



1 **ARTICLE 7. DANGEROUS WEAPONS.**

2 **§61-7-4. License to carry deadly weapons; how obtained.**

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

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

22 (2) That, on the date the application is made, the applicant  
23 is a bona fide resident of this state and of the county in which  
24 the application is made and has a valid driver's license or other

1 state-issued photo identification showing the residence;

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

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

22 (A) Residential or court-ordered treatment for alcoholism or  
23 alcohol detoxification or drug treatment; or

24 (B) Two or more convictions for driving while under the

1 influence or driving while impaired;

2 (5) That the applicant has not been convicted of a felony or  
3 of an act of a misdemeanor crime of violence involving the misuse  
4 of a deadly weapon within the five years immediately preceding the  
5 application: Provided, That if the offense is a misdemeanor crime  
6 of domestic violence as defined in 18 U.S.C. §921(a)(33), the  
7 provisions of subdivision six of this section shall control;

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

22 (7) That the applicant is not under indictment for a felony  
23 offense or is not currently serving a sentence of confinement,  
24 parole, probation or other court-ordered supervision imposed by a

1 court of any jurisdiction or is the subject of an emergency or  
2 temporary domestic violence protective order or is the subject of  
3 a final domestic violence protective order entered by a court of  
4 any jurisdiction;

5 ~~(8) That the applicant is physically and mentally competent to~~  
6 ~~carry the weapon;~~

7 ~~(9)~~ (8) That the applicant has not been adjudicated to be  
8 mentally incompetent. If the applicant has been adjudicated  
9 mentally incompetent the applicant must provide a court order or  
10 other evidence that the applicant is no longer under such  
11 disability;

12 ~~(10)~~ (9) That the applicant has qualified under the minimum  
13 requirements set forth in subsection (d) of this section for  
14 handling and firing the weapon: *Provided*, That this requirement  
15 shall be waived in the case of a renewal applicant who has  
16 previously qualified; and

17 ~~(11)~~ (10) That the applicant authorizes the sheriff of the  
18 county, or his or her designee, to conduct an investigation  
19 relative to the information contained in the application.

20 (b) For both initial and renewal applications, the sheriff  
21 shall conduct an investigation including ~~a nationwide criminal~~  
22 ~~background check~~ an inquiry through the National Instant Criminal  
23 Background Check System, in order to verify that the information  
24 required in ~~subdivisions (1), (2), (3), (5), (6), (8) and (9),~~

1 subsection (a) of this section is true and correct.

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

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

18       (1) Any official National Rifle Association handgun safety or  
19 training course;

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

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

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

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

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

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

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

4 (g) Before any approved license shall be issued or become  
5 effective, the applicant shall pay to the sheriff a fee in the  
6 amount of \$15 which the sheriff shall forward to the Superintendent  
7 of the West Virginia State Police within thirty days of receipt.  
8 The license shall be valid for five years throughout the state,  
9 unless sooner revoked.

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

21 (i) Each license shall contain the full name and address of  
22 the licensee and a space upon which the signature of the licensee  
23 shall be signed with pen and ink. The issuing sheriff shall sign  
24 and attach his or her seal to all license cards. The sheriff shall

1 provide to each new licensee a duplicate license card, in size  
2 similar to other state identification cards and licenses, suitable  
3 for carrying in a wallet, and the license card is considered a  
4 license for the purposes of this section.

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

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

24 (l) If a license is lost or destroyed, the person to whom the

1 license was issued may obtain a duplicate or substitute license for  
2 a fee of \$5 by filing a notarized statement with the sheriff  
3 indicating that the license has been lost or destroyed.

4 (m) The sheriff shall, immediately after the license is  
5 granted as aforesaid, furnish the Superintendent of the West  
6 Virginia State Police a certified copy of the approved application.  
7 The sheriff shall furnish to the Superintendent of the West  
8 Virginia State Police at any time so requested a certified list of  
9 all licenses issued in the county. The Superintendent of the West  
10 Virginia State Police shall maintain a registry of all persons who  
11 have been issued concealed weapons licenses.

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

21 (o) The sheriff shall deny any application or revoke any  
22 existing license upon determination that any of the licensing  
23 application requirements established in this section have been  
24 violated by the licensee.

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

5 (q) Notwithstanding the provisions of subsection (a) of this  
6 section, with respect to application by a former law-enforcement  
7 officer honorably retired from agencies governed by article  
8 fourteen, chapter seven of this code; article fourteen, chapter  
9 eight of this code; article two, chapter fifteen of this code; and  
10 article seven, chapter twenty of this code, an honorably retired  
11 officer is exempt from payment of fees and costs as otherwise  
12 required by this section. ~~and the application of the honorably~~  
13 ~~retired officer shall be granted without proof or inquiry by the~~  
14 ~~sheriff as to those requirements set forth in subdivision (9),~~  
15 ~~subsection (a) of this section, if the officer meets the remainder~~  
16 ~~of the requirements of this section and has the approval of the~~  
17 ~~appropriate chief law-enforcement officer.~~

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

23 (s) For purposes of this subsection, "misdemeanor crime of  
24 violence" means any of the following offenses at the misdemeanor

1 level, or a substantially similar offense committed in another  
2 jurisdiction:

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

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

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

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

12 (5) Unlawfully shooting at another, in violation of section  
13 eleven, article two of this chapter;

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

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

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

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

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

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

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

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

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

11 **§61-7-7. Persons prohibited from possessing or receiving firearms;**  
12 **classifications; reinstatement of rights to receive and**  
13 **possess; offenses; penalties.**

14       (a) Except as provided in subsection (b) of this section, no  
15 person may possess a firearm in this state if the person is  
16 prohibited from possessing or receiving a firearm by 18 U.S.C.  
17 §922(g) or (n).

