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ENGROSSED

H. B. 4310

(By Delegates R. Phillips, Marcum, White,
Barker, Tomblin, Craig, A. Evans, Ashley,
Sponaugle, R. Smith and Diserio)

[Introduced January 24, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §61-7-4 of the Code of West Virginia,
1931, as amended, relating to making gun permits and
applications confidential except for law enforcement purposes.

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.

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

1 revolvers. Each applicant shall file with the sheriff a complete
2 application, as prepared by the Superintendent of the West Virginia
3 State Police, in writing, duly verified, which sets forth only the
4 following licensing requirements:

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

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

16 (3) That the applicant is twenty-one years of age or older:
17 *Provided*, That any individual who is less than twenty-one years of
18 age and possesses a properly issued concealed weapons license as of
19 the effective date of this article shall be licensed to maintain
20 his or her concealed weapons license notwithstanding the provisions
21 of this section requiring new applicants to be at least twenty-one
22 years of age: *Provided, however*, That upon a showing of any
23 applicant who is eighteen years of age or older that he or she is
24 required to carry a concealed weapon as a condition for employment,

1 and presents satisfactory proof to the sheriff thereof, then he or
2 she shall be issued a license upon meeting all other conditions of
3 this section. Upon discontinuance of employment that requires the
4 concealed weapons license, if the individual issued the license is
5 not yet twenty-one years of age, then the individual issued the
6 license is no longer eligible and must return his or her license to
7 the issuing sheriff;

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

12 (A) Residential or court-ordered treatment for alcoholism or
13 alcohol detoxification or drug treatment; or

14 (B) Two or more convictions for driving while under the
15 influence or driving while impaired;

16 (5) That the applicant has not been convicted of a felony
17 unless the conviction has been expunged or set aside or the
18 applicant's civil rights have been restored or the applicant has
19 been unconditionally pardoned for the offense;

20 (6) That the applicant has not been convicted of a misdemeanor
21 crime of violence other than an offense set forth in subsection (7)
22 of this section in the five years immediately preceding the
23 application;

24 (7) That the applicant has not been convicted of a misdemeanor

1 crime of domestic violence as defined in 18 U. S. C. § 921(a)(33),
2 or a misdemeanor offense of assault or battery either under the
3 provisions of section twenty-eight, article two of this chapter or
4 the provisions of subsection (b) or (c), section nine, article two
5 of this chapter in which the victim was a current or former spouse,
6 current or former sexual or intimate partner, person with whom the
7 defendant cohabits or has cohabited, a parent or guardian, the
8 defendant's child or ward or a member of the defendant's household
9 at the time of the offense, or a misdemeanor offense with similar
10 essential elements in a jurisdiction other than this state;

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

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

1 (10) That the applicant is not prohibited under the provisions
2 of section seven of this article or federal law, including
3 18 U.S.C. § 922(q) or (n), from receiving, possessing or
4 transporting a firearm;

5 ~~(10)~~ (11) That the applicant has qualified under the minimum
6 requirements set forth in subsection (d) of this section for
7 handling and firing the weapon: *Provided*, That this requirement
8 shall be waived in the case of a renewal applicant who has
9 previously qualified; and

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

13 (b) For both initial and renewal applications, the sheriff
14 shall conduct an investigation including a nationwide criminal
15 background check consisting of inquiries of the National Instant
16 Criminal Background Check System, the West Virginia criminal
17 history record responses and the National Interstate Identification
18 Index and shall review the information received in order to verify
19 that the information required in subsection (a) of this section is
20 true and correct. A license may not be issued unless the issuing
21 sheriff has verified through the National Instant Criminal
22 Background Check System that the information available to him or
23 her does not indicate that receipt or possession of a firearm by
24 the applicant would be in violation of the provisions of section

1 seven of this article or federal law, including 18 U.S.C. § 922(g)
2 or (n).

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

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

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

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

1 utilizing instructors ~~duly~~ certified by the institution;

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

5 (4) Any handgun training or safety course or class conducted
6 by any branch of the United States Military, Reserve or National
7 Guard or proof of other handgun qualification received while
8 serving in any branch of the United States Military, Reserve or
9 National Guard.

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

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

23 (f) The sheriff shall issue a license unless he or she
24 determines that the application is incomplete, that it contains

1 statements that are materially false or incorrect or that applicant
2 otherwise does not meet the requirements set forth in this section.
3 The sheriff shall issue, reissue or deny the license within forty-
4 five days after the application is filed if all required background
5 checks authorized by this section are completed.

6 (g) Before any approved license ~~shall be~~ is issued or ~~become~~
7 is effective, the applicant shall pay to the sheriff a fee in the
8 amount of \$25 which the sheriff shall forward to the Superintendent
9 of the West Virginia State Police within thirty days of receipt.
10 The license ~~shall be~~ is valid for five years throughout the state,
11 unless sooner revoked.

12 (h) Each license shall contain the full name and address of
13 the licensee and a space upon which the signature of the licensee
14 shall be signed with pen and ink. The issuing sheriff shall sign
15 and attach his or her seal to all license cards. The sheriff shall
16 provide to each new licensee a duplicate license card, in size
17 similar to other state identification cards and licenses, suitable
18 for carrying in a wallet, and the license card is considered a
19 license for the purposes of this section.

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

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

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

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

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

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

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

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

1 any civil liability as the result of the lawful performance of his
2 or her duties under this article.

3 (q) Notwithstanding the provisions of subsection (a) of this
4 section, with respect to application by a former law-enforcement
5 officer honorably retired from agencies governed by article
6 fourteen, chapter seven of this code; article fourteen, chapter
7 eight of this code; article two, chapter fifteen of this code; and
8 article seven, chapter twenty of this code, an honorably retired
9 officer is exempt from payment of fees and costs as otherwise
10 required by this section. All other application and background
11 check requirements set forth in this shall be applicable to these
12 applicants.

13 (r) Except as restricted or prohibited by the provisions of
14 this article or as otherwise prohibited by law, the issuance of a
15 concealed weapon permit issued in accordance with the provisions of
16 this section authorizes the holder of the permit to carry a
17 concealed pistol or revolver on the lands or waters of this state.

18 (s) Applications, permits, renewal applications, renewed
19 permits and licensed status are confidential and not subject to
20 disclosure under chapter twenty-nine-b of this code and may only be
21 accessed and disclosed for law enforcement purposes.