

COMMITTEE SUBSTITUTE

FOR

H. B. 2431

(BY DELEGATE(S) R. PHILLIPS, COWLES, HUNT, MARCUM,
MOYE, PETHTEL AND STOWERS)

(Originating in the Committee on the Judiciary)
(March 29, 2013)

A BILL to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to the application process for obtaining a state license to carry a concealed deadly weapon; clarifying certain restrictions and prohibitions; clarifying effect of expungement, pardons or reversal of prior offenses on permit application; and clarifying background check requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

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

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

13 (1) The applicant's full name, date of birth, Social Security
14 number, a description of the applicant's physical features, the
15 applicant's place of birth, the applicant's country of citizenship
16 and, if the applicant is not a United States citizen, any alien or
17 admission number issued by the United States Bureau of
18 Immigration and Customs enforcement, and any basis, if

19 applicable, for an exception to the prohibitions of 18 U. S. C.
20 §922(g)(5)(B);

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

25 (3) That the applicant is twenty-one years of age or older:
26 *Provided*, That any individual who is less than twenty-one years
27 of age and possesses a properly issued concealed weapons
28 license as of the effective date of this article shall be licensed to
29 maintain his or her concealed weapons license notwithstanding
30 the provisions of this section requiring new applicants to be at
31 least twenty-one years of age: *Provided, however*, That upon a
32 showing of any applicant who is eighteen years of age or older
33 that he or she is required to carry a concealed weapon as a
34 condition for employment, and presents satisfactory proof to the
35 sheriff thereof, then he or she shall be issued a license upon
36 meeting all other conditions of this section. Upon discontinuance
37 of employment that requires the concealed weapons license, if
38 the individual issued the license is not yet twenty-one years of

39 age, then the individual issued the license is no longer eligible
40 and must return his or her license to the issuing sheriff;

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

45 (A) Residential or court-ordered treatment for alcoholism or
46 alcohol detoxification or drug treatment; or

47 (B) Two or more convictions for driving while under the
48 influence or driving while impaired;

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

53 (6) That the applicant has not been convicted of a
54 misdemeanor crime of violence involving the misuse of a deadly
55 weapon within the five years immediately preceding the
56 application;

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

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

60 (B) ~~or of~~ A misdemeanor offense of assault or battery either
61 under the provisions of section twenty-eight, article two of this
62 chapter or the provisions of subsection (b) or (c), section nine,
63 article two of this chapter in which the victim was a current or
64 former spouse, current or former sexual or intimate partner, a
65 person with whom the defendant cohabits or has cohabited, a
66 parent or guardian, the defendant's child or ward or a member of
67 the defendant's household at the time of the offense; or

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

70 ~~(7)~~ (8) That the applicant is not under indictment for a felony
71 offense or is not currently serving a sentence of confinement,
72 parole, probation or other court-ordered supervision imposed by
73 a court of any jurisdiction or is the subject of an emergency or
74 temporary domestic violence protective order or is the subject of
75 a final domestic violence protective order entered by a court of
76 any jurisdiction;

77 ~~(8)~~ (9) That the applicant has not been adjudicated to be
78 mentally incompetent or involuntarily committed to a mental
79 institution. If the applicant has been adjudicated mentally

80 incompetent or involuntarily committed to a mental institution,
81 the applicant must provide a court order reflecting that the
82 applicant is no longer under such disability and the applicant's
83 right to possess or receive a firearm have been restored;

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

87 ~~(9)~~ (11) That the applicant has qualified under the minimum
88 requirements set forth in subsection (d) of this section for
89 handling and firing the weapon: *Provided*, That this requirement
90 shall be waived in the case of a renewal applicant who has
91 previously qualified; and

92 ~~(10)~~ (12) That the applicant authorizes the sheriff of the
93 county, or his or her designee, to conduct an investigation
94 relative to the information contained in the application.

95 (b) For both initial and renewal applications, the sheriff shall
96 conduct an investigation including ~~a nationwide criminal~~
97 ~~background check consisting of checking~~ an inquiry of the
98 National Instant Criminal Background Check System and the
99 West Virginia criminal history record responses, and shall

100 review the information received in order to verify that the
101 information required in subsection (a) of this section is true and
102 correct.

103 (c) Sixty dollars of the application fee and any fees for
104 replacement of lost or stolen licenses received by the sheriff
105 shall be deposited by the sheriff into a Concealed Weapons
106 License Administration Fund. The fund shall be administered by
107 the sheriff and shall take the form of an interest-bearing account
108 with any interest earned to be compounded to the fund. Any
109 funds deposited in this Concealed Weapon License
110 Administration Fund are to be expended by the sheriff to pay for
111 the costs associated with issuing concealed weapons licenses.
112 Any surplus in the fund on hand at the end of each fiscal year
113 may be expended for other law-enforcement purposes or
114 operating needs of the sheriff's office, as the sheriff may
115 consider appropriate.