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

22       (1) In the case of a conviction, the conviction has been  
23 expunged or set aside, or the person has received a pardon or has  
24 had the person's civil rights restored, unless the expungement or

1 pardon or restoration of rights expressly provides that the person  
2 may not ship, transport, possess or receive firearms; or

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

8       (c) The provisions of this section shall be construed in  
9 harmony with the provisions and implementing regulations of, and  
10 the federal case law interpreting, the Gun Control Act of 1968, 18  
11 U.S.C. §921 *et seq.*, and the NICS Improvement Amendments Act of  
12 2007, Pub. L. 110-180.

13       (d) In the event of a prohibition arising from a person being  
14 adjudicated as a mental defective or committed to a mental  
15 institution pursuant to the provisions of chapter twenty-seven of  
16 this code, the mental hygiene commissioner or circuit judge shall  
17 make a determination of an appropriate public or private individual  
18 or entity to act as conservator for any firearms in the person's  
19 possession and shall enter an order under which the person shall  
20 relinquish and the conservator shall take possession of the  
21 property. In the event the person's rights are restored in  
22 accordance with subdivision (2) of subsection (b) of this section,  
23 the court shall order that the property be returned to the person,  
24 unless the person has transferred title to the property in the

1 interim.

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

8 (f) Notwithstanding the provisions of subsection (e) of this  
9 section, any person:

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

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

1 of a violation of this subsection.

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

19 **ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS**  
20 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**  
21 **CONDITION TO THE NATIONAL INSTANT CRIMINAL**  
22 **BACKGROUND CHECK SYSTEM; LEGISLATIVE FINDINGS;**  
23 **DEFINITIONS; REPORTING REQUIREMENTS; REINSTATEMENT**  
24 **OF RIGHTS PROCEDURES.**

1 **§61-7A-5. Petition to remove firearm-related disabilities.**

2 (a) A person who is subject to the disabilities of 18 U.S.C.  
3 §922(d) (4) and (g) (4) or of section seven, article seven of this  
4 chapter by virtue solely of having been adjudicated as a mental  
5 defective in a proceeding under the laws of this state or having  
6 been committed to a mental institution pursuant to chapter  
7 twenty-seven of this code may petition the circuit court of the  
8 county of his or her residence to remove all such disabilities. A  
9 copy of the petition for relief shall be served upon the attorney  
10 for the state who appeared in the underlying case. The attorney  
11 may, as he or she deems appropriate, represent the interests of the  
12 state in the restoration proceedings.

13 (b) The court shall receive and consider evidence in a closed  
14 proceeding, including evidence offered by the petitioner,  
15 concerning:

16 (1) The circumstances regarding the firearm disabilities from  
17 which relief is sought;

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

20 (3) The petitioner's reputation, developed at a minimum  
21 through character witness statements, testimony or other character  
22 evidence; and

23 (4) Changes in the petitioner's condition or circumstances  
24 since the original adjudication or commitment relevant to the

1 relief sought.

2       The court shall grant the petition for relief if it finds by  
3 a preponderance of the evidence or clear and convincing evidence  
4 that the petitioner will not be likely to act in a manner dangerous  
5 to public safety and that the granting of the relief would not be  
6 contrary to the public interest. A record shall be kept of the  
7 proceedings, but it shall remain confidential and be disclosed only  
8 to a court in the event of an appeal. The petitioner may appeal a  
9 denial of the requested relief, and review on appeal shall be *de*  
10 *novo*.

11       (c) The circuit clerk of each county shall provide the  
12 Superintendent of the West Virginia State Police or his or her  
13 designee with a certified copy of any order entered pursuant to the  
14 provisions of this section. If the order removes the petitioner's  
15 firearm-related disabilities, petitioner's name shall within five  
16 business days of when the order was received be removed from the  
17 Central State Mental Health Registry. The superintendent shall  
18 within ten business days of receiving the order inform the Federal  
19 Bureau of Investigation or other federal entity operating the  
20 National Instant Criminal Background Check System that the basis  
21 for the record being made available no longer applies.

22       (d) A person may petition for relief under this section not  
23 more than once every two years and, in the case of a person who was  
24 committed to a mental institution, not before the person has been

1 discharged from the commitment.

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

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

§61-7-7 and §61-7A-5 have been completely rewritten, therefore strike-throughs and underscoring have been omitted.