

1 **ENGROSSED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 2431**

5
6 (By Delegates R. Phillips, Cowles, Hunt, Marcum,
7 Moye, Pethtel and Stowers)

8 (Originating in the Committee on the Judiciary)

9 (March 29, 2013)

10

11 A bill to amend and reenact §61-7-4 of the Code of West Virginia,
12 1931, as amended, relating to the process for obtaining a
13 state license to carry a concealed deadly weapon; clarifying
14 certain restrictions and prohibitions; clarifying effect of
15 expungement, pardons or reversal of prior offenses on permit
16 application; clarifying training and certification
17 requirements; clarifying background check requirements; and
18 exempting active military and veterans from licensing fees.

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

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

22 **ARTICLE 7. DANGEROUS WEAPONS.**

23 **§61-7-4. License to carry deadly weapons; how obtained.**

24 (a) Except as provided in subsection (h) of this section, any
25 person desiring to obtain a state license to carry a concealed
26 deadly weapon shall apply to the sheriff of his or her county for

1 the license, and shall pay to the sheriff, at the time of
2 application, a fee of \$75, of which \$15 of that amount shall be
3 deposited in the Courthouse Facilities Improvement Fund created by
4 section six, article twenty-six, chapter twenty-nine of this code.
5 Concealed weapons permits may only be issued for pistols or
6 revolvers. Each applicant shall file with the sheriff a complete
7 application, as prepared by the Superintendent of the West Virginia
8 State Police, in writing, duly verified, which sets forth only the
9 following licensing requirements:

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

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

21 (3) That the applicant is twenty-one years of age or older:
22 *Provided*, That any individual who is less than twenty-one years of
23 age and possesses a properly issued concealed weapons license as of
24 the effective date of this article shall be licensed to maintain
25 his or her concealed weapons license notwithstanding the provisions
26 of this section requiring new applicants to be at least twenty-one

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

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

15 (A) Residential or court-ordered treatment for alcoholism or
16 alcohol detoxification or drug treatment; or

17 (B) Two or more convictions for driving while under the
18 influence or driving while impaired;

19 (5) That the applicant has not been convicted of a felony, ~~or~~
20 of an act unless the conviction has been expunged or set aside or
21 the applicant's civil rights have been restored or the applicant
22 has been pardoned for the offense;

23 (6) That the applicant has not been convicted of a misdemeanor
24 crime of violence involving the misuse of a deadly weapon within
25 the five years immediately preceding the application;

26 (7) That the applicant has not been convicted of:

1 (A) A misdemeanor crime of domestic violence as defined in 18
2 U. S. C. §921(a) (33);

3 (B) ~~or of~~ A misdemeanor offense of assault or battery either
4 under the provisions of section twenty-eight, article two of this
5 chapter or the provisions of subsection (b) or (c), section nine,
6 article two of this chapter in which the victim was a current or
7 former spouse, current or former sexual or intimate partner, a
8 person with whom the defendant cohabits or has cohabited, a parent
9 or guardian, the defendant's child or ward or a member of the
10 defendant's household at the time of the offense; or

11 (C) A misdemeanor offense with similar essential elements in
12 a jurisdiction other than this state;

13 ~~(7)~~ (8) That the applicant is not under indictment for a
14 felony offense or is not currently serving a sentence of
15 confinement, parole, probation or other court-ordered supervision
16 imposed by a court of any jurisdiction or is the subject of an
17 emergency or temporary domestic violence protective order or is the
18 subject of a final domestic violence protective order entered by a
19 court of any jurisdiction;

20 ~~(8)~~ (9) That the applicant has not been adjudicated to be
21 mentally incompetent or involuntarily committed to a mental
22 institution. If the applicant has been adjudicated mentally
23 incompetent or involuntarily committed to a mental institution, the
24 applicant must provide a court order reflecting that the applicant
25 is no longer under such disability and the applicant's right to
26 possess or receive a firearm have been restored;

1 (10) That the applicant is not otherwise prohibited from
2 possessing or receiving a firearm by 18 U.S.C. § 922(g) or (n) or
3 by section seven of this article;

4 ~~(9)~~ (11) That the applicant has qualified under the minimum
5 requirements set forth in subsection (d) of this section for
6 handling and firing the weapon: *Provided*, That this requirement
7 shall be waived in the case of a renewal applicant who has
8 previously qualified; and

9 ~~(10)~~ (12) That the applicant authorizes the sheriff of the
10 county, or his or her designee, to conduct an investigation
11 relative to the information contained in the application.

12 (b) For both initial and renewal applications, the sheriff
13 shall conduct an investigation including ~~a nationwide criminal~~
14 ~~background check consisting of checking~~ an inquiry of the National
15 Instant Criminal Background Check System and the West Virginia
16 criminal history record responses, and shall review the information
17 received in order to verify that the information required in
18 subsection (a) of this section is true and correct.

19 (c) Sixty dollars of the application fee and any fees for
20 replacement of lost or stolen licenses received by the sheriff
21 shall be deposited by the sheriff into a Concealed Weapons License
22 Administration Fund. The fund shall be administered by the sheriff
23 and shall take the form of an interest-bearing account with any
24 interest earned to be compounded to the fund. Any funds deposited
25 in this Concealed Weapon License Administration Fund are to be
26 expended by the sheriff to pay for the costs associated with

1 issuing concealed weapons licenses. Any surplus in the fund on
2 hand at the end of each fiscal year may be expended for other
3 law-enforcement purposes or operating needs of the sheriff's
4 office, as the sheriff may consider appropriate.

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

9 (1) Any official National Rifle Association handgun safety or
10 training course;

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

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

19 (4) Any handgun training or safety course or class conducted
20 by any branch of the United States Military, Reserve or National
21 Guard or proof of other handgun qualification received while
22 serving in any branch of the United States Military, Reserve or
23 National Guard.

24 Current members of the United States Military, Reserve or
25 National Guard or persons with an honorable discharge from any
26 branch of the United States Military who apply for a license under

1 this section are exempt from the payment of any fees required by
2 this section, but are subject to the remaining licensing
3 requirements of this section.

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

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

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

24 (g) Before any approved license shall be issued or become
25 effective, the applicant shall pay to the sheriff a fee in the
26 amount of \$25 which the sheriff shall forward to the Superintendent

1 of the West Virginia State Police within thirty days of receipt.
2 The license shall be valid for five years throughout the state,
3 unless sooner revoked.

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

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

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

1 include the court's findings of fact and conclusions of law. If
2 the final order upholds the denial, the applicant may file an
3 appeal in accordance with the Rules of Appellate Procedure of the
4 Supreme Court of Appeals.

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

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

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

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

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

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

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

14 (q) Notwithstanding the provisions of subsection (a) of this
15 section, with respect to application by a former law-enforcement
16 officer honorably retired from agencies governed by article
17 fourteen, chapter seven of this code; article fourteen, chapter
18 eight of this code; article two, chapter fifteen of this code; and
19 article seven, chapter twenty of this code, an honorably retired
20 officer is exempt from payment of fees and costs as otherwise
21 required by this section. All other application and background
22 check requirements specified in this section apply to these
23 applicants.

24 (r) Except as restricted or prohibited by the provisions of
25 this article or as otherwise prohibited by law, the issuance of a
26 concealed weapon permit issued in accordance with the provisions of

1 this section authorizes the holder of the permit to carry a
2 concealed pistol or revolver on the lands or waters of this state.