

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 314

FISCAL
NOTE

BY SENATORS SYPOLT, BEACH, BLAIR, BOSO, FERNS,

GAUNCH, KARNES, LEONHARDT, TAKUBO, TRUMP,

WALTERS, WILLIAMS AND YOST

[Introduced January 19, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §20-2-6a of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §61-7-3 of said code; and to amend said code by adding thereto two new
 3 sections, designated §61-7-4a and §61-7-7a, all relating to carry or use of handgun or
 4 deadly weapon; permitting eligible persons to carry a handgun for defense purposes,
 5 without license, while afield hunting, hiking, camping or in or on a motor vehicle; clarifying
 6 penalties for ineligible person who carries concealed deadly weapon; and providing
 7 enhanced penalties for use of display of firearm during planning or commission of a felony.

Be it enacted by the Legislature of West Virginia:

1 That §20-2-6a of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §61-7-3 of said code be amended and reenacted; and that said code be amended
 3 by adding thereto two new sections, designated §61-7-4a and §61-7-7a, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-6a. Carrying a concealed handgun.

1 (a) Notwithstanding any provision of this code to the contrary, a person ~~licensed to carry~~
 2 ~~a concealed weapon pursuant to the provisions of section four, article seven, chapter sixty-one of~~
 3 ~~this code~~ who is not prohibited at the time from possessing a firearm pursuant to the provisions
 4 of section seven, article seven, chapter sixty-one of this code or by any applicable federal law
 5 may carry a handgun ~~in a concealed manner~~ for self-defense purposes while afield hunting,
 6 hiking, camping or in or on a motor vehicle.

7 (b) The provisions of this section shall not exempt any person from obtaining any hunting
 8 or fishing license or stamp required by the Division of Natural Resources.

CHAPTER 61.CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

1 **§61-7-3. Carrying deadly weapon by person under twenty-one or who is prohibited from**

2 **carrying under section seven of this article; penalties.**

1 (a) Any person under twenty-one years of age, or who is prohibited from possessing
2 firearms under section seven of this article, who carries a concealed deadly weapon, ~~without a~~
3 ~~state license or other lawful authorization established under the provisions of this code,~~ shall be
4 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor
5 more than \$1,000 and may be imprisoned in ~~the county~~ jail for not more than twelve months for
6 the first offense; but upon conviction of a second or subsequent offense, he or she ~~shall be~~ is
7 guilty of a felony and, upon conviction thereof, shall be imprisoned in ~~the penitentiary~~ a state
8 correctional facility not less than one nor more than five years and fined not less than \$1,000 nor
9 more than \$5,000.

10 (b) It shall be the duty of the prosecuting attorney in all cases to ascertain whether or not
11 the charge made by the grand jury is a first offense or is a second or subsequent offense and, if
12 it shall be a second or subsequent offense, it shall be so stated in the indictment returned, and
13 the prosecuting attorney shall introduce the record evidence before the trial court of ~~such~~ the
14 second or subsequent offense and shall not be permitted to use discretion in introducing evidence
15 to prove the same on the trial.

§61-7-4a. Provisional license to carry deadly weapons; how obtained.

1 (a) Any person who is between eighteen and twenty-one years of age and who desires to
2 obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her
3 county for a provisional license, and pay to the sheriff, at the time of application, a fee of \$25, of
4 which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund
5 created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons
6 permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a

7 complete application, as prepared by the Superintendent of the West Virginia State Police, in
8 writing, duly verified, which sets forth only the following licensing requirements:

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

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

17 (3) That the applicant is eighteen years of age or older;

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

21 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
22 treatment; or

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

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

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

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

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

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

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

51 (11) That the applicant has qualified under the minimum requirements set forth in
52 subsection (d) of this section for handling and firing the weapon;

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

55 (b) For provisional license applications, the sheriff shall conduct an investigation including
56 a nationwide criminal background check consisting of inquiries of the National Instant Criminal
57 Background Check System, the West Virginia criminal history record responses and the National
58 Interstate Identification Index and shall review the information received in order to verify that the
59 information required in subsection (a) of this section is true and correct. A license may not be
60 issued unless the issuing sheriff has verified through the National Instant Criminal Background
61 Check System that the information available to him or her does not indicate that receipt or
62 possession of a firearm by the applicant would be in violation of the provisions of section seven
63 of this article or federal law, including 18 U.S.C. § 922(g) or (n).

