

1 **H. B. 3125**

2
3 (By Delegate Householder (By Request), Staggers,
4 Kump and Romine

5
6 [Introduced February 14, 2011; referred to the
7 Committee on the Judiciary then Finance.]

8
9

10 A BILL to repeal §8-12-5a of the Code of West Virginia, 1931, as
11 amended; to repeal §20-2-19a of said code; to repeal §61-7-6
12 and §61-7-6a of said code; to repeal §61-7A-1 and §61-7A-5 of
13 said code; to amend and reenact §2-2-1 of said code; to amend
14 and reenact §5A-4-3 of said code; to amend and reenact §6-3-1
15 and §6-3-1a of said code; to amend and reenact §7-1-3 of said
16 code; to amend and reenact §7-4-1 of said code; to amend and
17 reenact §7-11-5 of said code; to amend and reenact §7-14E-2 of
18 said code; to amend and reenact §8-12-5 of said code; to amend
19 and reenact §8-29B-5 of said code; to amend and reenact
20 §15-2-24b and §15-2-25 of said code; to amend and reenact
21 §15-5-6 and §15-5-19a of said code; to amend and reenact
22 §17C-2-3 of said code; to amend and reenact §18C-5-2 of said
23 code; to amend and reenact §18C-6-2 of said code; to amend and
24 reenact §18C-7-3 of said code; to amend and reenact §20-1-2 of
25 said code; to amend and reenact §20-2-2a, §20-2-5, §20-2-5c,

1 §20-2-6, §20-2-6a, §20-2-32, §20-2-37, §20-2-421, §20-2-42p,
2 §20-2-46e and §20-2-58 of said code; to amend and reenact
3 §20-7-9 and §20-7-11 of said code; to amend and reenact
4 §24A-7-6 of said code; to amend and reenact §25-1-11c of said
5 code; to amend and reenact §27-3-1 of said code; to amend and
6 reenact §32-4-407 of said code; to amend and reenact §33-41-8
7 of said code; to amend and reenact §44A-2-6 of said code; to
8 amend and reenact §48-27-403, §48-27-502, §48-27-601 and
9 §48-27-1002 of said code; to amend and reenact §49-2B-3 of
10 said code; to amend and reenact §50-1-14 of said code; to
11 amend and reenact §55-18-1 of said code; to amend and reenact
12 §61-5-8 of said code; to amend and reenact §61-6-1a and
13 §61-6-19 of said code; to amend and reenact §61-7-1, §61-7-2,
14 §61-7-3, §61-7-4, §61-7-5, §61-7-7, §61-7-9, §61-7-10,
15 §61-7-11a, §61-7-12 and §61-7-14 of said code; to amend and
16 reenact §61-7A-2, §61-7A-3 and §61-7A-4 of said code; to amend
17 and reenact §61-11-9 of said code; to amend and reenact
18 §62-12-6 of said code; to amend said code by adding thereto a
19 new section, designated §15-2-25a; to amend said code by
20 adding thereto a new section, designated §18C-1-6; to amend
21 said code by adding thereto a new section, designated §27-5-6;
22 to amend said code by adding thereto a new section, designated
23 §30-29-11; to amend said code by adding thereto a new section,

1 designated §48-22-804; to amend said code by adding thereto a
2 new section, designated §55-18-3; to amend said code by adding
3 thereto nine new sections, designated §61-7-11b, §61-7-11c,
4 §61-7-13, §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18,
5 §61-7-19 and §61-7-20; to amend said code by adding thereto a
6 new section, designated §61-11-27; to amend said code by
7 adding thereto two new sections, designated §64-5-1a and
8 §64-5-1b; to amend said code by adding thereto a new section,
9 designated §64-7-3a; to amend said code by adding thereto two
10 new sections, designated §64-10-3a and §64-10-3b; and to amend
11 said code by adding thereto a new article, designated §64-12-1
12 and §64-12-2, all relating to the regulation of firearms and
13 other deadly weapons; providing uniform statutory definition
14 of "business days" for purposes of computation of time;
15 providing that the rights of local conservators of the peace
16 and reserve deputy sheriffs to keep and bear arms as private
17 citizens are neither enlarged nor diminished by virtue of
18 their positions; clarifying various grants of authority to
19 certain state officers and agents to carry firearms and
20 concealed weapons while on duty; codifying common law arrest
21 powers of prosecuting attorneys and assistant prosecuting
22 attorneys; repealing special fees for fingerprinting services
23 for applicants for federal firearm licenses; repealing

1 authority of municipalities to prohibit the carrying of
2 certain weapons; limiting access to records pertaining to
3 licenses to carry concealed weapons, qualified retired
4 law-enforcement officers qualified to carry concealed firearms
5 pursuant to the federal Law Enforcement Officers Safety Act of
6 2004 and licensed hunters, trappers and fishermen; requiring
7 qualifying law-enforcement officers employed by a West
8 Virginia law-enforcement agency to receive certification to
9 carry a concealed firearm nationwide as provided in the
10 federal Law Enforcement Officers Safety Act of 2004;
11 establishing procedure for a retired or medically discharged
12 member of the State Police to appeal a denial of a letter of
13 authorization to carry concealed handguns; providing that
14 certain methods of authorization for retired or medically
15 discharged members of the State Police to carry concealed
16 handguns are cumulative; providing that a letter of
17 authorization for a retired or medically discharged member of
18 the State Police to carry concealed weapons shall be deemed a
19 West Virginia license to carry concealed weapons for the
20 purpose of participating in reciprocity with other states;
21 providing that law-enforcement agencies are neither prohibited
22 from nor required to permit an officer to carry his or her
23 service weapon off-duty; requiring West Virginia

1 law-enforcement agencies to offer access to training and
2 certification for honorably retired officers to be permitted
3 to carry a concealed firearm nationwide as a qualified retired
4 law-enforcement officer as provided in the federal Law
5 Enforcement Officers Safety Act of 2004; establishing program
6 for issuing special qualified retired law-enforcement officer
7 concealed firearm license by the State Police; authorizing
8 legislative rules; providing that special qualified retired
9 law-enforcement officer concealed firearm license is
10 cumulative and supplemental; prohibiting state financial
11 assistance to higher education institutions that infringe upon
12 an individual's right to keep and bear arms as provided by
13 law; expanding prohibition on interference with hunters,
14 trappers and fishermen to include the lawful possession or
15 control of lawfully-taken wildlife; prohibiting certain
16 harassment, intimidation or threats against hunters, trappers
17 or fishermen; providing exemptions to prohibited acts relating
18 to interference with hunters, trappers and fishermen;
19 providing exemption from prohibited acts relating to
20 interference with hunters, trappers and fishermen for
21 constitutionally-protected activities; increasing criminal
22 penalties for interference with hunters, trappers and
23 fishermen; providing civil remedies for unlawful interference

1 with hunters, trappers and fishermen; clarifying that hunting
2 statutes generally do not prohibit the otherwise lawful
3 carrying of handguns for self-defense purposes; exempting
4 persons who are licensed or otherwise authorized to lawfully
5 carry concealed weapons from certain limitations on how
6 firearms may be carried or transported; providing additional
7 lawful means for the transportation of rifles and shotguns in
8 or on vehicles and vessels; clarifying language on Sunday
9 hunting local option election ballots to accurately state the
10 nature of the question propounded; modifying restrictions
11 relating to discharging firearms near residences, parks and
12 certain other public places; consolidating and clarifying
13 certain penalty provisions; requiring notice of a guardianship
14 or conservatorship hearing to include a warning of the
15 potential consequences of the guardianship or conservatorship
16 action on the alleged protected person's ability to lawfully
17 possess firearms; requiring domestic violence protective
18 orders to contain certain warnings about implications of order
19 on legality of firearms possession; clarifying effect of
20 protective orders on legality of firearms possession;
21 prohibiting an adoption agency or entity from making
22 suitability determinations based on, requiring disclosure
23 relating to, or restricting the lawful possession, storage or

1 use of a firearm or ammunition; providing immunity from civil
2 liability for certain firearms safety instructors, course
3 providers, sponsoring organizations and participants;
4 modifying area covered by prohibition on transporting
5 restricted articles on correctional facility premises;
6 prohibiting the taking of lawfully possessed arms and
7 ammunition during a declared state of emergency or riot;
8 repealing prohibition on bringing weapons upon the state
9 Capitol Complex; declaring legislative findings and intent;
10 defining terms; limiting requirement of license to carry
11 concealed weapons to enumerated locations; providing
12 additional exemptions to requirement of license to carry
13 concealed weapons; granting full faith and credit to all
14 qualified out-of-state license or permit to carry concealed
15 weapons held by qualifying out-of-state licensees; requiring
16 certain persons who lawfully carry a concealed weapon without
17 a license to inform the law-enforcement officer and submit to
18 certain requests by the law-enforcement officer when the
19 person is contacted by a law-enforcement officer; providing
20 procedures for ascertaining the existence of a license or
21 other lawful authorization to carry a concealed weapon;
22 establishing certain rebuttable presumptions regarding the
23 existence or absence of evidence of a license or other lawful

1 authorization to carry a concealed weapon; establishing
2 multiple classes of licenses to carry concealed weapons;
3 prescribing eligibility criteria for each class of license;
4 repealing limitation of licenses to carry concealed weapons to
5 pistols and revolvers only; repealing license to carry
6 concealed weapons fee surcharge for Courthouse Facilities
7 Improvement Fund; requiring the inclusion of certain
8 information on applications for licenses to carry concealed
9 weapons; modifying eligibility criteria for licenses to carry
10 concealed weapons; specifying information to be provided in
11 application for license to carry concealed weapons; requiring
12 applicants for licenses to carry concealed weapons to provide
13 specified documentation with application; specifying required
14 components of background investigations of applicants for
15 licenses to carry concealed weapons; requiring background
16 check on applicants for licenses to carry concealed weapons to
17 determine an applicant's eligibility to possess or transport
18 firearms under state and federal law; requiring
19 fingerprint-based state and national criminal and mental
20 health background checks on applicants for Class 1 licenses;
21 establishing a State Police Concealed Weapons License
22 Background Check Administration Fund; source of funds; use of
23 funds; authorizing expenditures from collections; converting

1 county concealed weapons license administration funds to
2 perpetual revolving accounts; repealing authority of sheriff
3 to expend surplus funds in county concealed weapons license
4 administration fund; establishing additional means of
5 fulfilling requirement of demonstrating basic competence with
6 a handgun; prescribing additional requirement for Class 1, 2
7 and 4 licenses of completing certain live fire shooting
8 exercises and passing live fire shooting proficiency test;
9 requiring instructors of live fire shooting proficiency tests
10 to maintain records on students; modifying time limit for
11 sheriffs to act on applications for licenses to carry
12 concealed weapons; conforming requirements for Social Security
13 number solicitations on applications for licenses to carry
14 concealed weapons to Section 7 of the federal Privacy Act of
15 1974; establishing a uniform system of numbering and indexing
16 all licenses to carry concealed weapons throughout the state;
17 specifying the form and contents of licenses to carry
18 concealed weapons; establishing provisions governing the
19 change of a licensee's name or address; modifying the license
20 expiration and renewal cycle; prorating license fees;
21 extending licenses of active-duty members of the Armed Forces
22 while deployed; requiring Commissioner of Motor Vehicles to
23 produce license cards upon request of sheriff; payment of cost

1 of producing license cards; transferring responsibility for
2 preparing license applications and other forms from
3 Superintendent to Attorney General; requiring sheriffs to
4 accept certain methods of payment for fees for licenses to
5 carry concealed weapons; establishing procedure for appealing
6 the suspension or revocation of a license to carry concealed
7 weapons; specifying form of notice of denial, suspension or
8 revocation of a license to carry concealed weapons; specifying
9 whether a license to carry concealed weapons shall be
10 suspended or revoked; establishing optional procedure for
11 reconsidering denial, suspension or revocation of license
12 prior to judicial appeal; closing proceedings and sealing
13 records in judicial appeals of denials, suspension and
14 revocations of licenses to carry concealed weapons; modifying
15 immunity from civil liability for certain acts relative to
16 concealed weapons licensing; declaring licensing statute to be
17 comprehensive and preemptive; requiring courts to determine
18 whether individuals in proceedings resulting in
19 disqualification from licensure are licensed to carry a
20 concealed weapon; requiring court to notify issuing agency
21 upon a licensee becoming disqualified for certain causes from
22 continued licensure to carry concealed weapons; requiring
23 sheriffs to issue notice of license expiration and renewal

1 process; contents of notice; providing criminal penalties for
2 fraudulently obtaining or unlawfully disclosing confidential
3 information about individuals who have applied for or been
4 issued licenses to carry concealed weapons; establishing
5 provisions for the use of an alternate address by certain
6 classes of protected persons; requiring the Attorney General
7 to periodically notify the Attorney General and licensing
8 authority of each state of this state's recognition of
9 qualified out-of-state license or permit to carry concealed
10 weapons held by qualifying out-of-state licensees; requiring
11 the Attorney General to negotiate and execute reciprocity
12 agreements to secure recognition of West Virginia licenses
13 when required by other states as a condition of recognizing
14 West Virginia licenses; requiring the Attorney General and the
15 Superintendent of the State Police to provide certain annual
16 reports to the Legislature; requiring the Attorney General to
17 publish and annually revise a compendium of firearm and use of
18 force laws; providing for the disposition of applications for
19 licenses to carry concealed weapons filed before and pending
20 on the effective date of this act; providing for
21 classification of licenses to carry concealed weapons in
22 effect on the effective date of this act; specifying
23 procedures for upgrading or modifying class of license to

1 carry concealed weapons; establishing emergency license to
2 carry concealed weapons; eligibility criteria; license fee;
3 creating uniform rule concerning the requirement to carry and
4 exhibit license when carrying a concealed weapon for both West
5 Virginia licensees and qualified out-of-state licensees;
6 conforming classes of persons prohibited from possessing
7 firearms to federal law; clarifying conflicting statutory
8 language; prohibiting certain persons from carrying a
9 concealed weapon in a public place; providing additional
10 procedures for relief from weapons disabilities; designating
11 officials authorized to certify the transfer and registration
12 of firearms subject to the National Firearms Act; establishing
13 time limit for designated officials to act on requests for
14 certification; establishing uniform standard for approving or
15 denying requested certifications; providing immunity from
16 civil liability for lawfully performing required
17 certifications; prohibiting licensed firearm dealers from
18 refusing to sell or otherwise transfer a firearm to any person
19 solely on the basis that the person purchased a firearm that
20 was later the subject of a law-enforcement trace request;
21 requiring licensed firearms dealers to perform certain acts
22 incident to firearm sales or transfers; prohibiting the
23 purchase or attempt to purchase a firearm from a firearm

1 dealer by certain persons; increasing criminal penalties for
2 any person other than a law-enforcement officer who knowingly
3 solicits, persuades, encourages or entices any other person to
4 violate firearm sales laws; civil remedies for unlawful denial
5 or delay of firearm sale or transfer; specifying areas subject
6 to prohibition on possession of deadly weapons on school
7 premises; providing exceptions; creating separate offense for
8 possessing deadly weapon in school safety zone with the intent
9 to use the deadly weapon unlawfully or to threaten or endanger
10 another person; providing criminal penalties; reducing
11 criminal penalties for unlawful possession of deadly weapon in
12 school safety zones without the intent to use the deadly
13 weapon unlawfully or to threaten or endanger another person;
14 modifying requirements and procedures for suspending or
15 revoking driver's license of person convicted of or
16 adjudicated a juvenile delinquent for such offenses;
17 prohibiting the possession or conveyance of deadly weapons
18 into certain areas of courthouses and other places where
19 judicial proceedings are held; declaring certain persons
20 exempt; requiring establishment of secure weapon storage areas
21 and posting of signs; providing for the consolidation of
22 required signage and secure weapon storage areas when premises
23 contained within secure restricted access area; providing for

1 the establishment of secure restricted access areas in certain
2 public buildings; procedures for establishment; prohibiting
3 the possession of or conveyance of deadly weapons into secure
4 restricted access areas; providing criminal penalties for
5 possessing or conveying deadly weapons into restricted
6 premises; signage requirements; requiring the provision of
7 secure weapon storage areas at secure restricted access areas
8 for individuals to lawfully store firearms before entering
9 secure restricted access area; providing additional criminal
10 penalties for the use or possession of firearms or other
11 weapons during the commission of specified crimes; exempting
12 certain officers, employees and agents of the United States,
13 this state or a political subdivision of this state from
14 restrictions or prohibitions on possessing weapons imposed by
15 private property owners; requiring all private property owners
16 that have legally restricted or prohibited the possession or
17 carrying of weapons on their premises to give notice of such
18 prohibitions or restrictions by posting specified signs;
19 format of signs; effect of failure to properly post signs
20 indicating such prohibition or restriction; providing immunity
21 from civil liability to private property owners and private
22 employers for certain acts or omissions of individuals
23 licensed to carry concealed weapons or authorized to carry

1 concealed weapons without a license if the private property
2 owner or private employer voluntarily refrains from
3 restricting the possession or carrying of deadly weapons by
4 individuals licensed to carry concealed weapons or authorized
5 to carry concealed weapons without a license; prohibiting a
6 public or private employer from prohibiting a customer,
7 employee or invitee from possessing any legally owned firearm
8 or concealable weapon that is lawfully possessed and locked
9 inside or locked to a private motor vehicle in a parking lot;
10 prohibiting a public or private employer from violating the
11 privacy rights of a customer, employee or invitee by verbal or
12 written inquiry regarding the presence of a firearm or
13 concealable weapon inside or locked to a private motor vehicle
14 in a parking lot or by the search of a private motor vehicle
15 in a parking lot to ascertain the presence of a firearm or
16 concealable weapon within the vehicle; prohibiting actions by
17 a public or private employer against a customer, employee or
18 invitee based upon verbal or written statements concerning
19 possession of a firearm or concealable weapon stored inside a
20 private motor vehicle in a parking lot for lawful purposes;
21 providing conditions under which a search of a private motor
22 vehicle in the parking lot of a public or private employer may
23 be conducted; prohibiting a public or private employer from

1 conditioning employment upon specified licensure status or
2 upon a specified agreement; prohibiting a public or private
3 employer from attempting to prevent or prohibiting any
4 customer, employee or invitee from entering the parking lot of
5 the employer's place of business because the private motor
6 vehicle of a customer, employee or invitee contains a legal
7 firearm or concealable weapon; prohibiting public or private
8 employers from terminating the employment of or otherwise
9 discriminating against an employee, or expelling a customer or
10 invitee, for exercising his or her right to keep and bear arms
11 or for exercising the right of self-defense; providing a
12 condition to the prohibition; providing that such prohibitions
13 apply to all public-sector employers; providing that, when
14 subject to the prohibitions imposed by law, a public or
15 private employer has no duty of care related to the actions
16 prohibited; providing specified immunity from liability for
17 public and private employers; providing nonapplicability of
18 such immunity; providing construction; providing exceptions to
19 certain prohibitions; providing for enforcement of certain
20 prohibitions; providing for the award of reasonable personal
21 costs and losses; providing for the award of court costs and
22 attorney's fees; declaring the provisions of the West Virginia
23 Code to be the sole means by which the keeping and bearing of

1 arms may be regulated; preempting any ordinance, rule, policy
2 or administrative action inconsistent therewith; exceptions;
3 providing for enforcement of prohibition on additional
4 regulation of firearms or concealable weapons; providing rules
5 of construction; prohibiting the registration of firearms or
6 firearm owners; exceptions; compliance period for purging
7 prohibited registries; limiting seizures of concealable
8 weapons; providing remedies for unlawful seizure of
9 concealable weapon; providing civil and criminal penalties for
10 certain acts in violation of an individual's right to keep and
11 bear arms; defining certain acts as *per se* official misconduct
12 for purposes of removing public official from office;
13 establishing regulations for gun buy-back programs;
14 establishing procedures to protect interests of owners of
15 stolen firearms and preserve evidence of certain crimes;
16 requiring certain firearms disposed by a public agency to be
17 offered for sale to licensed firearm dealers by public auction
18 or sealed bids; procedures for public sale of certain
19 firearms; requiring award of court costs and attorney's fees
20 in certain cases; clarifying conflicting statutory language;
21 updating references to licenses to carry concealed weapons in
22 the state central mental health registry law; clarifying the
23 permissible use of records in the central state mental health

1 registry; establishing statute of limitations for prosecuting
2 certain crimes; authorizing the set aside and expungement of
3 certain criminal convictions involving misdemeanor crimes of
4 domestic violence; defining eligible offenses; form and
5 contents of petition; filing fee; service and notice
6 requirements; prosecutor, victim and state agency opposition
7 to petition; court procedure for hearing and ruling upon the
8 petition; presumptions and burdens of proof; establishing
9 procedures for expunging records; effects of set aside and
10 expungement; and repealing or revising various archaic
11 language.

