exercising the right of self-defense. It provides a condition to the prohibition and that such prohibitions apply to all public-sector employers. It provides that, when subject to the prohibitions imposed by law, a public or private employer has no duty of care related to the actions prohibited, provides specified immunity from liability for public and private employers, provides nonapplicability of such immunity, provides construction and exceptions to certain prohibitions, provides for enforcement of certain prohibitions and provides for the award of reasonable personal costs and losses and award of court costs and attorney's fees. The bill declares the provisions of the West Virginia Code to be the sole means by which the keeping and bearing of arms may be regulated, preempting any ordinance, rule, policy or administrative action inconsistent therewith and stating exceptions. It provides for enforcement of prohibition on additional regulation of firearms or concealable weapons, provides rules of construction, prohibits the registration of firearms or firearm owners, with exceptions, provides compliance period for purging prohibited registries, limits seizures of concealable weapons and provides remedies for unlawful seizure of concealable weapon. The bill provides civil and criminal penalties for certain acts in violation of an individual's right to keep and bear arms and defines certain acts as *per se* official misconduct for purposes of removing public official from office. The bill establishes regulations for gun buy-back programs, establishes procedures to protect interests of owners of stolen firearms and preserve evidence of certain crimes, requires certain

firearms disposed by a public agency to be offered for sale to licensed firearm dealers by public auction or sealed bids, procedures for public sale of certain firearms and requires award of court costs and attorney's fees in certain cases. The bill clarifies conflicting statutory language, updates references to licenses to carry concealed weapons in the state central mental health registry law and clarifies the permissible use of records in the central state mental health registry. The bill establishes statute of limitations for prosecuting certain crimes. It authorizes the setting aside and expungement of certain criminal convictions involving misdemeanor crimes of domestic violence. It defines eligible offenses. It provides a form and contents of petition, filing fee, service and notice requirements, prosecutor, victim and state agency opposition to petition, court procedure for hearing and ruling upon the petition, presumptions and burdens of proof, establishes procedures for expunging records and effects of set aside and expungement; and repeals or revising various archaic language.

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

§15-2-25a, §18C-1-6, §27-5-6, §30-29-11, §48-22-804, §55-18-3, §61-7-11b, §61-7-11c, §61-7-13, §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18, §61-7-19, §61-7-20, §61-11-27, §64-5-1a, §64-5-1b, §64-7-3a, §64-10-3a, §64-10-3b, §64-12-1 and §64-12-2 are new; therefore, it has been completely underscored.

§20-2-2a and §61-7-2 and §61-7-5 have been completely rewritten; therefore, it has been completely underscored.