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H. B. 2951

(By Delegates Pushkin, Ihle, J. Nelson, Faircloth, Azinger, Folk,
Blair and Fast)

[Introduced February 24, 2015; referred to the
Committee on Veterans’ Affairs and Homeland Security then the Judiciary.]

A BILL to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to recognizing those in active military service as residents for the purpose of obtaining concealed carry permits while stationed at a West Virginia military installation.

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 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 revolvers. Each applicant shall file with the sheriff a complete application, as prepared by

1 the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only
2 the following licensing requirements:

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

8 (2) That, on the date the application is made, the applicant is a bona fide resident of this state
9 and of the county in which the application is made and has a valid driver's license or other
10 state-issued photo identification showing the residence: Provided, That if the applicant or spouse
11 is in the Armed Forces of the United States, the applicant shall be considered a resident of this state
12 for purposes of this section if the applicant is stationed at a military installation in this state but
13 maintains a residence in another state and claims that residence for voting or tax purposes;

14 (3) That the applicant is twenty-one years of age or older: *Provided, That any individual who*
15 *is less than twenty-one years of age and possesses a properly issued concealed weapons license as*
16 *of the effective date of this article shall be licensed to maintain his or her concealed weapons license*
17 *notwithstanding the provisions of this section requiring new applicants to be at least twenty-one*
18 *years of age: Provided, however, That upon a showing of any applicant who is eighteen years of age*
19 *or older that he or she is required to carry a concealed weapon as a condition for employment, and*
20 *presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting*
21 *all other conditions of this section. Upon discontinuance of employment that requires the concealed*
22 *weapons license, if the individual issued the license is not yet twenty-one years of age, then the*

1 individual issued the license is no longer eligible and must return his or her license to the issuing
2 sheriff;

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

6 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
7 treatment; or

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

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

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

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

1 (8) That the applicant is not under indictment for a felony offense or is not currently serving
2 a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court
3 of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order
4 or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

5 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily
6 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or
7 involuntarily committed the applicant must provide a court order reflecting that the applicant is no
8 longer under such disability and the applicant's right to possess or receive a firearm has been
9 restored;

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

13 (11) That the applicant has qualified under the minimum requirements set forth in subsection
14 (d) of this section for handling and firing the weapon: *Provided*, That this requirement shall be
15 waived in the case of a renewal applicant who has previously qualified; and

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

18 (b) For both initial and renewal applications, the sheriff shall conduct an investigation
19 including a nationwide criminal background check consisting of inquiries of the National Instant
20 Criminal Background Check System, the West Virginia criminal history record responses and the
21 National Interstate Identification Index and shall review the information received in order to verify
22 that the information required in subsection (a) of this section is true and correct. A license may not

1 be issued unless the issuing sheriff has verified through the National Instant Criminal Background
2 Check System that the information available to him or her does not indicate that receipt or
3 possession of a firearm by the applicant would be in violation of the provisions of section seven of
4 this article or federal law, including 18 U.S.C. § 922(g) or (n).

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

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

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

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

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

1 (4) Any handgun training or safety course or class conducted by any branch of the United
2 States Military, Reserve or National Guard or proof of other handgun qualification received while
3 serving in any branch of the United States Military, Reserve or National Guard.

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

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

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

18 (g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff
19 a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West Virginia
20 State Police within thirty days of receipt. The license is valid for five years throughout the state,
21 unless sooner revoked.

22 (h) Each license shall contain the full name and address of the licensee and a space upon

1 which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign
2 and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a
3 duplicate license card, in size similar to other state identification cards and licenses, suitable for
4 carrying in a wallet, and the license card is considered a license for the purposes of this section.

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

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

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

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

1 notifies the sheriff in the new county of residence in writing of the old and new addresses.

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

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

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

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

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

1 exempt from payment of fees and costs as otherwise required by this section. All other application
2 and background check requirements set forth in this shall be applicable to these applicants.

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

NOTE: The purpose of this bill is to allow those in active military service, and their spouses, while stationed at a West Virginia military installation to be considered as residents of this state for the purpose of obtaining concealed carry permits.

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