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

13 That §8-12-5a of the Code of West Virginia, 1931, as amended,
14 be repealed; that §20-2-19a of said code be repealed; that §61-7-6
15 and §61-7-6a of said code be repealed; that §61-7A-1 and §61-7A-5
16 of said code be repealed; that §2-2-1 of said code be amended and
17 reenacted; that §5A-4-3 of said code be amended and reenacted; that
18 §6-3-1 and §6-3-1a of said code be amended and reenacted; that
19 §7-1-3 of said code be amended and reenacted; that §7-4-1 of said
20 code be amended and reenacted; that §7-11-5 of said code be amended
21 and reenacted; that §7-14E-2 of said code be amended and reenacted;
22 that §8-12-5 of said code be amended and reenacted; that §8-29B-5
23 of said code be amended and reenacted; that §15-2-24b and §15-2-25

1 of said code be amended and reenacted; that §15-5-6 and §15-5-19a
2 of said code be amended and reenacted; that §17C-2-3 of said code
3 be amended and reenacted; that §18C-5-2 of said code be amended and
4 reenacted; that §18C-6-2 of said code be amended and reenacted;
5 that §18C-7-3 of said code be amended and reenacted; that §20-1-2
6 of said code be amended and reenacted; that §20-2-2a, §20-2-5,
7 §20-2-5c, §20-2-6, §20-2-6a, §20-2-32, §20-2-37, §20-2-42l,
8 §20-2-42p, §20-2-46e and §20-2-58 of said code be amended and
9 reenacted; that §20-7-9 and §20-7-11 of said code be amended and
10 reenacted; that §24A-7-6 of said code be amended and reenacted;
11 that §25-1-11c of said code be amended and reenacted; that §27-3-1
12 of said code be amended and reenacted; that §32-4-407 of said code
13 be amended and reenacted; that §33-41-8 of said code be amended and
14 reenacted; that §44A-2-6 of said code be amended and reenacted;
15 that §48-27-403, §48-27-502, §48-27-601 and §48-27-1002 of said
16 code be amended and reenacted; that §49-2B-3 of said code be
17 amended and reenacted; that §50-1-14 of said code be amended and
18 reenacted; that §55-18-1 of said code be amended and reenacted;
19 that §61-5-8 of said code be amended and reenacted; that §61-6-1a
20 and §61-6-19 of said code be amended and reenacted; that §61-7-1,
21 §61-7-2, §61-7-3, §61-7-4, §61-7-5, §61-7-7, §61-7-9, §61-7-10,
22 §61-7-11a, §61-7-12 and §61-7-14 of said code be amended and
23 reenacted; that §61-7A-2, §61-7A-3 and §61-7A-4 of said code be

1 amended and reenacted; that §61-11-9 of said code be amended and
 2 reenacted; that §62-12-6 of said code be amended and reenacted;
 3 that said code be amended by adding thereto a new section,
 4 designated §15-2-25a; that said code be amended by adding thereto
 5 a new section, designated §18C-1-6; that said code be amended by
 6 adding thereto a new section, designated §27-5-6; that said code be
 7 amended by adding thereto a new section, designated §30-29-11; that
 8 said code be amended by adding thereto a new section, designated
 9 §48-22-804; that said code be amended by adding thereto a new
 10 section, designated §55-18-3; that said code be amended by adding
 11 thereto nine new sections, designated §61-7-11b, §61-7-11c,
 12 §61-7-13, §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18,
 13 §61-7-19 and §61-7-20; that said code be amended by adding thereto
 14 a new section, designated §61-11-27; that said code be amended by
 15 adding thereto two new sections, designated §64-5-1a and §64-5-1b;
 16 that said code be amended by adding thereto a new section,
 17 designated §64-7-3a; that said code be amended by adding thereto
 18 two new sections, designated §64-10-3a and §64-10-3b; and that said
 19 code be amended by adding thereto a new article, designated
 20 §64-12-1 and §64-12-2, all to read as follows:

21 **CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS,**

22 **DEFINITIONS AND LEGAL CAPACITY.**

23 **ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF**

1 **STATUTES; DEFINITIONS.**

2 **§2-2-1. Legal holidays; official acts or court proceedings.**

3 (a) The following days are legal holidays:

4 (1) The first day of January is "New Year's Day";

5 (2) The third Monday of January is "Martin Luther King's
6 Birthday";

7 (3) The third Monday of February is "Presidents' Day";

8 (4) The last Monday in May is "Memorial Day";

9 (5) The twentieth day of June is "West Virginia Day";

10 (6) The fourth day of July is "Independence Day";

11 (7) The first Monday of September is "Labor Day";

12 (8) The second Monday of October is "Columbus Day";

13 (9) The eleventh day of November is "Veterans' Day";

14 (10) The fourth Thursday of November is "Thanksgiving Day";

15 (11) The day after Thanksgiving Day is "Lincoln's Day";

16 (12) The twenty-fifth day of December is "Christmas Day";

17 (13) Any day on which a general, primary or special election
18 is held is a holiday throughout the state, a political subdivision
19 of the state, a district or an incorporated city, town or village
20 in which the election is conducted;

21 (14) General election day on even years shall be designated
22 Susan B. Anthony Day, in accordance with the provisions of
23 subsection (b), section one-a of this article; and

1 (15) Any day proclaimed or ordered by the Governor or the
2 President of the United States as a day of special observance or
3 Thanksgiving, or a day for the general cessation of business, is a
4 holiday.

5 (b) If a holiday otherwise described in subsection (a) of this
6 section falls on a Sunday, then the following Monday is the legal
7 holiday. If a holiday otherwise described in subsection (a) of this
8 section falls on a Saturday, then the preceding Friday is the legal
9 holiday: *Provided*, That this subsection (b) shall not apply to
10 subdivisions (13), (14) and (15), subsection (a) of this section.

11 (c) Any day or part thereof designated by the Governor as time
12 off, without charge against accrued annual leave, for state
13 employees statewide may also be time off for county employees if
14 the county commission elects to designate the day or part thereof
15 as time off, without charge against accrued annual leave for county
16 employees. Any entire or part statewide day off designated by the
17 Governor may, for all courts, be treated as if it were a legal
18 holiday.

19 (d) In computing any period of time prescribed by any
20 applicable provision of this code or any legislative rule or other
21 administrative rule or regulation promulgated pursuant to the
22 provisions of this code, the day of the act, event, default or
23 omission from which the applicable period begins to run is not

1 included. The last day of the period so computed is included,
2 unless it is a Saturday, a Sunday, a legal holiday or a designated
3 day off in which event the prescribed period of time runs until the
4 end of the next day that is not a Saturday, Sunday, legal holiday
5 or designated day off.

6 (e) If any applicable provision of this code or any
7 legislative rule or other administrative rule or regulation
8 promulgated pursuant to the provisions of this code designates a
9 particular date on, before or after which an act, event, default or
10 omission is required or allowed to occur, and if the particular
11 date designated falls on a Saturday, Sunday, legal holiday or
12 designated day off, then the date on which the act, event, default
13 or omission is required or allowed to occur is the next day that is
14 not a Saturday, Sunday, legal holiday or designated day off.

15 (f) In computing any period of time prescribed by any
16 applicable provision of this code or any legislative rule or other
17 administrative rule or regulation promulgated pursuant to the
18 provisions of this code governing when an act, event, default or
19 omission is required or allowed to occur, when the applicable
20 statute or rule specifies that the prescribed amount of time is
21 measured in "business days," only those days that are not a
22 Saturday, Sunday, legal holiday or designated day off, shall be
23 included in the computation of the applicable time period. When the

1 applicable statute or rule does not specifically provide that the
2 applicable time period is measured in "business days," the
3 applicable time period shall be measured in calendar days and
4 Saturdays, Sundays, legal holidays and designated days off shall be
5 excluded from the applicable time period only as otherwise provided
6 in this article.

7 ~~(f)~~(g) With regard to the courts of this state, the
8 computation of periods of time, the specific dates or days when an
9 act, event, default or omission is required or allowed to occur and
10 the relationship of those time periods and dates to Saturdays,
11 Sundays, legal holidays, or days designated as weather or other
12 emergency days pursuant to section two of this article are governed
13 by rules promulgated by the Supreme Court of Appeals.

14 ~~(g)~~ (h) The provisions of this section do not increase or
15 diminish the legal school holidays provided in section two, article
16 five, chapter eighteen-a of this code.

17 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

18 **ARTICLE 4. GENERAL SERVICES DIVISION.**

19 **§5A-4-3. Security officers; appointment; oath; powers and duties**
20 **generally, etc.**

21 (a) In addition to the other powers given and assigned to the
22 secretary in this chapter, ~~he is hereby authorized to~~ the secretary

1 may appoint bona fide residents of this state to act as security
2 officers upon any premises owned or leased by the State of West
3 Virginia and under the jurisdiction of the secretary, subject to
4 the conditions and restrictions ~~hereinafter~~ imposed in this
5 section. Before entering upon the performance of his or her duties
6 as ~~such a~~ security officer under this section, ~~each the person so~~
7 ~~appointed~~ shall qualify ~~therefor~~ in the same manner as is required
8 of county officers by taking and filing an oath of office as
9 required by article one, chapter six of this code. ~~No such person~~
10 ~~shall have authority to carry a gun or any other dangerous weapon~~
11 ~~until he shall have obtained a license therefor in the manner~~
12 ~~prescribed by section two, article seven, chapter sixty one of this~~
13 ~~code.~~

14 ~~It shall be the duty of~~ (b) Any person ~~so~~ appointed and
15 qualified ~~to~~ as a security officer pursuant to subsection (a) of
16 this section shall preserve law and order on any premises under the
17 jurisdiction of the secretary to which he ~~may be~~ or she is assigned
18 by the secretary. For this purpose, ~~he~~ the security officer shall,
19 as to offenses committed on such premises, have and may exercise
20 all the powers and authority and shall be subject to all the
21 responsibilities of a ~~deputy sheriff of the county~~ law-enforcement
22 officer as defined in section one, article twenty-nine, chapter
23 thirty of this code. The assignment of security officers to any

1 premises under the jurisdiction of the secretary ~~shall~~ does not ~~be~~
2 ~~deemed to supersede in any way or limit~~ the authority or duty of
3 other ~~peace~~ law-enforcement officers to preserve law and order on
4 such any premises to which the secretary assigns a security officer
5 pursuant to this section.

6 (c) The secretary may at his or her pleasure revoke the
7 authority of any ~~such~~ security officer appointed pursuant to this
8 section by filing a notice ~~to that effect~~ of revocation in the
9 office of the clerk of the county commission of each county in
10 which ~~his~~ the security officer's oath of office was filed. ~~and in~~
11 ~~the case of officers licensed to carry a gun or other dangerous~~
12 ~~weapon, by notifying the clerk of the circuit court of the county~~
13 ~~in which the license therefor was granted~~

14 **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

15 **ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.**

16 **§6-3-1. Appointment of deputies and local conservators of the**
17 **peace; powers and duties; compensation; vacating**
18 **appointment of deputy sheriff; removal of**
19 **conservators.**

20 (a) (1) The clerk of the Supreme Court of Appeals, or ~~of any~~
21 circuit ~~criminal, common pleas, intermediate or county magistrate~~
22 court ~~or of any tribunal established by law in lieu thereof,~~ may,

1 with the consent of the court, ~~or such tribunal,~~ duly entered of
2 record, appoint any person or persons his or her deputy or
3 deputies.

4 (2) A sheriff, surveyor of lands, clerk of the county
5 commission or assessor may, with the consent of the county ~~court~~
6 commission or tribunal established by law in lieu of a county
7 commission, duly entered of record, appoint any person or persons
8 his or her deputy or deputies.

9 (3) A sheriff may, when in the opinion of the judge of the
10 circuit court the public interest requires it, ~~may, with the assent~~
11 ~~of said court, duly entered of record,~~ appoint any person or
12 persons his or her deputy or deputies to perform any temporary
13 service or duty.

14 (4) Each deputy ~~so appointed~~ shall take the same oath of
15 office required of his or her principal, and may, during his or her
16 continuance in office, perform and discharge any of the official
17 duties of his or her principal, and any default or misfeasance in
18 office of the deputy shall constitute a breach of the conditions of
19 the official bond of his or her principal.

20 (5) A sheriff in any county in which there are more than four
21 deputies shall devote his or her full time to the performance of
22 the services or duties required by law of such sheriff, and ~~he~~
23 shall not receive any compensation or reimbursement, directly or

1 indirectly, from any person, firm or corporation for the
2 performance of any private or public services or duties. ~~Provided,~~
3 ~~That~~ However, any ~~such~~ sheriff may retain or make any investment
4 and receive income therefrom, unless ~~such~~ the investment is
5 otherwise prohibited by law or will impair ~~his~~ the sheriff's
6 independence of judgment in the exercise of, or might reasonably
7 tend to conflict with the proper discharge of, the services or
8 duties of ~~his~~ the office of sheriff. A sheriff in any county in
9 which there are four or fewer deputies, or a deputy sheriff in any
10 county ~~irrespective~~ regardless of the number of deputies, need not
11 devote his or her full time to the services or duties of his or her
12 office as sheriff or his or her employment as deputy sheriff, as
13 the case may be; but any such sheriff or deputy sheriff shall not
14 engage in any business or transaction, accept other employment or
15 make any investment which is otherwise prohibited by law or which
16 will impair his or her independence of judgment in the exercise of,
17 or might reasonably tend to conflict with the proper discharge of,
18 the services or duties of ~~his~~ the office as sheriff or his or her
19 employment as deputy sheriff, as the case may be. A sheriff and his
20 or her deputies in any county, ~~irrespective~~ regardless of the
21 number of deputies, shall receive for the performance of their
22 public services and duties no compensation or remuneration except
23 such as may be regularly provided and paid out of public funds to

1 the amount and in the manner provided by law. No sheriff or deputy
2 sheriff in any county, ~~irrespective~~ regardless of the number of
3 deputies, may receive, directly or indirectly, any gift or donation
4 from any person, firm or corporation.

5 (6) Except as ~~hereinafter~~ expressly provided by subsection (b)
6 of this section, no sheriff ~~shall~~ may appoint or continue the
7 appointment of any deputy contrary to the provisions ~~hereof~~ of this
8 section. Any sheriff or deputy sheriff who ~~shall violate~~ violates
9 any ~~of the provisions~~ provision of this section ~~shall be~~ is guilty
10 of a misdemeanor and, upon conviction thereof, shall be fined not
11 less than \$500 nor more than \$5,000, ~~or~~ confined in jail for not to
12 ~~exceed~~ more than one year, or both. ~~in the discretion of the court~~

13 (7) Circuit courts shall have jurisdiction in equity and
14 mandamus, and the Supreme Court of Appeals shall have jurisdiction
15 in mandamus, upon the filing of a petition by the prosecuting
16 attorney, the Attorney General, or any three or more citizens of
17 the county, to require any sheriff and the county ~~court~~ commission
18 to vacate the appointment of any deputy, the appointment of which
19 is made or continued in violation of the provisions ~~hereof~~ of this
20 subsection. Any such proceeding may be instituted and prosecuted by
21 the Attorney General either in the circuit court of Kanawha County
22 or in the county for which such appointment was made.

23 (b) (1) Any resident or group of residents of any

1 unincorporated community ~~as hereinafter defined,~~ may petition the
2 sheriff for the appointment of a local conservator of the peace and
3 ~~such~~ the sheriff, when in his or her opinion the public interests
4 require it, may with the assent of ~~said~~ the county ~~court~~ commission
5 and the judge of the circuit court duly entered of record, either
6 in term or vacation of any such court, appoint any person or
7 persons a local conservator or conservators of the peace to perform
8 the duties of a conservator of the peace outside of any
9 ~~incorporated city, town or village~~ municipality. No person shall be
10 appointed ~~such~~ local conservator of the peace who has not been a
11 bona fide resident and taxpayer of the county for at least one year
12 prior to his or her appointment. ~~Such~~ A local conservator of the
13 peace during his or her continuance in office, may perform and
14 discharge any of the official duties of the sheriff, subject
15 ~~nevertheless~~ to the provisions of this section. No local
16 conservator ~~so appointed~~ shall be subject to the direction or
17 control of any person other than ~~his principal~~ the appointing
18 sheriff and ~~he~~ a local conservator shall not perform any services
19 or duties, either private or public, except the duties required by
20 law of conservators of the peace pursuant to the provisions ~~hereof~~
21 of this subsection, for any person, firm, or corporation. No ~~such~~
22 local conservator shall be entitled to collect or receive any fees
23 provided by law to be paid to the sheriff or to a deputy sheriff,

1 but all fees provided by law for the sheriff, when such duties and
2 services are rendered by such local conservator, shall be paid to
3 the sheriff as regular collections of the sheriff's office. The
4 local conservator shall be paid for the public services ~~performed~~
5 ~~by him~~ the local conservator performs a salary of not less than \$75
6 per month out of the county treasury from a fund to be paid into
7 such treasury by a resident or the residents of the community for
8 which ~~he~~ the local conservator is appointed, for the sole purpose
9 of compensating ~~such~~ the local conservator or conservators and no
10 ~~such~~ local conservator ~~shall~~ may receive any other compensation,
11 directly or indirectly, from any person, firm, or corporation, for
12 any private or public service, except the salary payable to ~~him~~ the
13 local conservator for his or her public services and duties and
14 from such fund, except that ~~he~~ the local conservator shall be
15 entitled to witness and mileage fees when a witness in ~~a~~ any court
16 ~~of record~~ proceeding. Each local conservator ~~so appointed~~ shall
17 take the same oath of office required of ~~his principal~~ the
18 appointing sheriff and any default or misfeasance in the office of
19 ~~such~~ the local conservator shall constitute a breach of the
20 conditions of the official bond of ~~his principal~~ the appointing
21 sheriff.

22 (2) When the sheriff ~~shall have been~~ is petitioned for the
23 appointment of a local conservator and ~~has determined~~ determines

1 that the appointment is proper, ~~he~~ the sheriff shall select the
2 person whom ~~he~~ the sheriff proposes to have appointed ~~such a local~~
3 conservator and shall notify the county ~~court~~ commission of the
4 community for which ~~such~~ the local conservator is to be appointed
5 and the name of the person proposed for ~~such~~ the appointment. The
6 county ~~court~~ commission shall thereupon cause notice that the
7 sheriff has recommended the appointment of the person named as
8 conservator for the community named to be published as a Class II
9 legal advertisement in compliance with the provisions of article
10 three, chapter fifty-nine of this code, and the publication area
11 ~~for such publication~~ shall be the county. The notice shall
12 designate a day not less than five days after the date of the last
13 publication when the county ~~court~~ commission will act upon the
14 petition and recommendation. Neither the county ~~court~~ commission
15 nor the judge of the circuit court ~~shall~~ may assent and approve the
16 appointment of ~~such a~~ local conservator until ~~such~~ after the
17 required publication has been made. The costs of the publication
18 shall be paid by the person or persons petitioning for the
19 appointment of the conservator.

20 No local conservator ~~shall~~ may be appointed ~~except it be made~~
21 ~~to appear to the satisfaction of~~ unless the county ~~court~~ commission
22 and the judge of the circuit court find that because of the lack of
23 sufficient funds, the geographical location of the unincorporated

1 community for which ~~such~~ the conservator is to be appointed, or
2 other good reason, the sheriff and ~~his regular~~ the sheriff's
3 deputies ~~and the constables of the county~~ are not sufficient to
4 afford proper local policing of ~~such~~ the community and that the
5 person or persons moving for the appointment of ~~such~~ the local
6 conservator have made satisfactory arrangements to compensate ~~him~~
7 the local conservator for his or her services as ~~such~~ a local
8 conservator of the peace.

9 (3) ~~Such~~ A local conservator of the peace shall have all the
10 powers and duties of a regularly appointed deputy sheriff except
11 that ~~he~~ a local conservator of the peace shall not execute any
12 civil process except such process as may be necessary to bring
13 parties before the court in any civil action ~~at law or suit in~~
14 ~~equity~~ and subpoenas for witnesses within the unincorporated
15 community for which he or she is appointed and within a distance of
16 one mile outside the boundaries thereof, except as hereinafter
17 expressly provided, ~~but he~~ and shall not participate in any strike,
18 unemployment boycott, or other industrial or labor dispute, nor
19 serve any court process of any character relating thereto. ~~He~~ A
20 local conservator of the peace shall act ~~as such local conservator~~
21 only in the unincorporated community for which he or she is
22 appointed, and within a distance of one mile from the boundaries
23 thereof as fixed by the county ~~court~~ commission: *Provided,*

1 ~~however,~~ That the authority of one local conservator shall not
2 extend into any other unincorporated community for which another
3 local conservator is appointed and acting, except as otherwise
4 expressly provided by subdivision (6) of this subsection, except
5 that in fresh pursuit ~~he~~ a local conservator may effect arrests
6 anywhere in the county. ~~He~~ A local conservator may also exercise
7 the powers of a regularly appointed deputy sheriff anywhere in the
8 county when required to guard or assist in guarding a payroll, or
9 any other property of value in transit to or from the
10 unincorporated community for which ~~he~~ the local conservator is
11 appointed. Any person arrested by ~~such~~ a local conservator shall,
12 with all convenient speed, be turned over to the sheriff or ~~one of~~
13 ~~his regular deputies, or to a regular constable of the county to be~~
14 ~~dealt with according to law,~~ a deputy sheriff and ~~his~~ the local
15 conservator's authority for that purpose shall be coextensive with
16 the county.

17 (4) Any local conservator appointed to perform the duties of
18 conservator of the peace shall be a public officer and the payment,
19 or contribution to the payment of compensation of ~~such~~ the local
20 conservator shall not constitute the person, firm or corporation
21 making such payment or contribution the employer of ~~such~~ the local
22 conservator and no person, firm or corporation paying, or
23 contributing to the payment of compensation to ~~such~~ the local

1 conservator shall be ~~answerable in law or in equity~~ liable in any
2 civil action for any damages to person or property resulting from
3 any official act or omission of ~~such~~ any local conservator.

4 (5) ~~No person appointed such~~ The appointment of a local
5 conservator ~~shall thereby be entitled to carry weapons, but such~~
6 ~~local conservator may carry weapons when he shall be duly licensed~~
7 ~~and shall have given bond as provided by section two, article~~
8 ~~seven, chapter sixty one of the Code of West Virginia, 1931~~ does
9 not enlarge or diminish the local conservator's right to keep and
10 bear arms in the same manner as the local conservator may otherwise
11 lawfully do so as a private citizen.

12 (6) Not more than one local conservator of the peace shall be
13 appointed, to perform the duties of conservator of the peace, for
14 each two thousand five hundred inhabitants of the county as
15 ascertained by the last regular decennial census after deducting
16 the number of inhabitants of the county residing in ~~the~~
17 ~~incorporated cities, towns and villages in such county~~
18 municipalities. Not more than one local conservator shall be
19 appointed for any unincorporated community unless the population
20 ~~thereof~~ of the community exceeds one thousand five hundred people,
21 ~~and in such~~ which case not more than two conservators ~~shall~~ may be
22 appointed for ~~such~~ the community.

23 (7) ~~The phrase~~ In this section, "unincorporated community"

1 ~~within the meaning of this section shall mean~~ means any center of
2 population ~~wherein~~ outside a municipality in which fifty or more
3 persons reside within an area of not more than one square mile.

4 (8) The county ~~court~~ commission and the judge of the circuit
5 court in approving the appointment of a local conservator shall
6 enter of record an order making ~~such the~~ the appointment and shall show
7 ~~therein~~ in the order the necessity for the appointment, the person
8 or persons on whose motion the appointment is made, the arrangement
9 for the payment of compensation to such local conservator, the
10 unincorporated community or communities, for which the appointment
11 is made, including the general boundary of each unincorporated
12 community for which ~~he~~ the local conservator is appointed.

13 (9) No local conservator ~~shall~~ may act as an election official
14 or remain in, about or near any voting place or place of political
15 convention, further than is necessary for ~~him~~ the local conservator
16 to promptly ~~cast his~~ vote and retire from the voting place.

