

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 353

(By Senators Unger, Kessler (Mr. President),
Browning, Laird, Klempa and Snyder)

[Originating in the Committee on the Judiciary;
reported February 16, 2012.]

A BILL to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to possession of firearms generally; clarifying what constitutes carrying a handgun concealed in or on a motor vehicle; procedures for obtaining a license to carry a concealed handgun; providing application requirements; requiring investigations of applicants through a national criminal background check system and the West Virginia database; providing definitions; prohibiting certain persons from possessing or receiving firearms; providing exceptions; allowing licenses to be transferable within the state; requiring

reporting of new address; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

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

9 (2) “Gravity knife” means any knife that has a blade
10 released from the handle by the force of gravity or the
11 application of centrifugal force and when so released is
12 locked in place by means of a button, spring, lever or other
13 locking or catching device.

14 (3) “Knife” means an instrument, intended to be used or
15 readily adaptable to be used as a weapon, consisting of a
16 sharp-edged or sharp-pointed blade, usually made of steel,

17 attached to a handle which is capable of inflicting cutting,
18 stabbing or tearing wounds. The term “knife” shall include,
19 but not be limited to, any dagger, dirk, poniard or stiletto,
20 with a blade over three and one-half inches in length, any
21 switchblade knife or gravity knife and any other instrument
22 capable of inflicting cutting, stabbing or tearing wounds. A
23 pocket knife with a blade three and one-half inches or less in
24 length, a hunting or fishing knife carried for hunting,
25 fishing, sports or other recreational uses or a knife designed
26 for use as a tool or household implement shall not be in-
27 cluded within the term “knife” as defined herein unless such
28 knife is knowingly used or intended to be used to produce
29 serious bodily injury or death.

30 (4) “Switchblade knife” means any knife having a
31 spring-operated blade which opens automatically upon
32 pressure being applied to a button, catch or other releasing
33 device in its handle.

34 (5) “Nunchuka” means a flailing instrument consisting
35 of two or more rigid parts, connected by a chain, cable, rope
36 or other nonrigid, flexible or springy material, constructed
37 in such a manner as to allow the rigid parts to swing freely
38 so that one rigid part may be used as a handle and the other
39 rigid part may be used as the striking end.

40 (6) "Metallic or false knuckles" means a set of finger
41 rings attached to a transverse piece to be worn over the front
42 of the hand for use as a weapon and constructed in such a
43 manner that, when striking another person with the fist or
44 closed hand, considerable physical damage may be inflicted
45 upon the person struck. The terms "metallic or false knuck-
46 les" shall include any such instrument without reference to
47 the metal or other substance or substances from which the
48 metallic or false knuckles are made.

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

52 (8) "Revolver" means a short firearm having a cylinder
53 of several chambers that are brought successively into line
54 with the barrel to be discharged, designed to be aimed and
55 fired by the use of a single hand.

56 (9) "Deadly weapon" means an instrument which is
57 designed to be used to produce serious bodily injury or death
58 or is readily adaptable to such use. The term "deadly
59 weapon" shall include, but not be limited to, the instruments
60 defined in subdivisions (1) through (8), inclusive, of this
61 section or other deadly weapons of like kind or character

62 which may be easily concealed on or about the person. For
63 the purposes of section one-a, article five, chapter eighteen-a
64 of this code and section eleven-a, article seven of this
65 chapter, in addition to the definition of “knife” set forth in
66 subdivision (3) of this section, the term “deadly weapon” also
67 includes any instrument included within the definition of
68 “knife” with a blade of three and one-half inches or less in
69 length. Additionally, for the purposes of section one-a,
70 article five, chapter eighteen-a of this code and section
71 eleven-a, article seven of this chapter, the term “deadly
72 weapon” includes explosive, chemical, biological and
73 radiological materials. Notwithstanding any other provision
74 of this section, the term “deadly weapon” does not include
75 any item or material owned by the school or county board,
76 intended for curricular use, and used by the student at the
77 time of the alleged offense solely for curricular purposes.