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

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

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

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

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

82 (4) Any proof of current service in the United States Armed Forces, Armed Forces
83 Reserves, or National Guard.

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

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

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

98 (g) Before any approved license is issued or is effective, the applicant shall pay to the
99 sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West

100 Virginia State Police within thirty days of receipt. The provisional license is valid until the licensee
101 turns twenty-one years of age, unless sooner revoked.

102 (h) Each provisional license shall contain the full name and address of the licensee and a
103 space upon which the signature of the licensee shall be signed with pen and ink. The issuing
104 sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each
105 new licensee a duplicate license card, in size similar to other state identification cards and
106 licenses, suitable for carrying in a wallet, and the license card is considered a license for the
107 purposes of this section. The provisional license shall be readily distinguishable from a license
108 issued pursuant to §61-7-4 and shall state, "NOT NICS EXEMPT. This license confers the same
109 rights and privileges to carry a concealed pistol or revolver on the lands or waters of this state as
110 a license issued pursuant to §61-7-4. Except this license does not satisfy the requirements of 18
111 U.S.C. § 922(t)(3). A NICS check must be performed prior to purchase of a firearm from a federally
112 licensed firearm dealer."

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

116 (j) If an application is denied, the specific reasons for the denial shall be stated by the
117 sheriff denying the application. Any person denied a license may file, in the circuit court of the
118 county in which the application was made, a petition seeking review of the denial. The petition
119 shall be filed within thirty days of the denial. The court shall then determine whether the applicant
120 is entitled to the issuance of a license under the criteria set forth in this section. The applicant
121 may be represented by counsel, but in no case is the court required to appoint counsel for an
122 applicant. The final order of the court shall include the court's findings of fact and conclusions of
123 law. If the final order upholds the denial, the applicant may file an appeal in accordance with the

124 Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and
125 conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable
126 costs and attorney's fees, payable by the sheriff's office which issued the denial.

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

130 (l) Whenever any person after applying for and receiving a provisional concealed handgun
131 license moves from the address named in the application to another county within the state, the
132 license remains valid until the licensee turns twenty-one years of age unless the sheriff of the new
133 county has determined that the person is no longer eligible for a provisional concealed deadly
134 weapon license under this article, and the sheriff shall issue a new license bearing the person's
135 new address and the original expiration date for a fee not to exceed \$5: *Provided, That the*
136 licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing
137 of the old and new addresses.

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

144 (n) The sheriff shall deny any application or revoke any existing license upon
145 determination that any of the licensing application requirements established in this section have
146 been violated by the licensee.

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

150 (q) Information collected under this section, including applications, supporting documents,
151 permits, renewals, or any other information that would identify an applicant for or holder of a
152 concealed weapon permit, is confidential: *Provided:* That such information may be disclosed to a
153 law enforcement agency or officer: (i) To determine the validity of a permit; (ii) to assist in a
154 criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person
155 who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be
156 fined not less than \$50 or more than \$200 for each offense.

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

**§61-7-7a. Enhanced penalty for use or display of firearm during planning or commission
of felony.**

1 (a) Except to the extent that a greater minimum sentence is otherwise provided by any
2 other provision of law, any person who uses or displays a firearm during the planning or
3 commission of any felony shall, in addition to the punishment provided for the felony, be
4 sentenced to an additional term of imprisonment in the custody of the Division of Corrections of
5 five years, which sentence shall not be reduced or suspended.

6 (b) Except to the extent that a greater minimum sentence is otherwise provided by any
7 other provision of law, any convicted felon who uses or displays a firearm during the planning or
8 commission of any felony, shall, in addition to the punishment provided for the felony, be

9 sentenced to an additional term of imprisonment in the custody of the Division of Corrections of
10 ten years to run consecutively, not concurrently, which sentence shall not be reduced or
11 suspended.

12 (c) Unless otherwise provided in code, the provisions of this article do not apply to a person
13 who in good faith employs the use of a firearm, in self-defense or the defense of others, against
14 another person who is perpetuating violence or the threat of violence.

NOTE: The purpose of this bill is to amend requirements for carrying a concealed handgun or deadly weapon for defense purposes, and to establish enhanced penalty for use of a firearm during commission of a felony.

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