17 (10) Any local conservator ~~violating any of the provisions of~~
18 ~~subdivisions~~ who violates subdivision (3) ~~and~~ or (9) of this
19 subsection ~~shall be~~ is guilty of a misdemeanor and, upon conviction
20 thereof, shall be fined not less than \$50 nor more than \$300, ~~or be~~
21 confined in ~~the county~~ jail for not more than six months, or both.
22 ~~in the discretion of the court; and it shall be the duty of The~~
23 sheriff and the county ~~court to forthwith~~ commission shall

1 immediately revoke ~~his~~ the appointment ~~irrespective~~ of a local
2 conservator who violates subdivision (3) or (9) of this subsection
3 regardless of any criminal prosecution. A proceeding in mandamus or
4 injunction shall lie in the circuit court and a proceeding in
5 mandamus shall lie in the Supreme Court of Appeals at the instance
6 of the prosecuting attorney, the Attorney General, or of any three
7 or more citizens of the community for which ~~such~~ the conservator is
8 appointed, to require the performance of ~~such~~ this duty by the
9 sheriff and the county ~~court~~ commission.

10 (11) ~~Such~~ A local conservator shall serve ~~during~~ at the joint
11 will and pleasure of the sheriff and the county ~~court~~ commission
12 and ~~his~~ the local conservator's appointment may be revoked by order
13 entered of record by the county ~~court either with or~~ commission
14 without ~~the assignment of~~ cause. ~~therefor~~

15 A local conservator may be removed by the judge of the circuit
16 court, either in term or vacation, for drunkenness, gross
17 immorality, incompetence, neglect of duty, or other good cause,
18 upon the petition of three or more residents of the community for
19 which ~~he~~ the local conservator has been appointed. The petition
20 shall set forth the cause or causes for which ~~such~~ the removal of
21 the local conservator is ~~asked~~ demanded and shall show that demand
22 for removal has been made of the sheriff and the county ~~court~~
23 commission and that the sheriff and the county ~~court~~ commission

1 have failed to remove the local conservator. At least three copies
 2 of the petition shall be filed, and upon the filing of the petition
 3 the judge shall fix a time and place for a hearing thereon, which
 4 time shall not be less than ten days after the filing of the
 5 petition, and shall cause a copy thereof to be served upon the
 6 sheriff and ~~such~~ the local conservator at least ten days before the
 7 hearing thereon.

8 **§6-3-1a. Deputy sheriff's reserve; purpose; appointment and**
 9 **qualifications of members; duties; attire; training;**
 10 **oath; bond; not employee of sheriff or county**
 11 **commission for certain purposes; limitation on**
 12 **liability.**

13 (a) The sheriff of any county may, for the purposes
 14 ~~hereinafter set forth~~ specified in this section, designate and
 15 appoint a deputy sheriffs' reserve, hereinafter referred to as
 16 "reserve" or "reserves." A reserve may not be designated or created
 17 without the prior approval of the county commission for the
 18 establishment of the reserve.

19 (b) Each sheriff may appoint as members of the reserve bona
 20 fide citizens of the county who are of good moral character and who
 21 have not been convicted of a felony or other crime involving moral
 22 turpitude. Any ~~person so appointed~~ member of the reserve shall

1 serve at the will and pleasure of the sheriff and is not subject to
2 the provisions of article fourteen, chapter seven of this code. A
3 member of the reserve may not engage in any political activity or
4 campaign involving the office of sheriff or from which activity or
5 campaign the sheriff or ~~candidates therefor~~ any candidate for the
6 office of the sheriff appointing the member would directly benefit.

7 (c) ~~Members of the reserves shall not serve as law-enforcement~~
8 ~~officers, nor carry firearms, but may carry other weapons provided~~
9 ~~that the sheriff certifies in writing to the county commission that~~
10 ~~the reserve has met the special training requirements for the~~
11 ~~weapon as established by the Governor's committee on crime,~~
12 ~~delinquency and corrections. The Governor's committee on crime,~~
13 ~~delinquency and corrections is authorized to promulgate legislative~~
14 ~~rules and emergency rules pursuant to the provisions of article~~
15 ~~three, chapter twenty-nine-a of this code to establish appropriate~~
16 ~~training standards. The sheriff may provide the reserves may be~~
17 ~~provided with radio and other electronic communication equipment~~
18 for the purpose of maintaining contact with the sheriff's
19 department or other law-enforcement agencies.

20 (d) The duties of the reserves shall be limited to crowd
21 control or traffic control and direction within the county. In
22 addition, the reserves may perform such other duties of a
23 nonlaw-enforcement nature as are designated by the sheriff or by a

1 deputy sheriff designated and appointed by the sheriff for that
2 purpose: *Provided*, That a member of the reserves may not aid or
3 assist any law-enforcement officer in enforcing the statutes and
4 laws of this state in any labor trouble or dispute between employer
5 and employee.

6 ~~(d)~~ (e) Members of the reserves may be uniformed; however, if
7 ~~so~~ uniformed, the uniforms shall clearly differentiate ~~these~~
8 members of the reserves from other law-enforcement deputy sheriffs.

9 ~~(e)~~ (f) After appointment to the reserves but prior to service
10 each member of the reserves shall receive appropriate training and
11 instruction in their functions and authority as well as the
12 limitations of authority. In addition, each member of the reserves
13 shall annually receive in-service training.

14 ~~(f)~~ (g) Each member of the reserve shall take the same oath as
15 prescribed by section five, article IV of the Constitution of ~~the~~
16 this state, ~~of West Virginia~~ but the taking of the oath does not
17 ~~serve to~~ make the member a public officer.

18 ~~(g)~~ (h) The county commission of each county shall provide for
19 the bonding and liability insurance of each member of the reserve.

20 ~~(h)~~ (i) A member of the reserve is not an employee of either
21 the sheriff or ~~of the county commission for any purpose or purposes,~~
22 ~~including, but not limited to,~~ the purposes of workers'
23 compensation, civil service, unemployment compensation, public

1 employees retirement, public employees insurance or ~~for~~ any other
 2 purpose. A member of the reserves may not receive any compensation
 3 or pay for any services performed as a member nor may a member use
 4 the designated uniform for any other similar work performed. A
 5 member of the reserves is not a law-enforcement officer within the
 6 meaning of section one, article twenty-nine, chapter thirty of this
 7 code, and is not authorized by virtue of his or her appointment as
 8 a member of the reserves to carry a concealed weapon without a
 9 license. This section does not enlarge or diminish the right of a
 10 member of the reserves to keep and bear arms in the same manner as
 11 he or she may otherwise lawfully do so as a private citizen.

12 ~~(i)~~ (j) Neither the county commission nor the sheriff is liable
 13 for any of the acts of any member of the reserves except in the case
 14 of gross negligence on the part of the county commission or sheriff
 15 in the appointment of the member or in the case of gross negligence
 16 on the part of either the sheriff or any of his or her deputies in
 17 directing any action on the part of the member.

18 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

19 **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

20 **§7-1-3. Jurisdiction, powers and duties.**

21 The county commissions, through their clerks, shall have the
 22 custody of all deeds and other papers presented for record in their
 23 counties and the same shall be preserved therein, or otherwise

1 disposed of as now is, or may be prescribed by law. ~~They~~ The county
2 commissions shall have jurisdiction in all matters of probate, the
3 appointment and qualification of personal representatives,
4 guardians, committees, curators and the settlement of their accounts
5 and in all matters relating to apprentices. ~~They~~ The county
6 commissions shall also, under the rules as now are or may be
7 prescribed by law, have the superintendence and administration of
8 the internal police and fiscal affairs of their counties, including
9 the establishment and regulation of roads, ways, streets, avenues,
10 drives and the like, and the naming or renaming thereof, in
11 cooperation with local postal authorities, the Division of Highways
12 and the directors of county emergency communications centers, to
13 assure uniform, nonduplicative conversion of all rural routes to
14 city-type addressing on a permanent basis, bridges, public landings,
15 ferries and mills, with authority to lay and disburse the county
16 levies. ~~They~~ The county commissions shall, in all cases of contest,
17 judge of the election, qualification and returns of their own
18 members, and of all county and district officers, subject to appeal
19 as prescribed by law. The tribunals as have been heretofore
20 established by the Legislature under and by virtue of section
21 thirty-four, article VIII of the Constitution of 1,872, for police
22 and fiscal purposes, shall, until otherwise provided by law, remain
23 and continue as at present constituted in the counties in which they

1 have been respectively established, and shall be and act as to
2 police and fiscal matters in lieu of the county commission herein
3 mentioned, until otherwise provided by law. And until otherwise
4 provided by law, the clerk as is mentioned in section twenty-six of
5 said article, as amended, shall exercise any powers and discharge
6 any duties heretofore conferred on, or required of, any court or
7 tribunal established for judicial purposes under said section, or
8 the clerk of the court or tribunal, respectively, respecting the
9 recording and preservation of deeds and other papers presented for
10 record, matters of probate, the appointment and qualification of
11 personal representatives, guardians, committees, curators and the
12 settlement of their accounts and in all matters relating to
13 apprentices. ~~The county commission may not limit the right of any
14 person to purchase, possess, transfer, own, carry, transport, sell
15 or store any revolver, pistol, rifle or shotgun or any ammunition
16 or ammunition components to be used therewith nor to so regulate the
17 keeping of gunpowder so as to, directly or indirectly, prohibit the
18 ownership of the ammunition: *Provided*, That no provision in this
19 section may be construed to limit the authority of a county to
20 restrict the commercial use of real estate in designated areas
21 through planning or zoning ordinances.~~

22 **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

23 **§7-4-1. Duties of prosecuting attorney; further duties upon**

1 **request of Attorney General.**

2 ~~It shall be the duty of~~ (a) The prosecuting attorney ~~to~~ shall
3 attend to the criminal business of the state in the county in which
4 ~~he~~ the prosecuting attorney is elected and qualified. ~~and~~ When ~~he~~
5 the prosecuting attorney has information of the violation of any
6 penal law committed within ~~such~~ the county served by the prosecuting
7 attorney, ~~he~~ the prosecuting attorney shall institute and prosecute
8 all necessary and proper proceedings against the offender and may
9 ~~in such case~~ issue or cause to be issued a summons for any witness
10 ~~he may deem~~ the prosecuting attorney considers material. Every
11 public officer shall give ~~him~~ the prosecuting attorney information
12 of the violation of any penal law committed within ~~his~~ the county
13 served by the prosecuting attorney. ~~It shall also be the duty of~~

14 (b) A prosecuting attorney shall be a conservator of the peace
15 within the county he or she serves and may arrest any person without
16 a warrant for committing in his or her presence a misdemeanor that
17 constitutes a breach of the peace or any felony.

18 (c) The prosecuting attorney ~~to~~ shall attend to civil ~~suits~~
19 actions in ~~such~~ the county served by the prosecuting attorney in
20 which the state or any department, commission, ~~or board thereof,~~ or
21 other instrumentality of the state is interested, and ~~to~~ advise,
22 attend to, bring, prosecute or defend, as the case may be, all
23 matters, actions, suits and proceedings in which ~~such~~ the county or

1 ~~any~~ the county board of education is interested.

2 ~~It shall be the duty of~~ (d) The prosecuting attorney ~~to~~ shall
3 keep his or her office open in the charge of a responsible person
4 during the hours polls are open on general, primary and special
5 county-wide election days, and the prosecuting attorney ~~or his~~ and
6 assistant prosecuting attorneys, if any, shall be available for the
7 purpose of advising election officials. ~~It shall be the further duty~~
8 ~~of~~

9 (e) The prosecuting attorney, when requested by the Attorney
10 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in
11 performing, in the county ~~in which he is elected~~ served by the
12 prosecuting attorney, any legal duties required to be performed by
13 the Attorney General, and which are not inconsistent with the duties
14 of the prosecuting attorney as the legal representative of ~~such~~ the
15 county. ~~It shall also be the duty of~~

16 (f) The prosecuting attorney, when requested by the Attorney
17 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in
18 performing any legal duties required to be performed by the Attorney
19 General, in any county other than ~~that~~ the county in which such
20 prosecuting attorney is elected and qualified, and for the
21 performance of any such duties in any county other than ~~that in~~
22 ~~which such~~ the county served by the prosecuting attorney, ~~is elected~~
23 ~~he~~ the prosecuting attorney shall be paid his or her actual

1 expenses.

2 (g) Upon the request of the Attorney General, the prosecuting
3 attorney shall make a written report of the state and condition of
4 ~~the several causes~~ all cases in which the state is a party, pending
5 in ~~his~~ the county served by the prosecuting attorney, and upon any
6 matters referred to ~~him~~ the prosecuting attorney by the Attorney
7 General as provided by law.

8 **ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

9 **§7-11-5. General powers of commission; rules and regulations;**
10 **misdemeanor offenses; park police authorized.**

11 ~~The~~ (a) Each county parks and recreation commission shall have
12 the necessary powers and authority to manage and control all public
13 parks and recreational properties and facilities owned by the county
14 or commission and used as a part of such public parks and recreation
15 system, including the ~~right~~ power to promulgate rules and
16 regulations concerning the management and control of such parks and
17 recreational properties and facilities and to enforce any ~~such~~ rules
18 ~~and regulations~~ so promulgated pursuant to this section.

19 ~~The~~ (b) Each county parks and recreation commission shall ~~also~~
20 have plenary power and authority to prepare and submit to the county
21 ~~court~~ commission for adoption rules ~~and regulations~~ regulating the
22 use of any parks and recreational properties and facilities under
23 the control of the Parks and Recreation Commission and prohibiting

1 any type of use of or activities in connection with any such
2 properties or facilities, and any such rules ~~and regulations~~, if so
3 adopted, shall be duly entered of record in the order book of the
4 county ~~court~~ commission. ~~The violation of~~ Any person who violates
5 any ~~such rule and regulation so~~ adopted by the county ~~court~~ shall
6 ~~constitute~~ commission under this subsection is guilty of a
7 misdemeanor and, ~~any person convicted of any such violation upon~~
8 conviction thereof, shall be ~~punished by a fine of~~ fined not less
9 than \$5 nor more than \$100, ~~or by imprisonment~~ confined in jail for
10 ~~a period not exceeding~~ not more than thirty days, or by both. ~~such~~
11 ~~fine and imprisonment~~. Justices of the peace of the county shall
12 ~~have concurrent jurisdiction with the circuit court and other courts~~
13 ~~of record (having criminal jurisdiction) of any misdemeanor offenses~~
14 ~~arising under this article~~. The violation of any such rule and
15 ~~regulation~~ which also constitutes the violation of any state law or
16 municipal ordinance may be prosecuted and punished as a violation
17 of such state law or municipal ordinance rather than under the
18 provisions of this section. To enforce any such rules, ~~and~~
19 ~~regulations~~ to protect and preserve all properties and facilities
20 under the control of the Parks and Recreation Commission and to
21 preserve law and order in connection therewith, the Parks and
22 Recreation Commission shall have plenary power and authority to
23 provide in its bylaws procedures for the appointment, supervision

1 and discharge of one or more park police officers. Whenever any such
2 appointment is made, a copy of the order of appointment shall be
3 filed by the commission with the county ~~court~~ commission.

4 (c) In any area under the jurisdiction and control of the Parks
5 and Recreation Commission, or in connection with any properties or
6 facilities under the jurisdiction and control of the Parks and
7 Recreation Commission, or in pursuit of one or more individuals
8 therefrom, any park police officer ~~so appointed~~ shall have all of
9 the power and authority ~~which that~~ a ~~regularly appointed deputy~~
10 ~~sheriff of such county~~ law-enforcement officer, as defined in
11 section one, article twenty-nine, chapter thirty of this code, has
12 in enforcing the criminal laws of the state. ~~Notwithstanding any~~
13 ~~provisions of this code to the contrary,~~ park police officers
14 ~~appointed as aforesaid shall not be required to obtain a state~~
15 ~~license to carry a weapon, as required by the provisions of section~~
16 ~~two, article seven, chapter sixty one of this code. When any such~~
17 ~~commission has purchased one or more policies of public liability~~
18 ~~insurance providing the commission and its officers, agents and~~
19 ~~employees insurance coverage for legal liability of said commission~~
20 ~~and its officers, agents and employees for bodily injury, personal~~
21 ~~injury or damage (including, but not limited to, false arrest and~~
22 ~~false imprisonment) and property damage, and affording said~~
23 ~~commission and its officers, agents and employees insurance coverage~~

1 ~~against any and all legal liability arising from, growing out of,~~
2 ~~by reason of or in any way connected with, any acts or omissions of~~
3 ~~said commission, or its officers, agents or employees in the~~
4 ~~performance of their official duties, and so long as the coverage~~
5 ~~aforsaid remains in full force and effect as to such park police~~
6 ~~officers, then the bond specified in section five, article seven of~~
7 ~~said chapter sixty-one shall not be required as to such park police~~
8 ~~officers.~~

9 **ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICATION OF FEE TO**
10 **DEPUTY SHERIFF'S RETIREMENT SYSTEM.**

11 **§7-14E-2. Statewide uniform fees for reports generated by**
12 **sheriff's offices; dedication of fees.**

13 (a) The county commission of each county ~~in this state~~ shall
14 set a uniform fee for obtaining ~~certain~~ traffic accident reports,
15 criminal investigation reports, incident reports and property
16 reports ~~This fee shall be set at a minimum of~~ not less than \$10 for
17 ~~each report, with a maximum of~~ nor more than \$20 for each report.
18 Ten dollars of the charge for each report shall be deposited into
19 the Deputy Sheriff Retirement Fund created in section six, article
20 fourteen-d of this chapter. ~~The reports for which a charge may be~~
21 ~~made are traffic accident reports, criminal investigation reports,~~
22 ~~incident reports and property reports.~~

1 (b) All sheriff's offices in this state shall collect a fee of
2 \$5 for performing the following services: Adult private employment
3 fingerprinting; ~~fingerprinting for federal firearm permits;~~ motor
4 vehicle number identification; adult identification cards; and
5 photo-identification cards. Upon collection, these fees shall be
6 deposited into the Deputy Sheriff Retirement Fund created in section
7 six, article fourteen-d of this chapter.

8 (c) All sheriff's offices in this state shall collect a fee of
9 \$5 for each nongovernmental background investigation report. Upon
10 collection, these fees shall be deposited into the Deputy Sheriff
11 Retirement Fund created in section six, article fourteen-d of this
12 chapter.

13 (d) No charge may be made under this section for any report or
14 reports made to governmental agencies.

15 (e) The fees specified in this section do not apply to any
16 license to carry concealed weapons pursuant to section four or five,
17 article seven, chapter sixty-one of this code.

18 ~~(e)~~(f) Any county commission which fails to make any payment
19 due the Deputy Sheriff Retirement Fund by the fifteenth day
20 following the end of each calendar month in which a fee or other
21 contribution is received by the county's sheriff may be required to
22 pay the actuarial rate of interest lost on the total amount owed for
23 each day the payment is delinquent. Accrual of the loss of earnings

1 owed by the delinquent county commission commences after the
2 fifteenth day following the end of the calendar month in which the
3 fee or other contribution is due and continues until receipt of the
4 delinquent amount. Interest compounds daily and the minimum
5 surcharge is \$50.

6 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

7 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
8 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
9 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
10 **MUNICIPALITIES.**

11 **§8-12-5. General powers of every municipality and the governing**
12 **body thereof.**

13 In addition to the powers and authority granted by: (i) The
14 Constitution of this state; (ii) other provisions of this chapter;
15 (iii) other general law; and (iv) any charter, and to the extent not
16 inconsistent or in conflict with any of the foregoing except special
17 legislative charters, every municipality and the governing body
18 thereof shall have plenary power and authority therein by ordinance
19 or resolution, as the case may require, and by appropriate action
20 based thereon:

21 (1) To lay off, establish, construct, open, alter, curb,
22 recurb, pave or repave and keep in good repair, or vacate,

1 discontinue and close, streets, avenues, roads, alleys, ways,
2 sidewalks, drains and gutters, for the use of the public, and to
3 improve and light the same, and have them kept free from
4 obstructions on or over them which have not been authorized pursuant
5 to the succeeding provisions of this subdivision; and, subject to
6 such terms and conditions as the governing body shall prescribe, to
7 permit, without in any way limiting the power and authority granted
8 by the provisions of article sixteen of this chapter, any person to
9 construct and maintain a passageway, building or other structure
10 overhanging or crossing the airspace above a public street, avenue,
11 road, alley, way, sidewalk or crosswalk, but before any permission
12 for any person to construct and maintain a passageway, building or
13 other structure overhanging or crossing any airspace is granted, a
14 public hearing thereon shall be held by the governing body after
15 publication of a notice of the date, time, place and purpose of the
16 public hearing has been published as a Class I legal advertisement
17 in compliance with the provisions of article three, chapter
18 fifty-nine of this code and the publication area for the publication
19 shall be the municipality: *Provided*, That any permit so granted
20 shall automatically cease and terminate in the event of abandonment
21 and nonuse thereof for the purposes intended for a period of ninety
22 days, and all rights therein or thereto shall revert to the
23 municipality for its use and benefit;

1 (2) To provide for the opening and excavation of streets,
2 avenues, roads, alleys, ways, sidewalks, crosswalks and public
3 places belonging to the municipality and regulate the conditions
4 under which any such opening may be made;

5 (3) To prevent by proper penalties the throwing, depositing or
6 permitting to remain on any street, avenue, road, alley, way,
7 sidewalk, square or other public place any glass, scrap iron, nails,
8 tacks, wire, other litter or any offensive matter or anything likely
9 to injure the feet of individuals or animals or the tires of
10 vehicles;

11 (4) To regulate the use of streets, avenues, roads, alleys,
12 ways, sidewalks, crosswalks and public places belonging to the
13 municipality, including the naming or renaming thereof, and to
14 consult with local postal authorities, the Division of Highways and
15 the directors of county emergency communications centers to assure
16 uniform, nonduplicative addressing on a permanent basis;

17 (5) To regulate the width of streets, avenues and roads, and,
18 subject to the provisions of article eighteen of this chapter, to
19 order the sidewalks, footways and crosswalks to be paved, repaved,
20 curbed or recurbed and kept in good order, free and clean, by the
21 owners or occupants thereof or of the real property next adjacent
22 thereto;

23 (6) To establish, construct, alter, operate and maintain, or

1 discontinue, bridges, tunnels and ferries and approaches thereto;

2 (7) To provide for the construction and maintenance of water
3 drains, the drainage of swamps or marshlands and drainage systems;

4 (8) To provide for the construction, maintenance and covering
5 over of watercourses;