78 (10) “Concealed” means hidden from ordinary observa-
79 tion so as to prevent disclosure or recognition. A deadly
80 weapon is concealed when it is carried on or about the
81 person in such a manner that another person in the ordinary
82 course of events would not be placed on notice that the
83 deadly weapon was being carried. For purposes of concealed

84 handgun licensees, a licensee shall be deemed to be carrying
85 on or about his or her person while in or on a motor vehicle
86 if the firearm is located in a storage area in or on the motor
87 vehicle.

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

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

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

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

1 (a) Except as provided in subsection (h) of this section,
2 any person desiring to obtain a state license to carry a
3 concealed deadly weapon shall apply to the sheriff of his or
4 her county for the license, and shall pay to the sheriff, at the
5 time of application, a fee of \$75, of which \$15 of that amount
6 shall be deposited in the Courthouse Facilities Improvement
7 Fund created by section six, article twenty-six, chapter
8 twenty-nine of this code. Concealed weapons permits may
9 only be issued for pistols or revolvers. Each applicant shall

10 file with the sheriff a complete application, as prepared by
11 the Superintendent of the West Virginia State Police, in
12 writing, duly verified, which sets forth only the following
13 licensing requirements:

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

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

27 (3) That the applicant is twenty-one years of age or older:
28 *Provided*, That any individual who is less than twenty-one
29 years of age and possesses a properly issued concealed
30 weapons license as of the effective date of this article shall
31 be licensed to maintain his or her concealed weapons license

32 notwithstanding the provisions of this section requiring new
33 applicants to be at least twenty-one years of age: *Provided,*
34 *however,* That upon a showing of any applicant who is
35 eighteen years of age or older that he or she is required to
36 carry a concealed weapon as a condition for employment,
37 and presents satisfactory proof to the sheriff thereof, then he
38 or she shall be issued a license upon meeting all other
39 conditions of this section. Upon discontinuance of employ-
40 ment that requires the concealed weapons license, if the
41 individual issued the license is not yet twenty-one years of
42 age, then the individual issued the license is no longer
43 eligible and must return his or her license to the issuing
44 sheriff;

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

49 (A) Residential or court-ordered treatment for alcoholism
50 or alcohol detoxification or drug treatment; or

51 (B) Two or more convictions for driving while under the
52 influence or driving while impaired;

53 (5) That the applicant has not been convicted of a felony
54 or of an act of a misdemeanor crime of violence involving the
55 misuse of a deadly weapon within the five years immediately
56 preceding the application: *Provided*, That a person convicted
57 of a misdemeanor crime of domestic violence as defined in 18
58 U. S. C. §921(a)(33), or a misdemeanor offense of assault or
59 battery either under the provisions of section twenty-eight,
60 article two of this chapter or the provisions of subsection (b)
61 or (c), section nine, article two of this chapter in which the
62 victim was a current or former spouse, current or former
63 sexual or intimate partner, person with whom the defendant
64 cohabits or has cohabited, a parent or guardian, the defen-
65 dant's child or ward or a member of the defendant's house-
66 hold at the time of the offense, or a misdemeanor offense
67 with similar essential elements in a jurisdiction other than
68 the state the applicant prohibited from possessing a firearm;

69 ~~(6) That the applicant has not been convicted of a~~
70 ~~misdemeanor offense of assault or battery either under the~~
71 ~~provisions of section twenty-eight, article two of this chapter~~
72 ~~or the provisions of subsection (b) or (c), section nine, article~~
73 ~~two of this chapter in which the victim was a current or~~
74 ~~former spouse, current or former sexual or intimate partner,~~

75 ~~person with whom the defendant has a child in common,~~
76 ~~person with whom the defendant cohabits or has cohabited,~~
77 ~~a parent or guardian, the defendant's child or ward or a~~
78 ~~member of the defendant's household at the time of the~~
79 ~~offense; or a misdemeanor offense with similar essential~~
80 ~~elements in a jurisdiction other than this state.~~