116 (d) All persons applying for a license must complete a
117 training course in handling and firing a handgun. The successful
118 completion of any of the following courses fulfills this training
119 requirement:

120 (1) Any official National Rifle Association handgun safety
121 or training course;

122 (2) Any handgun safety or training course or class available
123 to the general public offered by an official law-enforcement
124 organization, community college, junior college, college or
125 private or public institution or organization or handgun training
126 school utilizing instructors duly certified by the institution;

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

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

133 A photocopy of a certificate of completion of any of the
134 courses or classes or an affidavit from the instructor, school,
135 club, organization or group that conducted or taught said course
136 or class attesting to the successful completion of the course or
137 class by the applicant or a copy of any document which shows
138 successful completion of the course or class shall constitute
139 evidence of qualification under this section.

140 (e) All concealed weapons license applications must be
141 notarized by a notary public duly licensed under article four,
142 chapter twenty-nine of this code. Falsification of any portion of
143 the application constitutes false swearing and is punishable
144 under the provisions of section two, article five, chapter
145 sixty-one of this code.

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

153 (g) Before any approved license shall be issued or become
154 effective, the applicant shall pay to the sheriff a fee in the
155 amount of \$25 which the sheriff shall forward to the
156 Superintendent of the West Virginia State Police within thirty
157 days of receipt. The license shall be valid for five years
158 throughout the state, unless sooner revoked.

159 (h) Each license shall contain the full name and address of
160 the licensee and a space upon which the signature of the licensee

161 shall be signed with pen and ink. The issuing sheriff shall sign
162 and attach his or her seal to all license cards. The sheriff shall
163 provide to each new licensee a duplicate license card, in size
164 similar to other state identification cards and licenses, suitable
165 for carrying in a wallet, and the license card is considered a
166 license for the purposes of this section.

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

172 (j) If an application is denied, the specific reasons for the
173 denial shall be stated by the sheriff denying the application. Any
174 person denied a license may file, in the circuit court of the
175 county in which the application was made, a petition seeking
176 review of the denial. The petition shall be filed within thirty days
177 of the denial. The court shall then determine whether the
178 applicant is entitled to the issuance of a license under the criteria
179 set forth in this section. The applicant may be represented by
180 counsel, but in no case may the court be required to appoint

181 counsel for an applicant. The final order of the court shall
182 include the court's findings of fact and conclusions of law. If the
183 final order upholds the denial, the applicant may file an appeal
184 in accordance with the Rules of Appellate Procedure of the
185 Supreme Court of Appeals.

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

190 (l) Whenever any person after applying for and receiving a
191 concealed handgun license moves from the address named in the
192 application to another county within the state, the license
193 remains valid for the remainder of the five years: *Provided*, That
194 the licensee within twenty days thereafter notifies the sheriff in
195 the new county of residence in writing of the old and new
196 addresses.

197 (m) The sheriff shall, immediately after the license is
198 granted as aforesaid, furnish the Superintendent of the West
199 Virginia State Police a certified copy of the approved
200 application. The sheriff shall furnish to the Superintendent of the

201 West Virginia State Police at any time so requested a certified
202 list of all licenses issued in the county. The Superintendent of the
203 West Virginia State Police shall maintain a registry of all
204 persons who have been issued concealed weapons licenses.

205 (n) Except when subject to an exception under section six,
206 article seven of this chapter, all licensees must carry with them
207 a state-issued photo identification card with the concealed
208 weapons license whenever the licensee is carrying a concealed
209 weapon. Any licensee who, in violation of this subsection, fails
210 to have in his or her possession a state-issued photo
211 identification card and a current concealed weapons license
212 while carrying a concealed weapon is guilty of a misdemeanor
213 and, upon conviction thereof, shall be fined not less than \$50 or
214 more than \$200 for each offense.

215 (o) The sheriff shall deny any application or revoke any
216 existing license upon determination that any of the licensing
217 application requirements established in this section have been
218 violated by the licensee.

219 (p) A person who is engaged in the receipt, review or in the
220 issuance or revocation of a concealed weapon license does not

221 incur any civil liability as the result of the lawful performance of
222 his or her duties under this article.

223 (q) Notwithstanding the provisions of subsection (a) of this
224 section, with respect to application by a former law-enforcement
225 officer honorably retired from agencies governed by article
226 fourteen, chapter seven of this code; article fourteen, chapter
227 eight of this code; article two, chapter fifteen of this code; and
228 article seven, chapter twenty of this code, an honorably retired
229 officer is exempt from payment of fees and costs as otherwise
230 required by this section. All other application and background
231 check requirements specified in this section apply to these
232 applicants.

233 (r) Except as restricted or prohibited by the provisions of this
234 article or as otherwise prohibited by law, the issuance of a
235 concealed weapon permit issued in accordance with the
236 provisions of this section authorizes the holder of the permit to
237 carry a concealed pistol or revolver on the lands or waters of this
238 state.