6 (9) To control and administer the waterfront and waterways of
7 the municipality and to acquire, establish, construct, operate and
8 maintain and regulate flood control works, wharves and public
9 landings, warehouses and all adjuncts and facilities for navigation
10 and commerce and the utilization of the waterfront and waterways and
11 adjacent property;

12 (10) To prohibit the accumulation and require the disposal of
13 garbage, refuse, debris, wastes, ashes, trash and other similar
14 accumulations whether on private or public property: *Provided,*
15 *That,* in the event the municipality annexes an area which has been
16 receiving solid waste collection services from a certificated solid
17 waste motor carrier, the municipality and the solid waste motor
18 carrier may negotiate an agreement for continuation of the private
19 solid waste motor carrier services for a period of time, not to
20 exceed three years, during which time the certificated solid waste
21 motor carrier may continue to provide exclusive solid waste
22 collection services in the annexed territory;

23 (11) To construct, establish, acquire, equip, maintain and

1 operate incinerator plants and equipment and all other facilities
2 for the efficient removal and destruction of garbage, refuse,
3 wastes, ashes, trash and other similar matters;

4 (12) To regulate or prohibit the purchase or sale of articles
5 intended for human use or consumption which are unfit for use or
6 consumption, or which may be contaminated or otherwise unsanitary;

7 (13) To prevent injury or annoyance to the public or
8 individuals from anything dangerous, offensive or unwholesome;

9 (14) To regulate the keeping of gunpowder and other
10 combustibles. However, any regulation of the keeping of gunpowder
11 pursuant to this subdivision may not act, directly or indirectly,
12 to prohibit the otherwise lawful ownership, possession, control or
13 storage of gunpowder or ammunition for any firearm;

14 (15) To regulate or prohibit the outdoor discharge of firearms,
15 other than (i) the discharge of a firearm by a law-enforcement
16 officer acting in the course of performance of his or her official
17 duties; (ii) the discharge of a firearm by a wildlife damage control
18 agent licensed pursuant to section fifty-a, article two, chapter
19 twenty of this code, acting in the course of killing or attempting
20 to kill nuisance wildlife as authorized by that section; (iii) the
21 discharge of a firearm for the specific purpose of killing nuisance
22 wildlife as authorized by a permit issued pursuant to section
23 fifteen, article two, chapter twenty of this code; or (iv) the

1 discharge of a firearm at an established shooting range, and to
2 arrest, convict and punish any individual for knowingly and
3 willfully discharging a firearm in violation of the applicable
4 restriction or prohibition. It is a defense to a charge of knowingly
5 and willfully discharging a firearm in violation of a municipal
6 ordinance under this subdivision that the defendant discharged the
7 firearm under circumstances in which the defendant was justified or
8 excused under the laws of this state in using deadly force in
9 self-defense or the defense of other persons or property;

10 ~~(15)(16) To make regulations guarding against danger or damage by~~
11 ~~fire;~~

12 ~~(16) To arrest, convict and punish any individual for carrying~~
13 ~~about his or her person any revolver or other pistol, dirk, bowie~~
14 ~~knife, razor, slingshot, billy, metallic or other false knuckles or~~
15 ~~any other dangerous or other deadly weapon of like kind or~~
16 ~~character;~~

17 (17) To arrest, convict and punish any person for importing,
18 printing, publishing, selling or distributing any pornographic
19 publications;

20 (18) To arrest, convict and punish any person for keeping a
21 house of ill fame, or for letting to another person any house or
22 other building for the purpose of being used or kept as a house of
23 ill fame, or for knowingly permitting any house owned by him or her

1 or under his or her control to be kept or used as a house of ill
2 fame, or for loafing, boarding or loitering in a house of ill fame,
3 or frequenting same;

4 (19) To prevent and suppress conduct and practices which are
5 immoral, disorderly, lewd, obscene and indecent;

6 (20) To prevent the illegal sale of intoxicating liquors,
7 drinks, mixtures and preparations;

8 (21) To arrest, convict and punish any individual for driving
9 or operating a motor vehicle while intoxicated or under the
10 influence of liquor, drugs or narcotics;

11 (22) To arrest, convict and punish any person for gambling or
12 keeping any gaming tables, commonly called "A, B, C," or "E, O,"
13 table or faro bank or keno table, or table of like kind, under any
14 denomination, whether the gaming table be played with cards, dice
15 or otherwise, or any person who shall be a partner or concerned in
16 interest, in keeping or exhibiting the table or bank, or keeping or
17 maintaining any gaming house or place, or betting or gambling for
18 money or anything of value;

19 (23) To provide for the elimination of hazards to public health
20 and safety and to abate or cause to be abated anything which in the
21 opinion of a majority of the governing body is a public nuisance;

22 (24) To license, or for good cause to refuse to license in a
23 particular case, or in its discretion to prohibit in all cases, the

1 operation of pool and billiard rooms and the maintaining for hire
2 of pool and billiard tables notwithstanding the general law as to
3 state licenses for any such business and the provisions of section
4 four, article thirteen of this chapter; and when the municipality,
5 in the exercise of its discretion, refuses to grant a license to
6 operate a pool or billiard room, mandamus may not lie to compel the
7 municipality to grant the license unless it shall clearly appear
8 that the refusal of the municipality to grant a license is
9 discriminatory or arbitrary; and in the event that the municipality
10 determines to license any business, the municipality has plenary
11 power and authority and it shall be the duty of its governing body
12 to make and enforce reasonable ordinances regulating the licensing
13 and operation of the businesses;

14 (25) To protect places of divine worship and to preserve peace
15 and order in and about the premises where held;

16 (26) To regulate or prohibit the keeping of animals or fowls
17 and to provide for the impounding, sale or destruction of animals
18 or fowls kept contrary to law or found running at large;

19 (27) To arrest, convict and punish any person for cruelly,
20 unnecessarily or needlessly beating, torturing, mutilating, killing,
21 or overloading or overdriving or willfully depriving of necessary
22 sustenance any domestic animal;

23 (28) To provide for the regular building of houses or other

1 structures, for the making of division fences by the owners of
2 adjacent premises and for the drainage of lots by proper drains and
3 ditches;

4 (29) To provide for the protection and conservation of shade
5 or ornamental trees, whether on public or private property, and for
6 the removal of trees or limbs of trees in a dangerous condition;

7 (30) To prohibit with or without zoning the location of
8 occupied house trailers or mobile homes in certain residential
9 areas;

10 (31) To regulate the location and placing of signs, billboards,
11 posters and similar advertising;

12 (32) To erect, establish, construct, acquire, improve, maintain
13 and operate a gas system, a waterworks system, an electric system
14 or sewer system and sewage treatment and disposal system, or any
15 combination of the foregoing (subject to all of the pertinent
16 provisions of articles nineteen and twenty of this chapter and
17 particularly to the limitations or qualifications on the right of
18 eminent domain set forth in articles nineteen and twenty of this
19 chapter), within or without the corporate limits of the
20 municipality, except that the municipality may not erect any system
21 partly without the corporate limits of the municipality to serve
22 persons already obtaining service from an existing system of the
23 character proposed and where the system is by the municipality

1 erected, or has heretofore been so erected, partly within and partly
2 without the corporate limits of the municipality, the municipality
3 has the right to lay and collect charges for service rendered to
4 those served within and those served without the corporate limits
5 of the municipality and to prevent injury to the system or the
6 pollution of the water thereof and its maintenance in a healthful
7 condition for public use within the corporate limits of the
8 municipality;

9 (33) To acquire watersheds, water and riparian rights, plant
10 sites, rights-of-way and any and all other property and
11 appurtenances necessary, appropriate, useful, convenient or
12 incidental to any system, waterworks or sewage treatment and
13 disposal works, as aforesaid, subject to all of the pertinent
14 provisions of articles nineteen and twenty of this chapter;

15 (34) To establish, construct, acquire, maintain and operate and
16 regulate markets and prescribe the time of holding the same;

17 (35) To regulate and provide for the weighing of articles sold
18 or for sale;

19 (36) To establish, construct, acquire, maintain and operate
20 public buildings, municipal buildings or city halls, auditoriums,
21 arenas, jails, juvenile detention centers or homes, motor vehicle
22 parking lots or any other public works;

23 (37) To establish, construct, acquire, provide, equip, maintain

1 and operate recreational parks, playgrounds and other recreational
2 facilities for public use and in this connection also to proceed in
3 accordance with the provisions of article two, chapter ten of this
4 code;

5 (38) To establish, construct, acquire, maintain and operate a
6 public library or museum or both for public use;

7 (39) To provide for the appointment and financial support of
8 a library board in accordance with the provisions of article one,
9 chapter ten of this code;

10 (40) To establish and maintain a public health unit in
11 accordance with the provisions of section two, article two, chapter
12 sixteen of this code, which ~~unit~~ shall exercise its powers and
13 perform its duties subject to the supervision and control of the
14 West Virginia Board of Health and State Bureau for Public Health;

15 (41) To establish, construct, acquire, maintain and operate
16 hospitals, sanitarium and dispensaries;

17 (42) To acquire, by purchase, condemnation or otherwise, land
18 within or near the corporate limits of the municipality for
19 providing and maintaining proper places for the burial of the dead
20 and to maintain and operate the same and regulate interments therein
21 upon terms and conditions as to price and otherwise as may be
22 determined by the governing body and, in order to carry into effect
23 the authority, the governing body may acquire any cemetery or

1 cemeteries already established;

2 (43) To exercise general police jurisdiction over any territory
3 without the corporate limits owned by the municipality or over which
4 it has a right-of-way;

5 (44) To protect and promote the public morals, safety, health,
6 welfare and good order;

7 (45) To adopt rules for the transaction of business and the
8 government and regulation of its governing body;

9 (46) Except as otherwise provided, to require and take bonds
10 from any officers, when considered necessary, payable to the
11 municipality, in its corporate name, with such sureties and in a
12 penalty as the governing body may see fit, conditioned upon the
13 faithful discharge of their duties;

14 (47) To require and take from the employees and contractors
15 such bonds in a penalty, with such sureties and with such
16 conditions, as the governing body may see fit;

17 (48) To investigate and inquire into all matters of concern to
18 the municipality or its inhabitants;

19 (49) To establish, construct, require, maintain and operate
20 such instrumentalities, other than free public schools, for the
21 instruction, enlightenment, improvement, entertainment, recreation
22 and welfare of the municipality's inhabitants as the governing body
23 may consider necessary or appropriate for the public interest;

1 (50) To create, maintain and operate a system for the
2 enumeration, identification and registration, or either, of the
3 inhabitants of the municipality and visitors thereto, or the classes
4 thereof as may be considered advisable;

5 (51) To require owners, residents or occupants of factory-built
6 homes situated in a factory-built rental home community with at
7 least ten factory-built homes, to visibly post the specific numeric
8 portion of the address of each factory-built home on the immediate
9 premises of the factory-built home of sufficient size to be visible
10 from the adjoining street. ~~Provided, That in the event~~ However, if
11 no numeric or other specific designation of an address exists for
12 a factory-built home subject to the authorization granted by this
13 subdivision, the municipality ~~has the authority to~~ may provide a
14 numeric or other specific designation of an address for the
15 factory-built home and require that it be posted in accordance with
16 the authority otherwise granted by this section;

17 (52) To appropriate and expend not exceeding \$0.25 per capita
18 per annum for advertising the municipality and the entertainment of
19 visitors;

20 (53) To conduct programs to improve community relations and
21 public relations generally and to expend municipal revenue for such
22 purposes;

23 (54) To reimburse applicants for employment by the municipality

1 for travel and other reasonable and necessary expenses actually
2 incurred by the applicants in traveling to and from the municipality
3 to be interviewed;

4 (55) To provide revenue for the municipality and appropriate
5 the same to its expenses;

6 (56) To create and maintain an employee benefits fund which may
7 not exceed one tenth of one percent of the annual payroll budget for
8 general employee benefits and which is set up for the purpose of
9 stimulating and encouraging employees to develop and implement
10 cost-saving ideas and programs and to expend moneys from the fund
11 for these purposes;

12 (57) To enter into reciprocal agreements with governmental
13 subdivisions or agencies of any state sharing a common border for
14 the protection of people and property from fire and for emergency
15 medical services and for the reciprocal use of equipment and
16 personnel for these purposes;

17 (58) To provide penalties for the offenses and violations of
18 law mentioned in this section, subject to the provisions of section
19 one, article eleven of this chapter, and such penalties may not
20 exceed any penalties provided in this chapter and chapter sixty-one
21 of this code for like offenses and violations; and

22 (59) To participate in a purchasing card program for local
23 governments authorized and administered by the State Auditor as an

1 alternative payment method.

2 **ARTICLE 29B. AIRPORT SECURITY.**

3 **§8-29B-5. Jurisdiction of airport police officers.**

4 (a) In any area under the jurisdiction and control of the
5 airport operator, or in connection with the airport, or in pursuit
6 of one or more individuals therefrom, any airport police officer
7 shall have:

8 (1) All of the power and authority which a ~~regularly appointed~~
9 ~~deputy sheriff of a county in this state~~ law-enforcement officer,
10 as defined in section one, article twenty-nine, chapter thirty of
11 this code, has in enforcing the criminal laws of this state;

12 (2) Full power and authority to enforce ~~any and~~ all federal
13 laws and rules and regulations relating to airports, air passengers,
14 baggage inspection, the screening of air passengers and other
15 airport security measures;

16 (3) Full power and authority to enforce any and all rules and
17 regulations promulgated by the airport operator; and

18 (4) The power to search persons, packages, containers and
19 baggage. ~~and the power to arrest persons: Provided, That the~~
20 ~~foregoing provisions of this section shall under no circumstances~~
21 ~~whatever~~

22 (b) Nothing in subsection (a) of this section may be construed
23 ~~as in any way limiting to limit~~ the power ~~and or~~ authority of a

1 ~~municipal police~~ any other law-enforcement officer, ~~or deputy~~
2 ~~sheriff~~ as defined in section one, article twenty-nine, chapter
3 thirty of this code, who has been assigned to serve as an airport
4 police officer which he or she has by virtue of his ~~being a~~
5 ~~municipal police~~ or her position as a law-enforcement officer. ~~or~~
6 ~~deputy sheriff and under no circumstances whatever shall~~

7 (c) The assignment or appointment or designation of one or more
8 airport police officers at an airport ~~be deemed in any way to~~
9 pursuant to this section does not supersede or limit the power and
10 authority of other ~~peace~~ law-enforcement officers to preserve law
11 and order at ~~such~~ the airport.

12 ~~Consistent with the provisions of section five, article seven,~~
13 ~~chapter sixty-one of this code, any municipal police officer or~~
14 ~~deputy sheriff assigned as an airport police officer pursuant to the~~
15 ~~provisions of subsection (b), section four of this article, and~~
16 ~~(notwithstanding any provision of this code to the contrary) any~~
17 ~~person appointed or designated as an airport police officer pursuant~~
18 ~~to the provisions of subsection (c), section four of this article,~~
19 ~~shall not be required to obtain a state license to carry a deadly~~
20 ~~weapon, as provided for in section two, article seven of said~~
21 ~~chapter sixty-one. Any municipal police officer or deputy sheriff~~
22 ~~assigned as an airport police officer pursuant to the provisions of~~
23 ~~subsection (b), section four of this article shall not be required~~

1 ~~to furnish any bond under section five, article seven of said~~
2 ~~chapter sixty-one other than the bond furnished thereunder as such~~
3 ~~municipal police officer or deputy sheriff. When one or more~~
4 ~~policies of public liability insurance are obtained providing~~
5 ~~insurance coverage for legal liability of an airport police officer~~
6 ~~for bodily injury, personal injury or damage (including, but not~~
7 ~~limited to, false arrest and false imprisonment) and property~~
8 ~~damage, and affording said airport police officer insurance coverage~~
9 ~~against any and all legal liability arising from, growing out of,~~
10 ~~or by reason of or in any way connected with, any acts or omissions~~
11 ~~of said airport police officer in the performance of his official~~
12 ~~duties, and so long as the coverage aforesaid remains in full force~~
13 ~~and effect as to such airport police officer, then the bond~~
14 ~~specified in section five, article seven of said chapter sixty-one~~
15 ~~shall not be required as to such airport police officer; otherwise~~
16 ~~such bond shall be required and must be furnished.~~

17

18 **CHAPTER 15. PUBLIC SAFETY.**

19 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

20 **§15-2-24b. Fees for adult private employment fingerprinting**
21 **services; dedication of fees.**

22 In addition to any fees that may be established or collected

1 by the State Police under any other provision of this article or
2 rule promulgated pursuant thereto, the State Police shall collect
3 a fee of \$20 for performing adult private employment fingerprinting
4 ~~or fingerprinting for federal firearm permits: Provided, That all~~
5 except when performed for or on behalf of state entities. are exempt
6 ~~from the fee~~ Fees collected pursuant to this section shall be
7 deposited into the West Virginia State Police Retirement System and
8 shall be in addition to employer percent-of-payroll contribution.

9 **§15-2-25. Rules generally; carrying of weapons upon retirement or**
10 **medical discharge.**

11 (a) Subject to the written approval of the Governor and the
12 provisions of this article, the superintendent may make and
13 promulgate proper rules for the government, discipline and control
14 of the West Virginia State Police and shall also cause to be
15 established proper rules for the examinations of all applicants for
16 appointment thereto. The members of the West Virginia State Police
17 shall be permitted to carry arms and weapons and no license may be
18 required for the privilege.

19 (b) Upon retirement or medical discharge from the West Virginia
20 State Police and with the written consent of the superintendent, any
21 retired or medically discharged member who is not prohibited by
22 federal law or section seven, article seven, chapter sixty-one of
23 this code from possessing or transporting firearms or carrying a

1 concealed weapon in a public place may carry ~~a handgun~~ concealed
2 weapons without a license for the life of the member following
3 retirement or medical discharge ~~notwithstanding the provisions of~~
4 as if the member was licensed to carry concealed weapons pursuant
5 to section four, article seven, chapter sixty-one of this code.
6 ~~Provided, That~~ However, the superintendent's written ~~letter of~~
7 ~~consent~~ authorization to carry ~~a handgun~~ concealed weapons without
8 a license pursuant to this subsection may not last for more than
9 five years at a time and a retired or medically discharged member
10 who wishes to continue to carry ~~a handgun~~ concealed weapons without
11 a license pursuant to this subsection beyond five years ~~of~~ after the
12 date of his or her initial retirement or medical discharge ~~must~~
13 shall request and obtain a renewal of the superintendent's written
14 ~~permission~~ authorization to carry ~~a handgun~~ concealed weapons
15 without a license pursuant to this subsection at least once every
16 five years. A retired or medically discharged member desiring to
17 carry a handgun after retirement or medical discharge ~~must~~ pursuant
18 to this section shall provide his or her own handgun. Upon request,
19 each member shall be presented with a ~~letter~~ certificate of
20 authorization signed by the superintendent authorizing the retired
21 or medically discharged member to carry ~~a handgun~~ concealed weapons
22 without a license pursuant to this subsection. The ~~written~~
23 certificate of authorization shall be shall be carried by the

1 retired or medically discharged member at all times that he or she
2 ~~has a handgun on~~ carries about his or her person a concealed weapon
3 pursuant to this subsection. The superintendent may not issue a
4 ~~letter~~ certificate of authorization under this subsection to any
5 retired or medically discharged member who is prohibited by federal
6 law or section seven, article seven, chapter sixty-one of this code,
7 from possessing or transporting firearms or carrying a concealed
8 weapon in a public place, who is no longer employed by the State
9 Police due to a mental disability or who ~~the superintendent has~~
10 ~~reason to believe~~ is mentally incapacitated to the extent ~~it would~~
11 ~~present a threat of physical harm to one or more persons for the~~
12 member is unable to carry a concealed weapon without creating a
13 manifest threat of physical harm to other persons. ~~The~~
14 ~~superintendent may revoke the authority at any time without cause~~
15 ~~and without recourse. Conviction of the retired or medically~~
16 ~~discharged member for the commission of any felony or for a~~
17 ~~misdemeanor involving the improper or illegal use of a firearm shall~~
18 ~~cause this authority to terminate immediately without a hearing or~~
19 ~~other recourse and without any action on the part of the~~
20 ~~superintendent~~. The superintendent may not withhold, deny or revoke
21 any certificate of authorization under this subsection if the
22 retired or medically discharged member is qualified for the
23 authorization. The superintendent shall promulgate a legislative

1 rule in accordance with the provisions of chapter twenty-nine-a of
2 this code, which ~~rule~~ shall prescribe requirements necessary for the
3 issuance and continuance of the authority herein granted and
4 procedures for appealing a denial or revocation of a certificate of
5 authorization to carry concealed weapons under this subsection in
6 accordance with subsection (f) of this section.

7 (c) In addition to any certificate of authorization under
8 subsection (b) of this section, the superintendent shall make
9 available to all eligible retired or medically discharged members
10 of the State Police a program for periodic qualification and
11 certification to carry concealed firearms nationwide under 18 U.S.C.
12 §926C if that retired or medically discharged member is otherwise
13 a qualified retired law-enforcement officer as that term is defined
14 in 18 U.S.C. §926C, which shall reasonably accommodate any physical
15 disability of the retired or medically-discharged member. The
16 superintendent may not charge a retired or medically-discharged
17 member a fee for the periodic qualification and certification.
18 However, a retired or medically-discharged member who wishes to
19 qualify shall provide at his or her own expense a suitable firearm
20 and the ammunition actually expended in the qualification. A
21 retired or medically discharged member of the State Police who
22 qualifies for both a certificate of authorization under subsection
23 (b) of this section and qualification and certification as a

1 qualified retired law-enforcement officer under 18 U.S.C. §926C,
2 shall be entitled to both and the corresponding rights, benefits,
3 privileges and immunities appertaining to each.

4 (d) Before issuing, renewing or reinstating any certificate of
5 authorization under subsection (b) of this section or a
6 certification as a qualified retired law-enforcement officer under
7 subsection (c) of this section, the superintendent shall conduct an
8 investigation which shall verify that the retired or medically
9 discharged member of the State Police is not prohibited by federal
10 law or section seven, article seven, chapter sixty-one of this code,
11 from possessing or transporting firearms or carrying a concealed
12 weapon in a public place. This investigation shall conform to the
13 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
14 or other applicable federal law for qualifying certificates of
15 authorization issued under subsection (b) of this section and
16 certifications issued under subsection (c) of this section as an
17 alternative to the National Instant Criminal Background Check System
18 or other similar required background check for a resident of this
19 state to purchase a firearm through a licensed firearms dealer
20 within this state, including a background check conducted through
21 the National Instant Criminal Background Check System and, if the
22 retired or medically discharged member is not a citizen of the
23 United States, a federal Immigration Alien Query.