81 (7) (6) That the applicant is not under indictment for a
82 felony offense or is not currently serving a sentence of
83 confinement, parole, probation or other court-ordered
84 supervision imposed by a court of any jurisdiction or is the
85 subject of an emergency or temporary domestic violence
86 protective order or is the subject of a final domestic violence
87 protective order entered by a court of any jurisdiction;

88 ~~(8) That the applicant is physically and mentally compe-~~
89 ~~tent to carry the weapon;~~

90 (9) (7) That the applicant has not been adjudicated to be
91 mentally incompetent. If the applicant has been adjudicated
92 mentally incompetent the applicant must provide a court
93 order reflecting that the applicant is no longer under such
94 disability;

95 ~~(10)~~ (8) That the applicant has qualified under the
96 minimum requirements set forth in subsection (d) of this

97 section for handling and firing the weapon: *Provided*, That
98 this requirement shall be waived in the case of a renewal
99 applicant who has previously qualified; and

100 ~~(11)~~ (9) That the applicant authorizes the sheriff of the
101 county, or his or her designee, to conduct an investigation
102 relative to the information contained in the application.

103 (b) For both initial and renewal applications, the sheriff
104 shall conduct an investigation including a nationwide
105 criminal background check consisting of checking the
106 National Instant Criminal Background Check System and
107 the West Virginia criminal history record responses in order
108 to verify that the information required in ~~subdivisions (1),~~
109 ~~(2), (3), (5), (6), (8) and (9)~~, subsection (a) of this section is
110 true and correct.

111 (c) \$60 of the application fee and any fees for replace-
112 ment of lost or stolen licenses received by the sheriff shall be
113 deposited by the sheriff into a Concealed Weapons License
114 Administration Fund. The fund shall be administered by the
115 sheriff and shall take the form of an interest-bearing account
116 with any interest earned to be compounded to the fund. Any
117 funds deposited in this Concealed Weapon License Adminis-
118 tration Fund are to be expended by the sheriff to pay for the

119 costs associated with issuing concealed weapons licenses.
120 Any surplus in the fund on hand at the end of each fiscal
121 year may be expended for other law-enforcement purposes
122 or operating needs of the sheriff's office, as the sheriff may
123 consider appropriate.

124 (d) All persons applying for a license must complete a
125 training course in handling and firing a handgun. The
126 successful completion of any of the following courses fulfills
127 this training requirement:

128 (1) Any official National Rifle Association handgun
129 safety or training course;

130 (2) Any handgun safety or training course or class
131 available to the general public offered by an official
132 law-enforcement organization, community college, junior
133 college, college or private or public institution or organiza-
134 tion or handgun training school utilizing instructors duly
135 certified by the institution;

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

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

142 A photocopy of a certificate of completion of any of the
143 courses or classes or an affidavit from the instructor, school,
144 club, organization or group that conducted or taught said
145 course or class attesting to the successful completion of the
146 course or class by the applicant or a copy of any document
147 which shows successful completion of the course or class
148 shall constitute evidence of qualification under this section.

149 (e) All concealed weapons license applications must be
150 notarized by a notary public duly licensed under article four,
151 chapter twenty-nine of this code. Falsification of any portion
152 of the application constitutes false swearing and is punish-
153 able under the provisions of section two, article five, chapter
154 sixty-one of this code.

155 (f) ~~If the information in the application is found to be~~
156 ~~true and correct,~~ The sheriff shall issue a license unless he or
157 she determines that the application is incomplete, that it
158 contains statements that are materially false or incorrect or
159 that applicant otherwise does not meet the requirements set
160 forth in this section. The sheriff shall issue, reissue or deny
161 the license within forty-five days after the application is
162 filed if all required background checks authorized by this
163 section are completed.

164 (g) Before any approved license shall be issued or become
165 effective, the applicant shall pay to the sheriff a fee in the
166 amount of ~~\$15~~ \$25 which the sheriff shall forward to the
167 Superintendent of the West Virginia State Police within
168 thirty days of receipt. The license shall be valid for five years
169 throughout the state, unless sooner revoked.

