

1 **Senate Bill No. 198**

2 (By Senators Unger, Kessler (Mr. President), Jenkins, Cann,  
3 Cookman, Fitzsimmons and Nohe)

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5 [Introduced January 8, 2014; referred to the Committee on the  
6 Judiciary.]  
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11 A BILL to amend and reenact §61-7-4 of the Code of West Virginia,  
12 1931, as amended, relating to protecting the confidentiality  
13 of applicants and renewal applicants for and holders of deadly  
14 weapons permits.

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

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

18 **ARTICLE 7. DANGEROUS WEAPONS.**

19 **§61-7-4. License to carry deadly weapons; how obtained.**

20 (a) Except as provided in subsection (h) of this section, any  
21 person desiring to obtain a state license to carry a concealed  
22 deadly weapon shall apply to the sheriff of his or her county for  
23 the license, and shall pay to the sheriff, at the time of

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

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

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

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

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

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

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

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

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

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

1 crime of violence other than an offense set forth in subsection (7)  
2 of this section in the five years immediately preceding the  
3 application.

4 (7) That the applicant has not been convicted of a misdemeanor  
5 crime of domestic violence as defined in 18 U. S. C. §921(a)(33),  
6 or a misdemeanor offense of assault or battery either under the  
7 provisions of section twenty-eight, article two of this chapter or  
8 the provisions of subsection (b) or (c), section nine, article two  
9 of this chapter in which the victim was a current or former spouse,  
10 current or former sexual or intimate partner, person with whom the  
11 defendant cohabits or has cohabited, a parent or guardian, the  
12 defendant's child or ward or a member of the defendant's household  
13 at the time of the offense, or a misdemeanor offense with similar  
14 essential elements in a jurisdiction other than this state;

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

22 (9) That the applicant has not been adjudicated to be mentally  
23 incompetent or involuntarily committed to a mental institution. If  
24 the applicant has been adjudicated mentally incompetent or

1 involuntarily committed the applicant must provide a court order  
2 reflecting that the applicant is no longer under such disability  
3 and the applicant's right to possess or receive a firearm has been  
4 restored.

5 (10) 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~~ This  
8 requirement ~~shall be~~ is waived in the case of a renewal applicant  
9 who has previously qualified; and

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

21 (c) Sixty dollars of the application fee and any fees for  
22 replacement of lost or stolen licenses received by the sheriff  
23 shall be deposited by the sheriff into a Concealed Weapons License  
24 Administration Fund. The fund ~~shall be~~ is administered by the

1 sheriff and ~~shall take~~ takes the form of an interest-bearing  
2 account with any interest earned to be compounded to the fund. Any  
3 funds deposited in this Concealed Weapon License Administration  
4 Fund ~~are to~~ shall be expended by the sheriff to pay for the costs  
5 associated with issuing concealed weapons licenses. Any surplus in  
6 the fund on hand at the end of each fiscal year may be expended for  
7 other law-enforcement purposes or operating needs of the sheriff's  
8 office, as the sheriff may consider appropriate.

9 (d) All persons applying for a license must complete a  
10 training course in handling and firing a handgun. The successful  
11 completion of any of the following courses fulfills this training  
12 requirement:

13 (1) Any official National Rifle Association handgun safety or  
14 training course;

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

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

23 (4) Any handgun training or safety course or class conducted  
24 by any branch of the United States Military, Reserve or National

1 Guard or proof of other handgun qualification received while  
2 serving in any branch of the United States Military, Reserve or  
3 National Guard.

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~~ constitutes  
10 evidence of 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 forty-  
22 five days after the application is filed if all required background  
23 checks authorized by this section are completed.

24 (g) Before any approved license ~~shall be~~ is issued or ~~become~~

1 becomes effective, the applicant shall pay to the sheriff a fee in  
2 the amount of \$25 which the sheriff shall forward to the  
3 Superintendent of the West Virginia State Police within thirty days  
4 of receipt. The license ~~shall be~~ is valid for five years throughout  
5 the state, unless sooner revoked.

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

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

19 (j) If an application is denied, the specific reasons for the  
20 denial shall be stated by the sheriff denying the application. Any  
21 person denied a license may file, in the circuit court of the  
22 county in which the application was made, a petition seeking review  
23 of the denial. The petition shall be filed within thirty days of  
24 the denial. The court shall then determine whether the applicant is



1 entitled to the issuance of a license under the criteria set forth  
2 in this section. The applicant may be represented by counsel, but  
3 in no case may the court be required to appoint counsel for an  
4 applicant. The final order of the court shall include the court's  
5 findings of fact and conclusions of law. If the final order upholds  
6 the denial, the applicant may file an appeal in accordance with the  
7 Rules of Appellate Procedure of the Supreme Court of Appeals.

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

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

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

1 have been issued concealed weapons licenses.

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

12       (o) The sheriff shall deny any application or revoke any  
13 existing license upon determination that any of the licensing  
14 application requirements established in this section have been  
15 violated by the licensee.

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

20       (q) Notwithstanding the provisions of subsection (a) of this  
21 section, with respect to application by a former law-enforcement  
22 officer honorably retired from agencies governed by article  
23 fourteen, chapter seven of this code; article fourteen, chapter  
24 eight of this code; article two, chapter fifteen of this code; and

1 article seven, chapter twenty of this code, an honorably retired  
2 officer is exempt from payment of fees and costs as otherwise  
3 required by this section. All other application and background  
4 check requirements set forth in this shall be applicable to these  
5 applicants.

6 (r) Except as restricted or prohibited by the provisions of  
7 this article or as otherwise prohibited by law, the issuance of a  
8 concealed weapon permit issued in accordance with the provisions of  
9 this section authorizes the holder of the permit to carry a  
10 concealed pistol or revolver on the lands or waters of this state.

11 (s) Applications, permits and renewal applications are  
12 confidential, are not subject to disclosure under article one,  
13 chapter twenty-nine-b of this code and may only be used for law-  
14 enforcement purposes.

NOTE: The purpose of this bill is to protect the confidentiality of applicants and renewal applicants for and holders of deadly weapons permits.

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