1 (e) Each certificate of authority under subsection (b) of this
2 section or certification under subsection (c) of this section,
3 issued on or after the effective date of the amendments to this
4 section enacted during the 2011 Regular Session of the Legislature,
5 shall be no larger than three and three-eighths inches wide by two
6 and one-eighth inches long, shall be made of a hard, laminated
7 material suitable for carrying in a wallet, similar to a driver's
8 license, and shall contain the retired or medically discharged
9 member's name, address, signature and full-face color photograph,
10 the superintendent's signature or a facsimile thereof affixed by any
11 person authorized to act on the superintendent's behalf pursuant to
12 section five, article two, chapter two of this code, the dates of
13 issue and expiration, the words "Qualified Retired Law Enforcement
14 Officer under 18 U.S.C. §926C" in conspicuous type in the case of
15 a certification under subsection (c) of this section and other
16 information the superintendent considers appropriate.

17 (f) Any denial, suspension, revocation or other termination by
18 the superintendent of a retired or medically discharged member's
19 certificate of authority under subsection (b) of this section or
20 certification as a qualified retired law-enforcement officer under
21 subsection (c) of this section, is subject to article five, chapter
22 twenty-nine-a of this code.

23 (g) The superintendent shall revoke any certificate of

1 authorization issued under subsection (b) of this section or
2 certification as a qualified retired law-enforcement officer issued
3 under subsection (c) of this section if the person to whom the
4 certificate or certification was issued becomes prohibited under
5 federal law or section seven, article seven, chapter sixty-one of
6 this code, from possessing or transporting firearms or carrying a
7 concealed weapon in a public place. The superintendent shall
8 immediately notify the person of the revocation in writing,
9 delivered either by personal service or certified mail, return
10 receipt requested. The person shall immediately surrender the
11 revoked certificate or certification to the superintendent if served
12 in person with the notice or within five business days if served by
13 certified mail.

14 (h) Any person to whom a certificate of authorization has been
15 issued under subsection (b) of this section or certification as a
16 qualified retired law-enforcement officer has been issued under
17 subsection (c) of this section, who becomes ineligible to continue
18 holding the certificate or certification shall immediately surrender
19 the certificate or certification to the superintendent regardless
20 of whether the superintendent discovers the disqualification and
21 initiates revocation proceedings under subsection (g) of this
22 section.

23 (i) Any person who knowingly and willfully fails to surrender

1 a revoked certificate or certification, as required by subsection
2 (g) of this section, or knowingly and willfully fails to surrender
3 a certificate or certification the person has become ineligible to
4 continue holding, as required by subsection (h) of this section, is
5 guilty of a misdemeanor and, upon conviction thereof, shall be fined
6 not more than \$1,000, confined in jail for not more than six months,
7 or both fined and confined.

8 (j) The superintendent shall reinstate a certificate of
9 authorization under subsection (b) of this section or certification
10 as a qualified retired law-enforcement officer under subsection (c)
11 of this section that was revoked pursuant to subsection (g) of this
12 section or surrendered pursuant to subsection (h) of this section
13 if the person to whom the revoked or surrendered certificate or
14 certification was issued subsequently ceases to be prohibited by
15 federal law or section seven, article seven, chapter sixty-one of
16 this code, from possessing or transporting firearms or carrying a
17 concealed weapon in a public place and fulfills all other
18 requirements to receive the applicable certificate of authorization
19 under subsection (b) of this section or certification as a qualified
20 retired law-enforcement officer under subsection (c) of this
21 section.

22 (k) (1) Notwithstanding any provision of this code or other law
23 of this state to the contrary, except as otherwise provided in this

1 subsection, the names, addresses and other personally-identifying
2 information of retired or medically discharged members of the State
3 Police who apply for or have been issued a certificate of authority
4 under subsection (b) of this section or certification as a qualified
5 retired law-enforcement officer under subsection (c) of this
6 section, are confidential, are not public records and may be copied
7 or inspected only by:

8 (A) The person to whom the record pertains;

9 (B) The duly qualified conservator or guardian of a person to
10 whom the record pertains;

11 (C) The duly qualified personal representative of a deceased
12 person to whom the record pertains, or, if a personal representative
13 has not qualified, the next of kin of a deceased person to whom the
14 record pertains;

15 (D) An attorney, attorney-in-fact or other agent or
16 representative acting pursuant to a written power of attorney or
17 other written authorization signed by the person to whom the record
18 pertains;

19 (E) A duly authorized representative of a law-enforcement
20 agency for any official purpose or any other agency or
21 instrumentality of federal, state or local government seeking the
22 record in the ordinary course of performing its official duties for
23 an official purpose; or

1 (F) By any licensed firearm dealer within this state from which
2 a retired or medically discharged member proposes purchasing a
3 firearm, for the purpose of verifying the validity of the
4 certificate of authorization issued under subsection (b) of this
5 section or certification as a qualified retired law-enforcement
6 officer issued under subsection (c) of this section; or

7 (G) (i) A person authorized by an order of any court, based upon
8 a finding of the court that the information is sufficiently
9 necessary to a proceeding before the court to substantially outweigh
10 the importance of maintaining the confidentiality established by
11 this subsection, to copy or inspect information protected by this
12 subsection.

13 (ii) Before any court may grant access to any records pursuant
14 to this paragraph, the court shall order the moving party to give
15 each affected applicant or licensee notice of the proceedings, the
16 request for confidential records under this paragraph and the
17 opportunity of affected persons to confidentially intervene and
18 object to the request by directing the superintendent to print and
19 mail by first-class mail to each affected person, the costs for
20 which the moving party shall prepay in full to the superintendent,
21 and perform this notification in a manner not inconsistent with the
22 confidentiality provisions of this subsection.

23 (2) Any person who knowingly misrepresents his or her identity

1 to obtain any information whose disclosure is restricted by
2 subdivision (1) of this subsection, knowingly makes a false
3 statement to obtain any information whose disclosure is restricted
4 by subdivision (1) of this subsection, knowingly and willfully
5 misrepresents his or her authority to obtain any information whose
6 disclosure is restricted by subdivision (1) of this subsection or
7 knowingly and willfully discloses any information whose disclosure
8 is restricted by subdivision (1) of this subsection in violation of
9 subdivision (1) of this subsection, is guilty of a felony and, upon
10 conviction thereof, shall be imprisoned for not less than one year
11 nor more than ten years, fined not more than \$10,000, or both fined
12 and imprisoned.

13 (3) This subsection does not prohibit disclosure or publication
14 of statistical summaries, abstracts or other records containing
15 information in an aggregate or statistical form that does not
16 disclose any personally-identifying information protected from
17 public disclosure under this subsection.

18 (4) (A) The superintendent shall furnish to a any nonprofit
19 firearm-related or hunting-related educational or issue-advocacy
20 organization exempt from federal income taxation under §501(c) of
21 the Internal Revenue Code that has not obtained records pursuant to
22 this subdivision within the immediate preceding six months, a
23 current list of the names, mailing addresses, telephone numbers,

1 e-mail addresses and county of residence if a resident of this
2 state, of all retired or medically discharged member of the State
3 Police who have applied for or been issued a certificate of
4 authority under subsection (b) of this section or certification as
5 a qualified retired law-enforcement officer under subsection (c) of
6 this section, in a commonly-used electronic database format
7 acceptable to the requesting organization.

8 (B) The superintendent shall furnish to the state executive
9 committee of any political party, as defined in section eight,
10 article one, chapter three of this code, that has not obtained
11 records pursuant to this subdivision within the immediate preceding
12 six months, a current list of the names, birthdates, mailing
13 addresses, telephone numbers, e-mail addresses and county of
14 residence of all retired or medically discharged members of the
15 State Police who reside in this state and have applied for or been
16 issued a certificate of authority under subsection (b) of this
17 section or certification as a qualified retired law-enforcement
18 officer under subsection (c) of this section, in a commonly-used
19 electronic database format acceptable to the committee.

20 (C) Personally-identifying information other than the
21 information described in paragraph (A) or (B) of this subdivision,
22 as applicable, may not be disclosed pursuant to this subdivision.

23 (D) The superintendent shall create and maintain an electronic

1 database of all information described in paragraphs (A) and (B) of
2 this subdivision for the purpose of promptly responding to requests
3 for such information. The superintendent may charge any entity
4 requesting information pursuant to paragraph (A) or (B) of this
5 subdivision, a reasonable fee, not to exceed the actual marginal
6 cost incurred in fulfilling the request, which may not include any
7 portion of overhead or other fixed costs incurred in creating or
8 maintaining the database required by this paragraph.

9 (E) Before any personally-identifying information of any
10 individual retired or medically discharged member of the State
11 Police who has applied for or been issued a certificate of authority
12 under subsection (b) of this section or certification as a qualified
13 retired law-enforcement officer under subsection (c) of this
14 section, may disclosed pursuant to this subdivision, the person
15 obtaining the information shall complete and verify under oath a
16 notarized request form prescribed by the Attorney General, which
17 shall be a public record, and file the request form at the
18 headquarters of the State Police in person or by certified mail,
19 return receipt requested. The superintendent shall maintain a record
20 of requests fulfilled under this subdivision for at least five years
21 and not more than seven years. The superintendent shall, upon
22 request of any individual retired or medically discharged member of
23 the State Police who has applied for or been issued a certificate

1 of authority under subsection (b) of this section or certification
2 as a qualified retired law-enforcement officer under subsection (c)
3 of this section, notify the retired or medically discharged member
4 of all organizations to which the person's personally-identifying
5 information have been disclosed pursuant to this subdivision during
6 the period for which the superintendent maintains those records and
7 provide a copy of all requests for disclosure made to the
8 superintendent pursuant to this subdivision.

9 (l) The superintendent and any employee or agent thereof shall
10 be immune from civil liability resulting from the lawful performance
11 of his or her duties under subsections (b) through (k) of this
12 section.

13 (m) A certificate of authority under subsection (b) of this
14 section and certification as a qualified retired law-enforcement
15 officer under subsection (c) of this section are cumulative and
16 supplemental to one another and to any license to carry concealed
17 weapons under section four, article seven, chapter sixty-one of this
18 code or authorization under federal law or the laws of this state
19 to carry a concealed weapon without a license. Subsections (b)
20 through (l) of this section are supplemental and additional to
21 existing rights to bear arms, and nothing in subsections (b) through
22 (l) of this section may be construed to impair or diminish those
23 rights.

1 §15-2-25a. Certification to carry concealed firearm by qualified
2 retired law-enforcement officers.

3 (a) Not later than September 1, 2011, the superintendent shall
4 establish a program for qualifying and certifying any person who is
5 eligible for qualification and certification to carry concealed
6 firearms as a qualified retired law-enforcement officer pursuant to
7 18 U.S.C. §926C. The superintendent shall propose rules for
8 legislative approval in accordance with the provisions of article
9 three, chapter twenty-nine-a of this code to implement this program
10 and shall initially promulgate emergency rules pursuant to
11 provisions of section fifteen, article three, chapter twenty-nine-a
12 of this code.

13 (b) The rules promulgated pursuant to subsection (a) of this
14 section shall:

15 (1) Make all necessary provisions to create a program open to
16 all residents of this state entitled by virtue of past employment
17 to be considered qualified retired law-enforcement officers within
18 the meaning of 18 U.S.C. §926C and who elect to become so certified
19 are, in fact, promptly qualified and certified so as to obtain all
20 rights, benefits, privileges and immunities of 18 U.S.C. §926C, on
21 a uniform, nondiscretionary basis;

22 (2) Provide that the required qualification shall be offered
23 at least once quarterly in each county of this state in which a

1 State Police troop headquarters is located and in any other counties
2 of this state designated by the superintendent;

3 (3) Provide that the opportunities for qualification and
4 certification shall be advertised on the official Internet website
5 of the West Virginia State Police, by mail to appropriate private
6 organizations in contact with retired law-enforcement officers and
7 by publication in the State Register;

8 (4) Provide that the certificate issued to a qualified
9 law-enforcement officer under this program shall be no larger than
10 three and three-eighths inches wide by two and one-eighth inches
11 long and shall be made of a hard, laminated material suitable for
12 carrying in a wallet, similar to a driver's license, and shall
13 contain the words "Qualified Retired Law-Enforcement Officer under
14 18 U.S.C. §926C" in conspicuous type;

15 (5) Provide that all documents a qualified retired
16 law-enforcement officer is required to file with the superintendent
17 under this section may be filed by mailing them to the headquarters
18 of the State Police, by delivering them in person to the
19 headquarters of the State Police or any troop headquarters or
20 detachment or by any other method the superintendent may authorize;

21 (6) Provide that the provisions of article five, chapter
22 twenty-nine-a of this code apply to any denial, suspension or
23 revocation of any certification under the program;

1 (7) Provide that any person who wishes to qualify under this
2 program shall provide, at his or her own expense, a suitable firearm
3 and ammunition actually expended in the qualification; and

4 (8) Provide that qualification under this program shall
5 reasonably accommodate any physical disability of an applicant.

6 (c) The rules promulgated pursuant to subsection (a) of this
7 section may establish a periodic qualification fee of not more than
8 \$25 per applicant. There is hereby created in the State Treasury
9 a special revenue revolving fund known as the State Police Qualified
10 Retired Law-Enforcement Officer Certification Fund, which shall be
11 an interest-bearing account. The fee authorized under this
12 subsection shall be deposited into this fund. This fund may be
13 expended solely for the purpose of defraying the costs incurred by
14 the State Police in administering the program established pursuant
15 to this section.

16 (d) Before issuing, renewing or reinstating any certificate
17 under this section, the superintendent shall conduct an
18 investigation which shall verify that the applicant is a qualified
19 law-enforcement officer and is not prohibited by federal law or
20 section seven, article seven, chapter sixty-one of this code, from
21 possessing or transporting firearms or carrying a concealed weapon
22 in a public place. This investigation shall conform to the
23 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)

1 or other applicable federal law for qualifying certificates issued
2 pursuant to this section as an alternative to the National Instant
3 Criminal Background Check System or other similar required
4 background check for a resident of this state to purchase a firearm
5 through a licensed firearms dealer within this state, including a
6 background check conducted through the National Instant Criminal
7 Background Check System and, if the applicant is not a citizen of
8 the United States, a federal Immigration Alien Query.

9 (e) The superintendent shall revoke any certification as a
10 qualified retired law-enforcement officer under this section if the
11 person to whom the certification was issued becomes prohibited by
12 federal law or section seven, article seven, chapter sixty-one of
13 this code, from possessing or transporting firearms or carrying a
14 concealed weapon in a public place. The superintendent shall
15 immediately notify the person of the revocation in writing,
16 delivered either by personal service or certified mail, return
17 receipt requested. The person shall immediately surrender the
18 revoked certification to the superintendent if served in person with
19 the notice or within five business days if served by certified mail.

20 (f) Any person who has been issued a certification as a
21 qualified retired law-enforcement officer under this section and
22 becomes ineligible to continue holding the certification shall
23 immediately surrender the certification to the superintendent

1 regardless of whether the superintendent discovers the
2 disqualification and initiates revocation proceedings under
3 subsection (e) of this section.

4 (g) Any person who knowingly and willfully fails to surrender
5 a revoked certification, as required by subsection (e) of this
6 section, or knowingly and willfully fails to surrender a
7 certification the person has become ineligible to continue holding,
8 as required by subsection (f) of this section, is guilty of a
9 misdemeanor and, upon conviction thereof, shall be fined not more
10 than \$1,000, confined in jail for not more than six months, or both
11 fined and confined.

12 (h) The superintendent shall reinstate a certification as a
13 qualified retired law-enforcement officer under this section that
14 was revoked pursuant to subsection (e) of this section or
15 surrendered pursuant to subsection (f) of this section if the person
16 to whom the revoked or surrendered certification was issued
17 subsequently ceases to be prohibited by federal law or section
18 seven, article seven, chapter sixty-one of this code, from
19 possessing or transporting firearms or carrying a concealed weapon
20 in a public place and fulfills all other requirements to receive the
21 certification under this section.

22 (i) (1) Notwithstanding any provision of this code or other law
23 of this state to the contrary, except as otherwise provided by this

1 subsection, the names, addresses and other personally-identifying
2 information of qualified retired law-enforcement officers who apply
3 for or have been issued a certificate of qualification under this
4 section or otherwise participates in a program under this section,
5 shall be confidential, are not public records and may be copied or
6 inspected only by:

7 (A) The person to whom the record pertains;

8 (B) The duly qualified conservator or guardian of a person to
9 whom the record pertains;

10 (C) The duly qualified personal representative of a deceased
11 person to whom the record pertains or, if a personal representative
12 has not qualified, the next of kin of a deceased person to whom the
13 record pertains;

14 (D) An attorney, attorney-in-fact or other agent or
15 representative acting pursuant to a written power of attorney or
16 other written authorization signed by the person to whom the record
17 pertains;

18 (E) A duly authorized representative of a law-enforcement
19 agency for any official purpose or any other agency or
20 instrumentality of federal, state or local government seeking the
21 record in the ordinary course of performing its official duties for
22 an official purpose; or

23 (F) By any licensed firearm dealer within this state from which

1 a qualified retired law-enforcement officer who presents a
2 certificate under this section proposes purchasing a firearm, for
3 the purpose of verifying the validity of the certificate; or

4 (G) (i) A person authorized by an order of any court, based
5 upon a finding of the court that the information is sufficiently
6 necessary to a proceeding before the court to substantially outweigh
7 the importance of maintaining the confidentiality established by
8 this subsection, to copy or inspect information protected by this
9 subsection.

10 (ii) Before any court may grant access to any records pursuant
11 to this paragraph, the court shall order the moving party to give
12 each affected person notice of the proceedings, the request for
13 confidential records under this paragraph and the opportunity of
14 affected persons to confidentially intervene and object to the
15 request by directing the superintendent to print and mail by
16 first-class mail to each affected person, the costs for which the
17 moving party shall prepay in full to the superintendent, and perform
18 this notification in a manner not inconsistent with the
19 confidentiality provisions of this subsection.

20 (2) Any person who knowingly misrepresents his or her identity
21 to obtain any information whose disclosure is restricted by
22 subdivision (1) of this subsection, knowingly makes a false
23 statement to obtain any information whose disclosure is restricted

1 by subdivision (1) of this subsection, knowingly and willfully
2 misrepresents his or her authority to obtain any information whose
3 disclosure is restricted by subdivision (1) of this subsection or
4 knowingly and willfully discloses any information whose disclosure
5 is restricted by subdivision (1) of this subsection in violation of
6 subdivision (1) of this subsection, is guilty of a felony and, upon
7 conviction thereof, shall be imprisoned for not less than one year
8 nor more than ten years, fined not more than \$10,000, or both fined
9 and imprisoned.

10 (3) This subsection does not prohibit disclosure or publication
11 of statistical summaries, abstracts or other records containing
12 information in an aggregate or statistical form that does not
13 disclose any personally-identifying information protected from
14 public disclosure under this subsection.

15 (4) (A) The superintendent shall furnish to any nonprofit
16 firearm-related or hunting-related educational or issue-advocacy
17 organization exempt from federal income taxation under §501(c) of
18 the Internal Revenue Code that has not obtained records pursuant to
19 this subdivision within the immediate preceding six months, a
20 current list of the names, mailing addresses, telephone numbers,
21 e-mail addresses and county of residence if a resident of this
22 state, of all qualified retired law-enforcement officers who have
23 applied for or been issued a certificate of qualification under this

1 section, in a commonly-used electronic database format acceptable
2 to the requesting organization.

3 (B) The superintendent shall furnish to the state executive
4 committee of any political party, as defined in section eight,
5 article one, chapter three of this code, that has not obtained
6 records pursuant to this subdivision within the immediate preceding
7 six months, a current list of the names, birthdates, mailing
8 addresses, telephone numbers, e-mail addresses and county of
9 residence of all qualified retired law-enforcement officers who
10 reside in this state and have applied for or been issued a
11 certificate of qualification under this section, in a commonly-used
12 electronic database format acceptable to the requesting committee.

13 (C) Personally-identifying information other than the
14 information described in paragraph (A) or (B) of this subdivision,
15 as applicable, may not be disclosed pursuant to this subdivision.

16 (D) The superintendent shall create and maintain an electronic
17 database of all information described in paragraphs (A) and (B) of
18 this subdivision for the purpose of promptly responding to requests
19 for such information. The superintendent may charge any entity
20 requesting information pursuant to paragraph (A) or (B) of this
21 subdivision, a reasonable fee, not to exceed the actual marginal
22 cost incurred in fulfilling the request, which may not include any
23 portion of overhead or other fixed costs incurred in creating or

1 maintaining the database required by this paragraph.

2 (E) Whenever personally-identifying information of any
3 qualified retired law-enforcement officers who have applied for or
4 been issued a certificate of qualification under this section is
5 disclosed pursuant to this subdivision, the person obtaining the
6 information shall complete and verify under oath a notarized request
7 form prescribed by the Attorney General, which shall be a public
8 record, and file the request form at the headquarters of the State
9 Police in person or by certified mail, return receipt requested.
10 The superintendent shall maintain a record of requests fulfilled
11 under this subdivision for at least five years and not more than
12 seven years. The superintendent shall, upon request of any
13 qualified retired law-enforcement officer who has applied for or
14 been issued a certificate of qualification under this section,
15 notify the qualified retired law-enforcement officer of all
16 organizations to which the person's personally-identifying
17 information have been disclosed pursuant to this subdivision during
18 the period for which the superintendent maintains those records and
19 provide a copy of all requests for disclosure made to the
20 superintendent pursuant to this subdivision.

21 (j) The superintendent and any employee or agent thereof shall
22 be immune from civil liability resulting from the lawful performance
23 of his or her duties under this section and the rules promulgated

1 pursuant to this section.

2 (k) A certification as a qualified retired law-enforcement
3 officer under this section is cumulative and supplemental to any
4 license to carry concealed weapons under section four, article
5 seven, chapter sixty-one of this code or authorization under federal
6 law or the laws of this state to carry a concealed weapon without
7 a license. This section is supplemental and additional to existing
8 rights to bear arms, and nothing in this section may be construed
9 to impair or diminish those rights.

10 (l) For the purposes of this section and the rules promulgated
11 pursuant to this section, the definitions specified in 18 U.S.C.
12 §926C shall apply.