170 ~~(h) All persons holding a current and valid concealed~~
171 ~~weapons license as of December 16, 1995, shall continue to~~
172 ~~hold a valid concealed weapons license until his or her~~
173 ~~license expires or is revoked as provided in this article:~~
174 ~~Provided, That all reapplication fees shall be waived for~~
175 ~~applications received by January 1, 1997, for any person~~
176 ~~holding a current and valid concealed weapons license as of~~
177 ~~December 16, 1995, which contains use restrictions placed~~
178 ~~upon the license as a condition of issuance by the issuing~~
179 ~~circuit court. Any licenses reissued pursuant to this subsec-~~
180 ~~tion will be issued for the time period of the original license.~~

181 (†) (h) Each license shall contain the full name and
182 address of the licensee and a space upon which the signature
183 of the licensee shall be signed with pen and ink. The issuing
184 sheriff shall sign and attach his or her seal to all license
185 cards. The sheriff shall provide to each new licensee a

186 duplicate license card, in size similar to other state identifi-
187 cation cards and licenses, suitable for carrying in a wallet,
188 and the license card is considered a license for the purposes
189 of this section.

190 (†) (i) The Superintendent of the West Virginia State
191 Police shall prepare uniform applications for licenses and
192 license cards showing that the license has been granted and
193 shall do any other act required to be done to protect the state
194 and see to the enforcement of this section.

195 (†) (j) If an application is denied, the specific reasons for
196 the denial shall be stated by the sheriff denying the applica-
197 tion. Any person denied a license may file, in the circuit
198 court of the county in which the application was made, a
199 petition seeking review of the denial. The petition shall be
200 filed within thirty days of the denial. The court shall then
201 determine whether the applicant is entitled to the issuance
202 of a license under the criteria set forth in this section. The
203 applicant may be represented by counsel, but in no case may
204 the court be required to appoint counsel for an applicant.
205 The final order of the court shall include the court's findings
206 of fact and conclusions of law. If the final order upholds the
207 denial, the applicant may file an appeal in accordance with

208 the Rules of Appellate Procedure of the Supreme Court of
209 Appeals.

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

214 (l) Whenever any person after applying for and receiving
215 a concealed handgun license moves from the address named
216 in the application to another county within the state, the
217 license remains valid for the remainder of the five years:
218 Provided, That the licensee within twenty days thereafter
219 notifies the sheriff in the new county of residence in writing
220 of the old and new addresses.

221 (m) The sheriff shall, immediately after the license is
222 granted as aforesaid, furnish the Superintendent of the West
223 Virginia State Police a certified copy of the approved
224 application. The sheriff shall furnish to the Superintendent
225 of the West Virginia State Police at any time so requested a
226 certified list of all licenses issued in the county. The Superin-
227 tendent of the West Virginia State Police shall maintain a
228 registry of all persons who have been issued concealed
229 weapons licenses.

230 (n) Except when subject to an exception under section
231 six, article seven of this chapter, all licensees must carry
232 with them a state-issued photo identification card with the
233 concealed weapons license whenever the licensee is carrying
234 a concealed weapon. Any licensee who, in violation of this
235 subsection, fails to have in his or her possession a
236 state-issued photo identification card and a current con-
237 cealed weapons license while carrying a concealed weapon
238 is guilty of a misdemeanor and, upon conviction thereof,
239 shall be fined not less than \$50 or more than \$200 for each
240 offense.

241 (o) The sheriff shall deny any application or revoke any
242 existing license upon determination that any of the licensing
243 application requirements established in this section have
244 been violated by the licensee.