13 **ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

14 **§15-5-6. Emergency powers of Governor.**

15 ~~The provisions of this section shall be operative only during~~
16 ~~the existence of a state of emergency.~~

17 (a) The existence of a state of emergency may be proclaimed by
18 the Governor, by proclamation, or by concurrent resolution of the
19 Legislature, by concurrent resolution, may proclaim the existence
20 of a state of emergency if the Governor in such his or her
21 proclamation, or the Legislature in such its concurrent resolution,
22 finds that:

23 (1) (A) An attack upon the United States has occurred or is

1 anticipated in the immediate future; or ~~that~~

2 (B) A natural or man-made disaster of major proportions has
3 actually occurred or is imminent within the state; and ~~that~~

4 (2) The safety and welfare of the inhabitants of this state
5 require an invocation of the provisions of this section.

6 (b) Any ~~such~~ state of emergency, whether proclaimed by the
7 Governor or by the Legislature, shall terminate upon the
8 proclamation of the termination ~~thereof~~ of the state of emergency
9 by the Governor, or the passage by the Legislature of a concurrent
10 resolution terminating ~~such~~ the state of emergency.

11 ~~So long as such~~ (c) During a state of emergency ~~exists~~ that is
12 proclaimed pursuant to subsection (a) of this section, the Governor
13 shall have and may exercise the following additional emergency
14 powers:

15 ~~(a)~~ (1) To enforce all laws, rules and regulations relating to
16 the provision of emergency services and to assume direct operational
17 control of any or all emergency service forces and helpers in the
18 state;

19 ~~(b)~~ (2) To sell, lend, lease, give, transfer or deliver
20 materials or perform functions relating to emergency services on
21 ~~such~~ terms and conditions ~~as he or she shall prescribe~~ and
22 prescribed by the Governor, without regard to the limitations of any
23 existing law, and to account to the State Treasurer for any funds

1 received for ~~such~~ the property;

2 ~~(c)~~ (3) To procure materials and facilities for emergency
3 services by purchase, condemnation under the provisions of chapter
4 fifty-four of this code or seizure pending institution of
5 condemnation proceedings within thirty days from the seizing thereof
6 and to construct, lease, transport, store, maintain, renovate or
7 distribute such materials and facilities. Compensation for property
8 ~~so~~ procured under this subdivision shall be made in the manner
9 provided in chapter fifty-four of this code;

10 ~~(d)~~ (4) To obtain the services of necessary personnel, required
11 during the emergency, and to compensate them for their services from
12 ~~his or her~~ the Governor's contingent funds or ~~such~~ other funds ~~as~~
13 ~~may be~~ available to ~~him or her~~ the Governor;

14 ~~(e)~~ (5) To provide and compel the evacuation of all or part of
15 the population from any stricken or threatened area within the state
16 and to take ~~such steps as are necessary~~ steps for the receipt and
17 care of ~~such~~ evacuees;

18 ~~(f)~~ (6) To control ingress and egress to and from a disaster
19 area, the movement of persons within the area and the occupancy of
20 premises ~~therein~~ in a disaster area;

21 ~~(g)~~ (7) To suspend the provisions of any regulatory statute
22 prescribing the procedures for conduct of state business or the
23 orders, rules or regulations of any state agency, if strict

1 compliance ~~therewith~~ with the applicable regulatory statute would
2 in any way prevent, hinder or delay necessary action in coping with
3 the emergency;

4 ~~(h)~~ (8) To utilize ~~such~~ available resources of the state and
5 ~~of~~ its political subdivisions as ~~are~~ reasonably necessary to cope
6 with the emergency;

7 ~~(i)~~ (9) To suspend or limit the sale, dispensing or
8 transportation of alcoholic beverages, ~~firearms,~~ explosives and
9 combustibles;

10 ~~(j)~~ (10) To make provision for the availability and use of
11 temporary emergency housing; and

12 ~~(k)~~ (11) To perform and exercise ~~such~~ other functions, powers
13 and duties as are necessary to promote and secure the safety and
14 protection of the civilian population.

15 ~~No~~ (d) The Legislature finds and declares that an individual's
16 right to keep and bear arms is especially necessary for the
17 protection of lives and property of law-abiding citizens during
18 emergency situations when law-enforcement and other public safety
19 resources are particularly limited. The powers granted under this
20 section may not be interpreted to authorize the seizure or
21 confiscation of a firearm from a person, unless ~~that firearm is~~
22 ~~unlawfully possessed or unlawfully carried by the person, or the~~
23 person is unlawfully possessing or carrying the firearm or is

1 otherwise engaged in a criminal act; any prohibition or impairment
2 of the otherwise lawful possession, carrying, transportation or
3 storage of privately owned firearms or ammunition; or the suspension
4 of otherwise lawful firearm sales or transfers or any other lawful
5 firearms-related activity conducted by any person possessing a
6 federal firearms license.

7 **§15-5-19a. Possession, carrying, transportation or storage of**
8 **firearms not restricted during a declared state of**
9 **emergency.**

10 (a) The Legislature finds and declares that an individual's
11 right to keep and bear arms is especially necessary for the
12 protection of lives and property of law-abiding citizens during
13 emergency situations when law-enforcement and other public safety
14 resources are particularly limited.

15 ~~No~~ (b) Notwithstanding any provision of this article to the
16 contrary, the powers granted under this article to state or local
17 authorities may not be interpreted to authorize the seizure or
18 confiscation of a firearm from a person during a declared state of
19 emergency, unless ~~that firearm is unlawfully possessed or unlawfully~~
20 ~~carried by the person, or~~ the person is unlawfully possessing or
21 carrying the firearm or is otherwise engaged in a criminal act; any
22 prohibition or impairment of the otherwise lawful possession,
23 carrying, transportation or storage of privately owned firearms or

1 ammunition; or the suspension of otherwise lawful firearm sales or
2 transfers or any other lawful firearms-related activity conducted
3 by any person possessing a federal firearms license.

4 **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

5 **ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.**

6 **§17C-2-3. Enforcement of chapter; designation and power of special**
7 **officers; bond of special officers; failure to obey**
8 **police officer or special officers.**

9 (a) ~~It is the duty of~~ The West Virginia State Police and its
10 members ~~to~~ shall enforce the provisions of this chapter and other
11 laws of this state governing the operation of vehicles upon the
12 streets and highways of this state as defined in section
13 thirty-five, article one of this chapter or in other designated
14 places specifically referred to in a given section in this chapter.
15 ~~and it is the duty of~~ The sheriffs, ~~and~~ their deputies and ~~of~~ the
16 police of municipalities ~~to render to~~ shall assist the West Virginia
17 State Police ~~assistance~~ in the performance of ~~said~~ these duties as
18 the Superintendent of the West Virginia State Police may require of
19 them.

20 (b) The ~~West Virginia~~ Commissioner of Highways ~~is authorized~~
21 ~~to~~ may designate employees of the ~~West Virginia~~ Division of Highways
22 as special officers to enforce the provisions of this chapter only

1 when special officers are directing traffic upon bridges and the
2 approaches to bridges which are a part of the state road system when
3 any bridge needs special traffic direction and the superintendent
4 of the West Virginia State Police has informed the ~~West Virginia~~
5 Commissioner of Highways that he or she is unable to furnish
6 personnel for traffic direction. The ~~West Virginia~~ Commissioner of
7 Highways may also designate certain employees of the ~~West Virginia~~
8 Division of Highways serving as members of official weighing crews
9 as special officers to enforce the provisions of article seventeen
10 of this chapter. ~~Notwithstanding any provision of this code to the~~
11 ~~contrary,~~ Designated special officers serving as members of official
12 weighing crews may carry ~~handguns~~ concealed weapon without a license
13 in the course of their official duties after meeting specialized
14 qualifications established by the Governor's Committee on Crime,
15 Delinquency and Correction, which ~~qualifications~~ shall include the
16 successful completion of handgun training, including a minimum of
17 four hours' training in handgun safety, paid for by the Division of
18 Highways and comparable to the handgun training provided to
19 law-enforcement officers by the West Virginia State Police.
20 ~~Provided, That~~ However, nothing in this section ~~shall~~ may be
21 construed to include designated special officers authorized by the
22 provisions of this section ~~as~~ within the definition of
23 law-enforcement officers as ~~such are~~ defined in section one, article

1 twenty-nine, chapter thirty of this code. The ~~West Virginia~~
2 Commissioner of Highways shall provide a blanket bond in the amount
3 of \$10,000 for all employees designated as special officers ~~as above~~
4 provided pursuant to this subsection.

5 (c) ~~No~~ A person ~~shall~~ may not willfully fail or refuse to
6 comply with a lawful order or direction of any police officer or
7 designated special officer invested by law with authority to direct,
8 control or regulate traffic.

9 (d) ~~No~~ A person ~~shall~~ may not willfully fail or refuse to
10 comply with a lawful order or direction of any designated special
11 officer pursuant to the provisions of subsection (b) of this
12 section.

13 **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

14 **ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**

15 **§18C-1-6. State-supported higher education institutions required**
16 **to respect individual's right to keep and bear arms**
17 **as condition of receiving state financial assistance.**

18 (a) A higher education institution within this state may not
19 be eligible for any form of financial assistance, direct or
20 indirect, from this state or any political subdivision of this
21 state, unless the institution and all its programs and activities
22 fully comply with the requirements of sections sixteen and

1 seventeen, article seven, chapter sixty-one of this code.

2 (b) In this section, "program or activity" includes all of the
3 operations of any higher education institution, any part of which
4 is extended direct or indirect financial assistance from this state
5 or any political subdivision of this state.

6 (c) In addition to any other person who may have proper
7 standing, the Attorney General, any citizen or taxpayer of this
8 state or any person whose rights under sections sixteen or
9 seventeen, article seven, chapter sixty-one of this code, have been
10 violated by a higher education institution that has received any
11 form of financial assistance, direct or indirect, from this state
12 or any political subdivision of this state, may bring a civil action
13 in the circuit court of Kanawha County or any county in which any
14 part of the institution is located to enjoin any alleged violations
15 of sections sixteen or seventeen, article seven, chapter sixty-one
16 of this code, enjoin the institution's receipt of any financial
17 assistance, direct or indirect, from this state or any political
18 subdivision of this state, in violation of subsection (a) of this
19 section and obtain any other relief to which the person may be
20 entitled, including without limitation attorney's fees and other
21 costs of litigation pursuant to section twenty, article seven,
22 chapter sixty-one of this code.

23 **ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

1 **§18C-5-2. Definitions.**

2 (a) "Approved institution of higher education" means:

3 (1) A state institution of higher education as defined in
4 section two, article one, chapter eighteen-b of this code;
5 Alderson-Broadus College, Appalachian Bible College, Bethany
6 College, Mountain State University, Davis and Elkins College, Ohio
7 Valley University, Salem International University, the University
8 of Charleston, West Virginia Wesleyan College and Wheeling Jesuit
9 University, all in West Virginia; and

10 (2) Any other regionally or nationally accredited institution
11 of higher education in this state, public or private, approved by
12 the vice chancellor if the institution has been licensed for a
13 minimum of fifteen years subject to the provisions of section nine,
14 article two-b, chapter eighteen-b of this code and section six,
15 article two-b of said chapter.

16 However, this term does not include any institution that does
17 not fully comply with the requirements of subsection (a), section
18 six, article one of this chapter and sections sixteen and seventeen,
19 article seven, chapter sixty-one of this code.

20 (b) "Grant" or "grant program" means a higher education grant
21 or the higher education grant program authorized and established by
22 the provisions of this article.

23 (c) "Senior administrator" and "vice chancellor" mean the Vice

1 Chancellor for Administration, as provided in section two, article
2 four, chapter eighteen-b of this code.

3 **ARTICLE 6. WEST VIRGINIA ENGINEERING, SCIENCE AND TECHNOLOGY**
4 **SCHOLARSHIP PROGRAM.**

5 **§18C-6-2. Definitions.**

6 When used in this article the following terms have the
7 following meanings, unless the context clearly indicates a different
8 meaning:

9 (a) "ABET" means the Accrediting Board for Engineering and
10 Technology.

11 (b) "ABET approved engineering major" means a major approved
12 by ABET's engineering accreditation commission.

13 (c) "ABET approved technology major" means a major approved by
14 ABET's technology accreditation commission.

15 (d) "Eligible institution of higher education" means:

16 (1) A state institution of higher education as defined in
17 section two, article one, chapter eighteen-b of this code; and

18 (2) Alderson-Broadus College, Appalachian Bible College,
19 Bethany College, the College of West Virginia, Davis and Elkins
20 College, Ohio Valley College, Salem-Teikyo College, the University
21 of Charleston, West Virginia Wesleyan College and Wheeling Jesuit
22 College, all in West Virginia, and any other institution of higher
23 education in this state, public or private, approved by the senior

1 administrator: *Provided*, That if any institution listed in this
2 paragraph subdivision is not regionally accredited or does not fully
3 comply with the requirements of subsection (a), section six, article
4 one of this chapter and sections sixteen and seventeen, article
5 seven, chapter sixty-one of this code, it shall not be included as
6 an eligible institution;

7 (e) "Engineering, science and technology-related field" means
8 any position for which the employer provides a written statement
9 that engineering, science or technology skill, knowledge and
10 ability, as evidenced by the attainment of a certificate, associate
11 or baccalaureate degree in engineering, science or technology, are
12 preferred or required or where an industry-based certification
13 requirement exists.

14 (f) "Industry-based certification" means any special
15 certification required, necessary or deemed preferred for employment
16 in the field.

17 (g) "Science" means a major in biology, chemistry, computer
18 science, physics or mathematics at an eligible institution of higher
19 education or any other major as approved by the higher education
20 governing boards by rule.

21 **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR**
22 **MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP**
23 **PROGRAM.**

1 **§18C-7-3. Definitions.**

2 (a) *General.* -- For the purposes of this article, terms have
3 the meaning ascribed to them in section two, article one of this
4 chapter, unless the context in which the term is used clearly
5 requires a different meaning or a specific definition is provided
6 in this section.

7 (b) *Definitions.* --

8 (1) "Eligible institution" means:

9 (A) A state institution of higher education as defined in
10 section two, article one, chapter eighteen-b of this code;

11 (B) Alderson-Broadus College, Appalachian Bible College,
12 Bethany College, Davis and Elkins College, Mountain State
13 University, Ohio Valley University, the University of Charleston,
14 West Virginia Wesleyan College and Wheeling Jesuit University, all
15 in West Virginia. Any institution listed in this subdivision ceases
16 to be an eligible institution if: ~~it meets either of the following~~
17 ~~conditions~~

18 (i) It loses regional accreditation; ~~or~~

19 (ii) It changes its status as a private, not-for-profit
20 institution; or

21 (iii) It does not fully comply with the requirements of
22 subsection (a), section six, article one of this chapter and
23 sections sixteen and seventeen, article seven, chapter sixty-one of

1 this code; and

2 (C) Any other public or private regionally accredited
3 institution in this state approved by the commission that fully
4 complies with the requirements of subsection (a), section six,
5 article one of this chapter and sections sixteen and seventeen,
6 article seven, chapter sixty-one of this code.

7 (2) "Tuition" means the quarter, semester or term charges
8 imposed by an eligible state institution of higher education and,
9 additionally, all mandatory fees required as a condition of
10 enrollment by all students. For the purposes of this article, the
11 following conditions apply:

12 (A) West Virginia University, Potomac State College and West
13 Virginia University Institute of Technology are considered separate
14 institutions for purposes of determining tuition rates; and

15 (B) The tuition amount paid by undergraduate health sciences
16 students at West Virginia University is considered to be the same
17 as the amount of tuition paid by all other West Virginia University
18 undergraduate students.

19 (3) "Enrolled" means either currently enrolled or in the
20 process of enrolling in an eligible institution.

21

22 **CHAPTER 20. NATURAL RESOURCES.**

23 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

1 **§20-1-2. Definitions.**

2 As used in this chapter, unless the context clearly requires
3 a different meaning:

4 "Agency" means any branch, department or unit of the state
5 government, however designated or constituted.

6 "Aircraft" has the same meaning as in section one, article
7 two-a, chapter twenty-nine of this code.

8 "Alien" means any person not a citizen of the United States.

9 "Ammunition" means ammunition or cartridge cases, primers,
10 bullets or propellant powder designed for use in any firearm.

11 "Bag limit" or "creel limit" means the maximum number of
12 wildlife which may be taken, caught, killed or possessed by any
13 person.

14 "Big game" means elk, deer, black bears, wild boars and wild
15 turkeys.

16 "Bona fide resident, tenant or lessee" means a person who
17 permanently resides on the land.

18 ~~"Citizen" means any native-born citizen of the United States~~
19 ~~and foreign-born persons who have procured their final~~
20 ~~naturalization papers.~~

21 "Closed season" means the time or period during which it ~~shall~~
22 ~~be~~ is unlawful to take any wildlife as specified and limited by the
23 provisions of this chapter.

1 "Commission" means the Natural Resources Commission.

2 "Commissioner" means a member of the advisory commission of the
3 Natural Resources Commission.

4 "Director" means the Director of the Division of Natural
5 Resources.

6 "Firearm" has the same meaning as in section two, article
7 seven, chapter sixty-one of this code.

8 "Fishing" or "to fish" means the taking, by any means, of fish,
9 minnows, frogs or other amphibians, aquatic turtles and other forms
10 of aquatic life used as fish bait.

11 "Fur-bearing animals" include: (a) The mink; (b) the weasel;
12 (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and
13 civet cat, commonly called polecat; (g) the otter; (h) the red fox;
14 (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the
15 raccoon; and (l) the fisher.

16 "Game" means game animals, game birds and game fish. ~~as herein~~
17 ~~defined~~

18 "Game animals" include: (a) The elk; (b) the deer; (c) the
19 cottontail rabbits and hares; (d) the fox squirrels, commonly called
20 red squirrels, and gray squirrels and all their color phases - red,
21 gray, black or albino; (e) the raccoon; (f) the black bear; and (g)
22 the wild boar.

23 "Game birds" include: (a) The anatidae, commonly known as

1 swan, geese, brants and river and sea ducks; (b) the rallidae,
2 commonly known as rails, sora, coots, mudhens and gallinule; (c) the
3 limicolae, commonly known as shorebirds, plover, snipe, woodcock,
4 sandpipers, yellow legs and curlews; (d) the galliformes, commonly
5 known as wild turkey, grouse, pheasants, quails and partridges (both
6 native and foreign species); (e) the columbidae, commonly known as
7 doves; (f) the icteridae, commonly known as blackbirds, redwings and
8 grackle; and (g) the corvidae, commonly known as crows.

9 "Game fish" include: (a) Brook trout; (b) brown trout; (c)
10 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)
11 smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain
12 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock
13 bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all
14 sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue
15 catfish, (u) sauger; and (v) all game fish hybrids.

16 "Handgun" has the same meaning as in section two, article
17 seven, chapter sixty-one of this code.

18 "Hunt" means to pursue, chase ~~catch~~ or take any wild birds or
19 wild animals ~~Provided, That the definition of "hunt" does not~~
20 ~~include an~~ except in any officially sanctioned and properly licensed
21 field trial, water race or wild hunt ~~as long as that field trial is~~
22 ~~not~~ other than a shoot-to-retrieve field trial.

23 "Lands" means land, waters and all other appurtenances

1 connected therewith.

2 "Loaded", with respect to a firearm, has the same meaning as
3 in section two, article seven, chapter sixty-one of this code.

4 "Migratory birds" means any migratory game or nongame birds
5 included in the terms of conventions between the United States and
6 Great Britain and between the United States and United Mexican
7 States, known as the Migratory Bird Treaty Act, 16 U.S.C. §§703
8 through 712, for the protection of migratory birds and game mammals
9 concluded, respectively, August 16, 1916, and February 7, 1936.

10 "Motor vehicle" has the same meaning as in section one, article
11 one, chapter seventeen-a of this code.

12 "Motorboat" has the same meaning as in section one, article
13 one, chapter seventeen-a of this code.

14 "Nonresident" means any person who is ~~a citizen of the United~~
15 ~~States and who has not been a domiciled resident of the State of~~
16 ~~West Virginia for a period of thirty consecutive days immediately~~
17 ~~prior to the date of his or her application for a license or permit~~
18 ~~except any full-time student of any college or university of this~~
19 ~~state, even though he or she is paying a nonresident tuition not a~~
20 resident as defined in this section.

21 "Open season" means the time during which the various species
22 of wildlife may be legally caught, taken, killed or chased in a
23 specified manner, ~~and shall include both the first and the last day~~

1 ~~of the season or period~~ as designated by the director.

2 "Person", except ~~as otherwise defined~~ where specifically
3 provided otherwise elsewhere in this chapter, ~~means the plural~~
4 ~~"persons" and shall include individuals,~~ includes natural persons,
5 partnerships, limited liability companies, corporations or other
6 legal entities.

7 "Personal watercraft" means:

8 (a) A small vessel of less than sixteen feet in length that:

9 (1) Uses an inboard motor powering a water jet pump as its
10 primary source of motive power; and

11 (2) Is designed to be operated by a person sitting, standing
12 or kneeling on the vessel, rather than the conventional manner of
13 sitting or standing inside the vessel; or

14 (b) "Specialty prop-crafts," which are vessels similar in
15 appearance and operation to a vessel described in part (a) of this
16 definition, but which are powered by an outboard motor or
17 propeller-driven motor.

18 "Personally-identifying information" has the same meaning as
19 in section two, article seven, chapter sixty-one of this code.

20 "Preserve" means all duly licensed private game farmlands, or
21 private plants, ponds or areas, where hunting or fishing is
22 permitted under special licenses or seasons other than the regular
23 public hunting or fishing seasons.

1 "Protected birds" means all wild birds ~~not included within the~~
2 ~~definition of~~ other than "game birds" and "unprotected birds".

3 "Resident" means any person who:

4 (a) Is a citizen of the United States and who has been a
5 domiciled resident of the State of West Virginia this state and,
6 except for temporary absences, has resided in this state for a
7 period of not less than thirty consecutive days ~~or more~~ immediately
8 ~~prior to~~ preceding the date of his or her application on which the
9 person applies for any license or permit ~~Provided, That a~~ under this
10 chapter;

11 (b) Is an active duty member of the Armed Forces of the United
12 States who is stationed beyond the territorial limits of whose
13 permanent duty station is located outside this state, but who was
14 a resident of this state at the time of his or her entry into ~~such~~
15 ~~service and any~~ the Armed Forces of the United States; or

16 (c) Is a full-time student of any college or university of
17 higher education institution, as defined in section two, article
18 one, chapter eighteen-b of this code, located within this state,
19 ~~even though he or she is paying~~ including any full-time student of
20 a state institution of higher education, as defined in section two,
21 article one, chapter eighteen-b of this code, who pays a nonresident
22 ~~tuition. shall be considered a resident under the provisions of this~~
23 ~~chapter~~

1 "Roadside menagerie" means any place of business, other than
2 a commercial game farm, commercial fish preserve, place or pond,
3 where any wild bird, game bird, unprotected bird, game animal or
4 fur-bearing animal is kept in confinement for the attraction and
5 amusement of the people for commercial purposes.

6 "Small game" includes all game animals, ~~fur-bearing~~ fur-bearing
7 animals and game birds except ~~elk, deer, black bears, wild boars and~~
8 ~~wild turkeys~~ big game.

9 "Take" means to ~~hunt,~~ shoot, ~~pursue,~~ lure, kill, destroy,
10 catch, capture, keep in captivity, gig, spear, trap, ensnare, wound
11 or injure any wildlife, or attempt to do so ~~Provided, That the~~
12 ~~definition of "take" does not include an~~ except in any officially
13 sanctioned and properly licensed field trial, water race or wild
14 hunt ~~as long as that field trial is not~~ other than a
15 shoot-to-retrieve field trial.

16 "Unprotected birds" ~~shall~~ include: (a) The English sparrow;
17 (b) the European starling; and (c) the cowbird.

18 "Vehicle" has the same meaning as in section one, article one,
19 chapter seventeen-a of this code.

20 "Vessel" means every description of watercraft, other than a
21 seaplane on the water, used or capable of being used as a means of
22 transportation on water;

23 "Wild animals" means all mammals native to the State of West

1 Virginia occurring either in a natural state or in captivity, except
2 house mice or rats.

3 "Wild birds" ~~shall~~ include all birds other than: (a) Domestic
4 poultry - chickens, ducks, geese, guinea fowl, peafowls and turkeys;
5 (b) psittacidae, commonly called parrots and parakeets; and (c)
6 other foreign cage birds such as the common canary, exotic finches
7 and ring dove. All wild birds, either: (i) Those occurring in a
8 natural state in West Virginia; or (ii) those imported foreign game
9 birds, such as waterfowl, pheasants, partridges, quail and grouse,
10 regardless of how long raised or held in captivity, shall remain
11 wild birds under the meaning of this chapter.

12 "Wildlife" means wild birds, wild animals, game ~~and~~ animals,
13 fur-bearing animals, fish (including minnows), reptiles, amphibians,
14 mollusks, crustaceans and all forms of aquatic life used as fish
15 bait, whether dead or alive.

16 "Wildlife refuge" means any land set aside by action of the
17 Director as an inviolate refuge or sanctuary for the protection of
18 designated forms of wildlife.

19 **ARTICLE 2. WILDLIFE RESOURCES.**

20 **§20-2-2a. Interference with hunters, trappers and fishermen.**

21 (a) Except as otherwise provided by subsection (b) of this
22 section, no person may intentionally:

23 (1) Obstruct or impede the participation of any individual in

1 any lawful activity of incident to hunting, fishing or trapping or
2 the lawful control or possession of lawfully-taken wildlife;

3 (2) Harass, bait, drive or disturb any wild bird or wild animal
4 for the purpose of disrupting the lawful hunting of it;

5 (3) Damage or destroy in any way any lawful hunting blind with
6 the intent to interfere with its usage for hunting; or

7 (4) Harass, intimidate or threaten by any means including, but
8 not limited to, personal or written contact or telephone, e-mail or
9 other electronic communication, any person who is or was engaged in
10 the lawful hunting, fishing or control of fish or wildlife.

11 (b) Subsection (a) of this section does not apply to:

12 (1) Any incidental interference arising from lawful activity
13 by land users or interference by a landowner or members of his or
14 her immediate family arising from activities on his or her own
15 property; or

16 (2) Any constitutionally-protected activity.

17 (c) In addition to any other relief to which a person may be
18 entitled, the court shall order any person found liable in a civil
19 action for violating subsection (a) of this section to pay
20 prevailing plaintiffs treble damages, court costs, attorney's fees
21 and other reasonable expenses of litigation.

22 **§20-2-5. Unlawful methods of hunting and fishing and other**
23 **unlawful acts.**

1 (a) Except as authorized by the director or otherwise provided
2 by the Legislature in another provision of this chapter, it is
3 unlawful at any time for any person to knowingly:

4 (1) Shoot ~~at~~ or attempt to shoot any wild bird or animal unless
5 it is ~~plainly visible to him or her~~ in plain sight;

6 (2) Dig out, cut out or smoke out, or in any manner take or
7 attempt to take, any live wild animal or wild bird out of its den
8 or place of refuge; ~~except as may be authorized by rules promulgated~~
9 ~~by the Director or by law~~

10 (3) Make use of, or take advantage of, any artificial light in
11 hunting, locating or attracting ~~taking, trapping or killing~~ any wild
12 bird or wild animal, or to attempt to do so, while having in his or
13 her immediate physical possession ~~or~~ and subject to his or her
14 actual physical control, or ~~for~~ while any person accompanying him
15 or her ~~to have~~ has in his or her immediate physical possession ~~or~~
16 and subject to his or her actual physical control, any ~~firearm,~~
17 ~~whether cased or uncased~~ loaded rifle, loaded shotgun, bow, arrow,
18 or both, or other implement or device, other than a firearm that is
19 not loaded or any handgun, suitable for taking ~~killing or trapping~~
20 a wild bird or animal, ~~Provided, That it is lawful to hunt or take~~
21 except when the person:

22 (A) Hunts raccoon, opossum or skunk by the use of artificial
23 light; ~~subject to the restrictions set forth in this subdivision:-~~

1 ~~Provided, however, That it is lawful to hunt or take~~

2 (B) Hunts coyotes by the use of amber- or red-colored
3 artificial light; ~~subject to the restrictions set forth in this~~
4 ~~subdivision. No person is guilty of a violation of this subdivision~~
5 ~~merely because he or she~~ or

6 (C) Looks for, looks at, attracts or makes motionless a wild
7 bird or wild animal with or by the use of an artificial light
8 without taking the wild bird or wild animal, ~~unless at the time he~~
9 ~~or she has in his or her possession a firearm, whether cased or~~
10 ~~uncased~~ the person knowingly:

11 (i) Has in his or her immediate physical possession and subject
12 to his or her actual physical control:

13 (I) A loaded rifle or loaded shotgun, unless the person is
14 licensed to carry concealed weapons pursuant to section four or
15 five, article seven, chapter sixty-one of this code or authorized
16 by subsection (d), section three, article seven, chapter sixty-one
17 of this code, to carry a concealed weapon without a license, or has
18 an affirmative defense under subsection (b) of this section;

19 (II) A bow, arrow, or both; or

20 (III) Any other implement or device, other than firearms,
21 suitable for taking, killing or trapping a wild bird or wild animal;
22 or ~~unless the~~

23 (ii) Uses an artificial light (other than the ~~head lamps~~

1 headlights of ~~an automobile or other land conveyance~~ a motor
2 vehicle) that is attached to, a part of, or used from within or upon
3 ~~an automobile or other land conveyance~~ any motor vehicle;

4 ~~Any person violating the provisions of this subdivision is~~
5 ~~guilty of a misdemeanor and, upon conviction thereof, shall for each~~
6 ~~offense be fined not less than \$100 nor more than \$500 and shall be~~
7 ~~confined in jail for not less than ten days nor more than one~~
8 ~~hundred days;~~

9 (4) ~~Hunt for, take, kill, wound or shoot at wild animals or~~
10 ~~wild birds from an airplane or other airborne conveyance, an~~
11 ~~automobile, or other land conveyance, or from a motor-driven water~~
12 ~~conveyance, except as authorized by rules promulgated by the~~
13 ~~Director~~ any aircraft, motor vehicle or motorboat, except when the
14 person possesses a Class Q permit issued pursuant to section
15 forty-six-e of this article and hunts from a motor vehicle in
16 accordance with the terms of that permit;

17 (5) Take any beaver or muskrat by any means other than by trap;

18 (6) ~~Catch, capture, take or kill by~~ Use any seine, net, bait,
19 trap or snare or like device of any kind to take or facilitate the
20 taking of any wild turkey, ruffed grouse, pheasant or quail;

21 (7) Destroy or attempt to destroy needlessly or willfully the
22 nest or eggs of any wild bird or ~~have in his or her possession~~
23 possess the nest or eggs of any wild bird unless ~~authorized to do~~

1 ~~so under rules promulgated by or under~~ the person possesses a permit
 2 issued by the director;

3 (8) ~~Except as provided in section six of this article, And~~
 4 willfully carry an uncased or loaded gun about his or her person any
 5 rifle or shotgun in any of the woods of this state, or in any place
 6 where the discharge of a firearm is prohibited by subdivision (4),
 7 subsection (a), section fifty-eight of this article, except during
 8 ~~the open firearms hunting season for wild animals and nonmigratory~~
 9 ~~wild birds within any county of the state, unless he or she has in~~
 10 ~~his or her possession a permit, in writing, issued to him or her by~~
 11 ~~the Director: Provided, That this section does not prohibit~~ when:

12 (A) The rifle or shotgun is not loaded and:

13 (i) Is broken down in a nonfunctioning state;

14 (ii) Is in a closed case, bag, box or other container that has
 15 a lid, a cover or a closing mechanism with a zipper, snap or buckle,
 16 which lid, cover or closing mechanism must be opened for a person
 17 to gain access to the rifle or shotgun; or

18 (iii) Ammunition capable of being discharged from that rifle
 19 or shotgun is not readily accessible for immediate use; or

20 (B) The person:

21 (i) Is lawfully hunting during an open firearms hunting season
 22 or lawfully hunting or taking of an unprotected species of wild
 23 animals, ~~and wild birds and~~ or migratory wild birds; ~~during the open~~

1 ~~season in the open fields, open water and open marshes of the state~~

2 (ii) Possesses a permit issued by the Director;

3 (iii) Is licensed to carry concealed weapons pursuant to

4 section four or five, article seven, chapter sixty-one of this code;

5 or

6 (iv) Is authorized by subsection (d), section three, article

7 seven, chapter sixty-one of this code, to carry a concealed weapon

8 without a license;

9 (9) ~~Have in his or her possession a~~ Possess or transport any

10 ~~crossbow with a nocked bolt a loaded firearm or a firearm from the~~

11 ~~magazine of which all shells and cartridges have not been removed,~~

12 ~~in or on any motor vehicle, or conveyance, or its attachments,~~

13 ~~within the state, except as may otherwise be provided by law or~~

14 ~~regulation. Except as hereinafter provided, between five o'clock~~

15 ~~postmeridian of one day and seven o'clock antemeridian, eastern~~

16 ~~standard time of the day following, any unloaded firearm or~~

17 ~~crossbow, being lawfully carried in accordance with the foregoing~~

18 ~~provisions, may be so carried only when in a case or taken apart and~~

19 ~~securely wrapped. During the period from July 1 to September 30,~~

20 ~~inclusive, of each year, the foregoing requirements relative to~~

21 ~~carrying certain unloaded firearms are permissible only from~~

22 ~~eight thirty o'clock postmeridian to five o'clock antemeridian,~~

23 ~~eastern standard time: *Provided, That the time periods for carrying*~~

1 ~~unloaded and uncased firearms are extended for one hour after the~~
2 ~~postmeridian times and one hour before the antemeridian times~~
3 ~~established above if a hunter is preparing to or in the process of~~
4 ~~transporting or transferring the firearms to or from a hunting site,~~
5 ~~campsite, home or other place of abode~~ except when the person
6 possesses a Class Q permit issued pursuant to section forty-six-e
7 of this article and a Class Y permit issued pursuant to section
8 forty-two-w of this article and is lawfully hunting with a crossbow
9 from a motor vehicle in accordance with the terms of those permits;

10 ~~(10) Hunt, catch, take, kill, trap, injure or pursue with~~
11 ~~firearms or other implement by which wildlife may be taken after the~~
12 ~~hour of five o'clock antemeridian on Sunday on private land without~~
13 ~~the written consent of the landowner any wild animals or wild birds~~
14 ~~except when a big game season opens on a Monday, the Sunday prior~~
15 ~~to that opening day will be closed for any taking of wild animals~~
16 ~~or birds after five o'clock antemeridian on that Sunday: *Provided,*~~
17 ~~That traps previously and legally set may be tended after the hour~~
18 ~~of five o'clock antemeridian on Sunday and the person so doing may~~
19 ~~carry only a twenty-two caliber firearm for the purpose of humanely~~
20 ~~dispatching trapped animals. Any person violating the provisions of~~
21 ~~this subdivision is guilty of a misdemeanor and, upon conviction~~
22 ~~thereof, in addition to any fines that may be imposed by this or~~
23 ~~other sections of this code, is subject to a \$100 fine;~~

1 ~~(11) Hunt with firearms or long bow while under the influence~~
2 ~~of intoxicating liquor;~~

3 (10) And willfully possess or transport any rifle or shotgun
4 in or on any motor vehicle, unless:

5 (A) The person is:

6 (i) Licensed to carry concealed weapons pursuant to section
7 four or five, article seven, chapter sixty-one of this code; or

8 (ii) Authorized by subsection (d), section three, article
9 seven, chapter sixty-one of this code, to carry a concealed weapon
10 without a license;

11 (B) The rifle or shotgun is not loaded and is possessed or
12 transported:

13 (i) During the months of July, August or September:

14 (I) Between the hours of four o'clock antemeridian and
15 nine-thirty o'clock postmeridian, if the person is preparing to or
16 in the process of transporting or transferring the rifle or shotgun
17 to or from a hunting site, campsite, home or other place of abode;
18 or

19 (II) Between the hours of five o'clock antemeridian and
20 eight-thirty o'clock postmeridian, if the person is not engaged in
21 an activity described in clause (I) of this subparagraph;

22 (ii) During any month other than July, August or September:

23 (I) Between the hours of six o'clock antemeridian and six

1 o'clock postmeridian, if the person is preparing to or in the
2 process of transporting or transferring the rifle or shotgun to or
3 from a hunting site, campsite, home or other place of abode; or

4 (II) Between the hours of seven o'clock antemeridian and five
5 o'clock postmeridian, if the person is not engaged in an activity
6 described in clause (I) of this subparagraph;

7 (iii) When ammunition capable of being discharged from that
8 rifle or shotgun is not readily accessible for immediate use;

9 (iv) In a closed case, bag, box or other container that has a
10 lid, a cover or a closing mechanism with a zipper, snap or buckle,
11 which lid, cover or closing mechanism must be opened for a person
12 to gain access to the rifle or shotgun;

13 (v) In a compartment that can be reached only by leaving the
14 vehicle;

15 (vi) In plain sight and secured in a rack or holder made for
16 the purpose of holding and securing a firearm; or

17 (vii) In plain sight with the action open or the weapon
18 stripped or, if the rifle or shotgun is of a type on which the
19 action will not stay open or which cannot easily be stripped, in
20 plain sight; or

21 (C) The person possesses a Class Q permit issued pursuant to
22 section forty-six-e of this article and is hunting from a motor
23 vehicle in accordance with the terms of that permit;

1 ~~(12)~~ (11) Hunt ~~catch, take, kill, injure or pursue~~ a wild
2 animal or wild bird with ~~the use of~~ a ferret;

3 ~~(13)~~ (12) Buy raw furs, pelts or skins of fur-bearing animals
4 ~~unless licensed to do so~~ without a license issued by the Director
5 pursuant to section forty-nine of this article or, if licensed under
6 a resident county license or an agent's permit issued to an employee
7 of a resident county licensee, buy raw furs, pelts or skins of
8 fur-bearing animals outside the county or counties specified in the
9 resident county license;

10 ~~(14) Catch,~~ (13) Take ~~kill~~ or attempt to ~~catch, take or kill~~
11 ~~any fish at any time~~ by any means other than by rod, line and hooks
12 with natural or artificial lures, ~~unless otherwise authorized by law~~
13 ~~or rules issued by the Director: Provided, That~~ except when snaring
14 ~~of any species of suckers, carp, fallfish and or~~ creek chubs; shall
15 ~~at all times be lawful~~

16 ~~(15)~~ (14) Employ or hire, or induce or persuade, by the use of
17 money or other things of value or ~~by~~ any other means, any person to
18 hunt ~~take, catch or kill~~ any wild animal or wild bird except those
19 species on which there is no closed season, or to fish for ~~catch,~~
20 ~~take or kill~~ any fish, amphibian or aquatic life ~~which~~ that is
21 protected by the provisions of this chapter or rules of the director
22 or the sale of which is prohibited;

23 ~~(16)~~ (15) Hunt, ~~catch, take, kill, capture, pursue,~~ transport,

1 possess or use any migratory ~~game or nongame~~ birds included in the
2 ~~terms of conventions between the United States and Great Britain and~~
3 ~~between the United States and United Mexican States for the~~
4 ~~protection of migratory birds and wild mammals concluded,~~
5 ~~respectively, August 16, 1916, and February 7, 1936,~~ except during
6 the time and in the manner and numbers prescribed by the federal
7 Migratory Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and regulations
8 made thereunder;

9 ~~(17) Kill,~~ (16) Take ~~catch or have in his or her possession,~~
10 ~~living or dead,~~ possess any wild bird other than a game protected
11 bird, ~~or~~ expose for sale or transport within or without the state
12 any protected bird ~~except as aforesaid no part of the plumage, skin~~
13 ~~or body of any protected bird may be sold~~ or sell or had in
14 ~~possession for~~ possess for the purpose of sale any protected bird,
15 except mounted or stuffed plumage, skin, bodies or heads of ~~the~~
16 protected birds legally taken and stuffed or mounted, ~~irrespective~~
17 regardless of whether the protected bird is alive or was captured
18 within ~~or without~~ this state; ~~except the English or European sparrow~~
19 ~~(passer domesticus), starling (sturnus vulgaris) and cowbird~~
20 ~~(molothrus ater), which may not be protected and the killing thereof~~
21 ~~at any time is lawful~~

22 ~~(18)~~ (17) Use dynamite or any like explosive or poisonous
23 mixture placed in any waters of the state ~~for the purpose of killing~~

1 ~~or taking to~~ fish; ~~Any person violating the provisions of this~~
 2 ~~subdivision is guilty of a felony and, upon conviction thereof,~~
 3 ~~shall be fined not more than five hundred dollars, or imprisoned for~~
 4 ~~not less than six months nor more than three years, or both fined~~
 5 ~~and imprisoned~~

6 ~~(19) have a bow and gun, or have a gun and any arrow or arrows,~~

7 (18) Unless licensed to carry concealed weapons pursuant to
 8 section four or five, article seven, chapter sixty-one of this code
 9 or authorized by subsection (d), section three, article seven,
 10 chapter sixty-one of this code, to carry a concealed weapon without
 11 a license, simultaneously possess in the fields or woods: ~~at the~~
 12 ~~same time~~

13 (A) A bow or any arrow or arrows; and

14 (B) A rifle or shotgun;

15 ~~(20) Have~~ (19) Carry about his or her person a crossbow in the
 16 woods or fields or use a crossbow to hunt ~~for, take or attempt to~~
 17 ~~take~~ any wildlife, unless the person possesses a Class Y permit
 18 issued pursuant to section forty-two-w of this article;

19 ~~(21)~~ (20) Take or attempt to take turkey, bear, elk or deer
 20 with any arrow unless the arrow is equipped with a point having at
 21 least two sharp cutting edges measuring in excess of three fourths
 22 of an inch wide;

23 ~~(22)~~ (21) Take or attempt to take any wildlife with an arrow

1 having an explosive head or shaft, a poisoned arrow or an arrow
2 which would affect wildlife by any chemical action;

3 ~~(23)~~ (22) Shoot an arrow across any public highway or from any
4 aircraft, ~~motor-driven watercraft~~ motorboat, ~~motor~~ vehicle or other
5 land conveyance;

6 ~~(24)~~ (23) Permit any dog owned by him or her or under his or
7 her control to chase, pursue or follow upon the track of any wild
8 animal or wild bird, either day or night, between May 1 and ~~the~~
9 August 15 next following: *Provided*, That a person may train dogs
10 ~~may be trained~~ on wild animals and wild birds, except deer and wild
11 turkeys, and hold or conduct field trials ~~may be held or conducted~~
12 on the grounds or lands of the owner or by his or her bona fide
13 tenant or tenants or upon the grounds or lands of another person
14 with his or her written permission or on public lands, at any time:
15 *Provided, however*, That nonresidents may not train dogs in this
16 state at any time except during the legal small game hunting season:
17 *Provided further*, That the person training ~~said~~ dogs ~~does~~ may not
18 ~~have firearms or other implements in his or her possession~~ carry
19 about his or her person during the closed season on wild animals and
20 wild birds, (i) any rifle or shotgun unless the person is licensed
21 to carry concealed weapons pursuant to section four or five, article
22 seven, chapter sixty-one of this code or authorized by subsection
23 (d), section three, article seven, chapter sixty-one of this code,

1 to carry a concealed weapon without a license, or has an affirmative
 2 defense under subsection (b) of this section, or (ii) any implement
 3 of hunting, other than a firearm, whereby wild animals or wild birds
 4 could be taken; ~~or killed~~

5 ~~(25)~~ (24) Conduct or participate in a field trial,
 6 shoot-to-retrieve field trial, water race or wild hunt hereafter
 7 referred to as trial: *Provided,* That any person, group of persons,
 8 club or organization may hold such trial at any time of the year
 9 upon obtaining a permit ~~as is provided in~~ pursuant to section
 10 fifty-six of this article. The person responsible for obtaining the
 11 permit shall prepare and keep an accurate record of the names and
 12 addresses of all persons participating in ~~said~~ the trial, and make
 13 ~~same~~ the record readily available for inspection by any ~~natural~~
 14 ~~resources police~~ officer authorized to enforce the provisions of
 15 this chapter upon request;

16 ~~(26) Except as provided in section four of this article,~~

17 (25) Hunt ~~catch, take, kill or attempt to hunt, catch, take or~~
 18 ~~kill~~ any wild animal, wild bird or wild fowl except during the open
 19 season for that species established by ~~rule~~ of the director; ~~as~~
 20 ~~authorized by subdivision (6), section seven, article one of this~~
 21 ~~chapter~~

22 ~~(27) Hunting~~ (26) Hunt any wild animal or wild bird on public
 23 lands on Sunday after five o'clock antemeridian, ~~is prohibited; and~~

1 except to tend traps previously and legally set;

2 (27) Hunt any wild animal or wild bird after the hour of five
3 o'clock antemeridian on Sunday if the following Monday is the
4 opening day of a big game hunting season in that county or other
5 geographical zone designated by the director for the applicable big
6 game hunting season, except to tend traps previously and legally
7 set;

8 (28) Hunt any wild animal or wild bird after the hour of five
9 o'clock antemeridian on Sunday on private land without the written
10 consent of the landowner, except to tend traps previously and
11 legally set;

12 (29) (A) Hunt ~~catch, take, kill, trap, injure or pursue with~~
13 ~~firearms or other implement which wildlife can be taken,~~ any wild
14 animal or wild bird on private lands on Sunday after the hour of
15 five o'clock antemeridian, except to tend traps previously and
16 legally set. ~~Provided, That the provisions~~

17 (B) (i) Paragraph (A) of this subdivision ~~do~~ does not apply in
18 any county until the county commission of the county holds an
19 election on the question of whether the provisions of paragraph (A)
20 of this subdivision prohibiting hunting on Sunday shall apply within
21 the county and the voters ~~approve the allowance~~ of that county
22 prohibit hunting on private lands on Sunday in the county. The
23 election shall be determined by a vote of the resident voters of the

1 county in which the prohibition on hunting on private lands on
2 Sunday is proposed. ~~to be authorized~~ The county commission of the
3 county in which the prohibition on Sunday hunting on private lands
4 is proposed shall give notice to the public of the election by
5 publication of the notice as a Class II-0 legal advertisement in
6 compliance with the provisions of article three, chapter fifty-nine
7 of this code, and the publication area for the publication shall be
8 the county in which the election is to be held. The date of the last
9 publication of the notice shall fall on a date within the period of
10 the fourteen consecutive days next preceding the election.