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

249 (q) Notwithstanding the provisions of subsection (a) of
250 this section, with respect to application by a former
251 law-enforcement officer honorably retired from agencies

252 governed by article fourteen, chapter seven of this code;
253 article fourteen, chapter eight of this code; article two,
254 chapter fifteen of this code; and article seven, chapter twenty
255 of this code, an honorably retired officer is exempt from
256 payment of fees and costs as otherwise required by this
257 section. ~~and the application of the honorably retired officer~~
258 ~~shall be granted without proof or inquiry by the sheriff as to~~
259 ~~those requirements set forth in subdivision (9), subsection (a)~~
260 ~~of this section, if the officer meets the remainder of the~~
261 ~~requirements of this section and has the approval of the~~
262 ~~appropriate chief law-enforcement officer.~~

263 (r) Except as restricted or prohibited by the provisions of
264 this article or as otherwise prohibited by law, the issuance of
265 a concealed weapon permit issued in accordance with the
266 provisions of this section authorizes the holder of the permit
267 to carry a concealed pistol or revolver on the lands or waters
268 of this state.

**§61-7-7. Persons prohibited from possessing firearms; classifica-
tions; reinstatement of rights to possess; offenses;
penalties.**

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

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

6 (2) Is habitually addicted to alcohol;

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

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

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

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

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

25 (A) Was issued after a hearing of which such person
26 received actual notice and at which such person had an
27 opportunity to participate;

28 (B) Restrains such person from harassing, stalking or
29 threatening an intimate partner of such person or child of
30 such intimate partner or person, or engaging in other
31 conduct that would place an intimate partner in reasonable
32 fear of bodily injury to the partner or child; and

33 (C)(i) Includes a finding that such person represents a
34 credible threat to the physical safety of such intimate
35 partner or child; or

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

40 (8) Has been convicted of a misdemeanor offense of
41 assault or battery either under the provisions of section
42 twenty-eight, article two of this chapter or the provisions of
43 subsection (b) or (c), section nine of said article or a federal
44 or state statute with the same essential elements in which the
45 victim was a current or former spouse, current or former
46 sexual or intimate partner, person with whom the defendant

47 has a child in common, person with whom the defendant
48 cohabits or has cohabited, a parent or guardian, the defen-
49 dant's child or ward or a member of the defendant's house-
50 hold at the time of the offense or has been convicted in any
51 court of any jurisdiction of a comparable misdemeanor crime
52 of domestic violence.

53 Any person who violates the provisions of this subsection
54 shall be guilty of a misdemeanor and, upon conviction
55 thereof, shall be fined not less than \$100 nor more than
56 \$1,000 or confined in the county jail for not less than ninety
57 days nor more than one year, or both.

58 (b) Notwithstanding the provisions of subsection (a) of
59 this section, any person:

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

63 (2) Who has been convicted in this state or any other
64 jurisdiction of a felony controlled substance offense involv-
65 ing a Schedule I controlled substance other than marijuana,
66 a Schedule II or a Schedule III controlled substance as such
67 are defined in sections two hundred four, two hundred five
68 and two hundred six, article two, chapter sixty-a of this code

69 and who possesses a firearm as such is defined in section two
70 of this article shall be guilty of a felony and, upon conviction
71 thereof, shall be confined in a state correctional facility for
72 not more than five years or fined not more than \$5,000, or
73 both. The provisions of subsection (c) of this section shall not
74 apply to persons convicted of offenses referred to in this
75 subsection or to persons convicted of a violation of this
76 subsection.

77 (c) Any person prohibited from possessing a firearm by
78 the provisions of subsection (a) of this section may petition
79 the circuit court of the county in which he or she resides to
80 regain the ability to possess a firearm and if the court finds
81 by clear and convincing evidence that the person is compe-
82 tent and capable of exercising the responsibility concomitant
83 with the possession of a firearm, the court may enter an
84 order allowing the person to possess a firearm if such
85 possession would not violate any federal law: *Provided*, That
86 a person prohibited from possessing a firearm by the provi-
87 sions of subdivision (4), subsection (a) of this section may
88 petition to regain the ability to possess a firearm in accor-
89 dance with the provisions of section five, article seven-a of
90 this chapter.