11 (ii) On the local option election ballot shall be printed the
12 following:

13 Section 20-2-5(a)(26) of the West Virginia Code prohibits
14 hunting on Sunday on all public lands. Section 20-2-5(a)(27)-(28)
15 of the West Virginia Code prohibits hunting on Sunday on private
16 lands if the following Monday is the opening day of a big game
17 (deer, bear, turkey or boar) hunting season or if the hunter does
18 not have the express written permission of the landowner. In
19 addition to these restrictions, section 20-2-5(a)(29) of the West
20 Virginia Code authorizes local option elections within each county
21 to determine whether hunting on Sunday will be completely prohibited
22 on private lands.

23 The purpose of this local option election is to determine

1 whether, in addition to the above limitations on Sunday hunting
2 contained in Section 20-2-5(a) (26)-(29) of the West Virginia Code,
3 hunting on private lands on Sunday will be completely prohibited in
4 _____ County.

5 Shall hunting on private lands on Sunday be ~~authorized~~
6 prohibited in _____ County?

7 [] Yes [] No

8 (Place a cross mark in the square opposite your choice.)

9 (iii) Any local option election to approve or disapprove of the
10 proposed ~~authorization~~ prohibition of Sunday hunting on private
11 lands within a county shall be in accordance with procedures adopted
12 by the commission. The local option election may be held in
13 conjunction with a primary or general election, or at a special
14 election. Approval shall be by a majority of the voters casting
15 votes on the question of approval or disapproval of a prohibition
16 on Sunday hunting at the election.

17 (iv) If a majority votes ~~against allowing~~ to prohibit Sunday
18 hunting on private lands, no election on the issue may be held for
19 a period of one hundred four weeks. If a majority votes ~~“yes”~~
20 against prohibiting Sunday hunting on private lands, ~~no~~ an election
21 reconsidering the action may not be held for a period of five years.
22 A local option election may thereafter be held if a written petition
23 of qualified voters residing within the county equal to at least

1 five percent of the number of persons who were registered to vote
2 in the next preceding general election is received by the county
3 commission of the county in which ~~Sunday hunting is authorized~~ a new
4 local option election is proposed. The petition may be in any number
5 of counterparts. The election shall take place at the next primary
6 or general election scheduled more than ninety days following
7 receipt by the county commission of the petition required by this
8 ~~subsection: *Provided, That*~~ subparagraph. However, the issue may not
9 be placed on the ballot until all statutory notice requirements have
10 been met; ~~No local law or regulation providing any penalty,~~
11 ~~disability, restriction, regulation or prohibition of Sunday hunting~~
12 ~~may be enacted, and the provisions of this article preempt all~~
13 ~~regulations, rules, ordinances and laws of any county or~~
14 ~~municipality in conflict with this subdivision~~

15 (30) While tending traps after the hour of five o'clock
16 antemeridian on Sundays as authorized by subdivisions (26) through
17 (28) of this subsection or paragraph (A), subdivision (29) of this
18 subsection, carry about his or her person any rifle or shotgun other
19 than a twenty-two caliber firearm that is carried for the purpose
20 of humanely dispatching trapped animals, unless the person is
21 licensed to carry concealed weapons pursuant to section four or
22 five, article seven, chapter sixty-one of this code or authorized
23 by subsection (d), section three, article seven, chapter sixty-one

1 of this code, to carry a concealed weapon without a license; or

2 ~~(29)~~ (31) Hunt or conduct hunts for a fee where the hunter is
3 not physically present in the same location as the wildlife being
4 hunted within ~~West Virginia~~ this state.

5 (b) It is an affirmative defense to any offense under
6 subdivision (8), (10), (18) or (30), subsection (a) of this section,
7 or any offense under any other subdivision of subsection (a) of this
8 section in which the offense was based primarily upon the
9 possession, carrying, transportation or storage of a firearm, that:

10 (1) The defendant was not prohibited from possessing firearms
11 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
12 subsection (a), section seven, article seven, chapter sixty-one of
13 this code; and

14 (2) (A) The defendant carried the weapon for defensive purposes
15 while the defendant was engaged in or was going to or from the
16 defendant's lawful business or occupation, which business or
17 occupation was of a character or was necessarily carried on in a
18 manner or at a time or place as to render the defendant particularly
19 susceptible to criminal attack, such as would justify a prudent
20 person in going armed; or

21 (B) The defendant carried the weapon for defensive purposes
22 while the actor was engaged in a lawful activity and had reasonable
23 cause to fear a criminal attack upon the defendant or any person

1 accompanying the defendant, such as would justify a prudent person
 2 in going armed.

3 (c) The Legislature fully occupies and preempts the field of
 4 regulation of Sunday hunting. Any rule of the director or county or
 5 municipal ordinance, rule, resolution, policy, administrative action
 6 or other official act regulating Sunday hunting, except as provided
 7 in subdivisions (26) through (30), subsection (a) of this section,
 8 is void.

9 (d) In this section, the phrase "rifle or shotgun" means any
 10 firearm other than a handgun.

11 **§20-2-5c. Protection of bald eagles and golden eagles; unlawful**
 12 **acts; criminal penalties; forfeitures; license**
 13 **revocation.**

14 ~~(a) It is unlawful at any time for any~~ Except as otherwise
 15 provided by subsection (d) of this section, no person to take, may
 16 hunt, possess, transport, import, export or process, sell or offer
 17 for sale, buy, barter or trade or offer to buy, barter or trade at
 18 any time or in any manner, any bald eagle, also commonly known as
 19 the American eagle, or any golden eagle, alive or dead, or any part,
 20 nest or egg thereof of the foregoing eagles any bald eagle or golden
 21 eagle, or to attempt to do any of these acts.

22 ~~(b) Anyone~~ Except as otherwise provided in subsection (c) of
 23 this section, any person who violates the provisions subsection (a)

1 of this section is guilty of a misdemeanor and, upon conviction
2 thereof, shall be fined not less than \$500 nor more than \$5,000, ~~or~~
3 ~~imprisoned~~ confined in ~~the county~~ jail for not less than sixty days
4 nor more than one year, or both fined and imprisoned. One half of
5 any fine imposed shall be paid to any person or persons providing
6 information that leads to the arrest and conviction of ~~anyone~~ any
7 person for a first offense of violating the provisions subsection
8 (a) of this section.

9 (c) For a second or subsequent conviction for a violation of
10 subsection (a) of this section, a person is guilty of a felony and,
11 upon conviction thereof, shall be fined not less than \$5,000 nor
12 more than \$10,000, ~~and~~ imprisoned in ~~the penitentiary~~ a state
13 correctional facility for not less than one year nor more than two
14 years, or both fined and imprisoned. An amount equal to one half
15 of the fine imposed, not exceeding \$2,500, shall be paid to the
16 person or persons providing information that leads to the arrest and
17 conviction of ~~anyone~~ any person for a second or subsequent violation
18 of ~~the provisions~~ subsection (a) of this section.

19 ~~(d) "Take" is defined as including any means to pursue, hunt,~~
20 ~~wound, kill, capture, collect, poison, or molest any bald eagle or~~
21 ~~golden eagle, or any part, nest or egg thereof, or to knowingly and~~
22 ~~willfully destroy the nest or eggs of any such eagles.~~

23 ~~(e) Nothing in (d) This section may be construed to prohibit~~

1 does not apply to the taking hunting, possession or transportation
2 of bald eagles or golden eagles ~~legally under~~ as authorized by the
3 ~~current~~ federal Eagle Protection Act, 16 ~~USC §668a~~ U.S.C. §§668
4 through 668d, as amended, and or the current federal regulations
5 promulgated pursuant to the federal Eagle Protection Act, as
6 amended, 50 CFR 22.1 et seq. C.F.R. Part 22.

7 ~~(f)~~ (e) All wildlife, merchandise, ~~guns~~ firearms, traps, nets
8 and other equipment, vessels, vehicles, aircraft and other means of
9 transportation used in taking, possessing, transporting, importing,
10 exporting, selling or offering for sale, purchasing or bartering or
11 offering to purchase or barter any bald eagle or golden eagle or
12 part, nest, or egg ~~thereof~~ of any bald eagle or golden eagle, or in
13 attempting to do any of these acts in violation of this section,
14 shall be forfeited, at the time of conviction, to the state.

15 ~~(g)~~ (f) Upon conviction of taking, possessing, transporting,
16 importing, exporting or processing, selling or offering for sale,
17 buying, bartering or trading or offering to buy, barter or trade any
18 bald or golden eagle, alive or dead, or any part, nest or egg
19 ~~thereof~~ of the foregoing bald eagles or golden eagles, or of
20 attempting to do any of these acts, the director shall revoke the
21 person's hunting licenses ~~of such person or persons may be revoked~~
22 and ~~such person or persons~~ shall not be issued any issue the person
23 a new hunting licenses for a period of license until ten years from

1 after the date of conviction.

2 **§20-2-6. Carrying firearm on landowner's land not prohibited.**

3 Notwithstanding any ~~other provisions~~ provision of this chapter
 4 to the contrary, ~~it shall be lawful for~~ a bona fide resident,
 5 ~~landowner of this state, any member of said landowner's family and~~
 6 ~~any bona fide tenant of said landowner, to~~ or lessee who is not
 7 prohibited by federal law or article seven, chapter sixty-one of
 8 this code from possessing firearms, may carry an uncased gun a
 9 firearm at any time, regardless of whether the bona fide resident,
 10 tenant or lessee is accompanied by or without a dog or whether the
 11 firearm is loaded or encased, in ~~their~~ the bona fide resident,
 12 tenant or lessee's regular pursuits in caring for and looking after
 13 ~~such landowner's~~ livestock or poultry on his or her land and on any
 14 other lands leased or rented by him the bona fide resident, tenant
 15 or lessee rents or leases for livestock or poultry husbandry
 16 purposes.

17 **§20-2-6a. Carrying handguns not prohibited.**

18 (a) Notwithstanding any provision of this ~~code~~ chapter, rules
 19 established by the director or any county or municipal ordinance,
 20 rule, policy, administrative action or other official act to the
 21 contrary, ~~a~~ except as otherwise provided by federal law or article
 22 seven, chapter sixty-one of this code, any person licensed to carry
 23 ~~a concealed weapon pursuant to the provisions of section four,~~

1 ~~article seven, chapter sixty one of this code who is not prohibited~~
2 ~~at the time from possessing a firearm pursuant to the provisions of~~
3 ~~section seven, article seven, chapter sixty one of this code or by~~
4 ~~any applicable federal law, may, for self-defense, the defense of~~
5 ~~other persons, the defense of livestock and domestic animals and~~
6 ~~other lawful purposes, own, possess, carry, a handgun in a concealed~~
7 ~~manner for self defense purposes transfer, transport, store and keep~~
8 ~~handguns and parts, components and ammunition for handguns:~~

9 (1) In or on any national, state, county, municipal or other
10 public park, forest, wildlife management area, wildlife refuge,
11 trail or other public lands;

12 (2) While afield hunting, trapping or fishing in a lawful
13 manner;

14 (3) While hiking, camping, backpacking, farming, ranching or
15 engaged in any other lawful outdoor activity in which weapons are
16 often carried for recreation or protection;

17 (4) While in or on ~~a motor~~ any vehicle, vessel or other means
18 of transportation or conveyance on land or water; or

19 (5) While engaging in any other activity regulated by this
20 chapter or rules promulgated by the director.

21 (b) When a person owns, possesses, carries, transfers,
22 transports, stores or keeps a handgun or parts, components or
23 ammunition for a handgun as provided by subsection (a) of this

1 section:

2 (1) The person shall be presumed to be owning, possessing,
3 carrying, transferring, transporting, storing or keeping the handgun
4 and parts, components and ammunition for the handgun for
5 self-defense or another lawful purpose other than hunting; and

6 (2) The handgun and parts, components and ammunition for the
7 handgun shall be presumed to not be an implement of hunting, unless
8 the person knowingly and willfully uses the handgun to take wildlife
9 and the taking was not in justifiable self-defense or the defense
10 of another person or property.

11 ~~The provisions of (b)(c) This section shall~~ does not exempt
12 authorize any person from obtaining any hunting or fishing to hunt
13 or fish without any license or stamp required by the Division of
14 Natural Resources this chapter.

15 (d) Notwithstanding any existing or future provision of this
16 chapter to the contrary:

17 (1) This section supersedes and preempts any prohibition or
18 restriction contained in or authorized by any other provision of
19 this chapter, rules promulgated by the director or any county or
20 municipal ordinance, pertaining to the ownership, possession,
21 carrying, transfer, transportation, storage or keeping of handguns
22 and parts, components and ammunition for handguns;

23 (2) Any future act of the Legislature may not be construed to

1 amend or supersede this section unless the act specifically and
2 expressly amends or repeals this section;

3 (3) This section is supplemental and additional to existing
4 rights to bear arms, and nothing in this section shall impair or
5 diminish such rights; and

6 (4) This section shall be liberally construed to effectuate its
7 purpose.

8 **§20-2-32. Issuance of licenses; duplicate licenses; confidentiality**
9 **of personally-identifying information.**

10 (a) The clerk of the county commission in each county and other
11 persons designated by the director ~~shall be~~ are license-issuing
12 authorities. ~~Each~~ A license-issuing authority shall issue a license
13 to ~~a license~~ an applicant if ~~in the opinion of the authority,~~ the
14 ~~license~~ applicant is legally ~~entitled~~ qualified to obtain the
15 license, ~~applied for~~ makes a proper application and pays the proper
16 fee.

17 (b) The director shall furnish all materials and supplies
18 necessary for the issuance of licenses ~~shall be furnished by the~~
19 ~~Director~~ to each person authorized to issue licenses.

20 (c) Each license shall bear a serial number and shall be signed
21 by the licensee. The issuing authority shall keep an accurate
22 record, in the form and manner prescribed by the director, of all
23 licenses issued and ~~of all money collected as~~ license fees

1 collected.

2 (d) Any license-issuing authority may issue a duplicate
3 license, to replace a lost, destroyed or damaged license, upon
4 receipt of a verified application duly executed by the original
5 ~~license holder~~ licensee and the payment to the issuing authority of
6 a duplicate license fee of \$1.

7 (e) (1) Except as otherwise provided in this subsection, the
8 personally-identifying information of individuals who apply for or
9 have been issued any license, permit or stamp to hunt, trap or fish
10 and any records of the director or any license-issuing authority
11 that, if disclosed, would tend to reveal such information, unless
12 such information has been redacted, are not public records and may
13 be copied or inspected only by:

14 (A) The person to whom the record pertains;

15 (B) The duly qualified conservator or guardian of the person
16 to whom the record pertains;

17 (C) The duly qualified personal representative of a deceased
18 person to whom the record pertains or, if a personal representative
19 has not qualified, the next of kin of a deceased person to whom the
20 record pertains;

21 (D) An attorney, attorney-in-fact or other agent or
22 representative acting pursuant to a written power of attorney or
23 other written authorization signed by the person to whom the record

1 pertains; or

2 (E) A duly authorized representative of a law-enforcement
3 agency or license-issuing authority for any official purpose or any
4 other agency or instrumentality of federal, state or local
5 government seeking the record in the ordinary course of performing
6 its official duties for an official purpose; or

7 (F) (i) A person authorized by an order of any court, based
8 upon a finding of the court that the information is sufficiently
9 necessary to a proceeding before the court to substantially outweigh
10 the importance of maintaining the confidentiality established by
11 this subsection, to copy or inspect information protected by this
12 subsection.

13 (ii) Before any court may grant access to any records pursuant
14 to this paragraph, the court shall order the moving party to give
15 each affected person notice of the proceedings, the request for
16 confidential records under this paragraph and the opportunity of
17 affected persons to confidentially intervene and object to the
18 request by having the director print and mail by first-class mail
19 to each affected person, the costs for which the moving party shall
20 prepay in full to the director, and perform this notification in a
21 manner not inconsistent with the confidentiality provisions of this
22 subsection.

23 (2) This subsection does not prohibit disclosure or publication

1 of statistical summaries, abstracts or other records containing
2 information in an aggregate or statistical form that does not
3 disclose any personally-identifying information protected from
4 public disclosure under this subsection.

5 (3) (A) The director shall furnish to any nonprofit
6 firearm-related or hunting-related educational or issue-advocacy
7 organization exempt from federal income taxation under §501(c) of
8 the Internal Revenue Code that has not obtained records pursuant to
9 this subdivision within the immediate preceding six months, a
10 current list of the names, mailing addresses, telephone numbers,
11 e-mail addresses and county of residence if a resident of this
12 state, of all persons at least eighteen years of age who hold any
13 license, permit or stamp under this chapter, in a commonly-used
14 electronic database format acceptable to the requesting
15 organization.

16 (B) The director shall furnish to the state executive committee
17 of any political party, as defined in section eight, article one,
18 chapter three of this code, that has not obtained records pursuant
19 to this subdivision within the immediate preceding six months, a
20 current list of the names, birthdates, mailing addresses, telephone
21 numbers, e-mail addresses and county of residence of all residents
22 of this state who are at least eighteen years of age and who hold
23 any license, permit or stamp under this chapter, in a commonly-used

1 electronic database format acceptable to the requesting committee.

2 (C) A personally-identifying information other than the
3 information described in paragraph (A) or (B) of this subdivision,
4 as applicable, or any information pertaining to the type of license,
5 permit or stamp, other than whether it is a hunting only, fishing
6 only or combined hunting and fishing license, permit or stamp, may
7 not be disclosed pursuant to this subdivision.

8 (D) The director shall create and maintain an electronic
9 database of all information described in paragraphs (A) and (B) of
10 this subdivision for the purpose of promptly responding to requests
11 for such information. The director may charge any entity requesting
12 information pursuant to paragraph (A) or (B) of this subdivision,
13 a reasonable fee, not to exceed the actual marginal cost incurred
14 in fulfilling the request, which may not include any portion of
15 overhead or other fixed costs incurred in creating or maintaining
16 the database required by this paragraph.

17 (E) Before any personally-identifying information of persons
18 who hold any license, permit or stamp under this chapter may be
19 disclosed pursuant to this subdivision, the person obtaining the
20 information shall complete and verify under oath a notarized request
21 form prescribed by the director, which shall be a public record, and
22 file the request form at the director's office in person or by
23 certified mail, return receipt requested. The director shall

1 maintain a record of requests fulfilled under this subdivision for
 2 at least five years and not more than seven years. The director
 3 shall, upon request of any person who holds or has previously held
 4 any license, permit or stamp under this chapter, notify the person
 5 of all organizations to which the person's personally-identifying
 6 information have been disclosed pursuant to this subdivision during
 7 the period for which the director maintains those records and
 8 provide a copy of all requests for disclosure made to the director
 9 pursuant to this subdivision.

10 **§20-2-37. Display of license, etc., by persons in possession of**
 11 **hunting, fishing, etc., paraphernalia.**

12 (a) ~~Any person having in his or her possession~~ who possesses
 13 in or near the fields or woods, or about the streams of this state,
 14 any dog, ~~gun~~ rifle, shotgun, fishing rod or other hunting, fishing
 15 or trapping paraphernalia, shall, upon demand of any officer
 16 authorized to enforce the provisions of this chapter:

17 (1) State his or her correct name and address; and ~~shall~~

18 (2) Exhibit for inspection:

19 ~~(a)~~ (A) ~~All applicable licenses and documents set forth~~
 20 specified in subsection (a), section thirty-six of this article; and

21 ~~(b)~~ (B) ~~All firearms and wildlife which~~ and rifles or shotguns
 22 he or she ~~may have in his or her possession~~ possesses.

23 ~~Nothing in (b) This section may be construed as authorizing~~

1 does not authorize searches or seizures that violate article three,
2 section six of the West Virginia Constitution or the Fourth
3 Amendment to the Constitution of the United States ~~nor~~ and may
4 ~~anything in this section~~ not be construed as effecting a waiver of
5 these Constitutional provisions.

6 **§20-2-421. Class A-1 handgun hunting stamp.**

7 ~~Notwithstanding the provisions of section two, article seven,~~
8 ~~chapter sixty-one of this code,~~

9 (a) A Class A-1 stamp is a ~~small arms~~ handgun hunting stamp.
10 ~~To be eligible to get a Class A-1 stamp, a person must be legally~~
11 ~~able to possess a firearm. If a person is otherwise qualified, The~~
12 director may issue a Class A-1 stamp ~~may be issued to a~~ any person
13 who is at least 21 years of age, ~~or older who~~ holds a valid resident
14 or nonresident hunting license or ~~to a person who is a resident~~
15 ~~sixty five years of age or older, but a Class A-1 stamp shall never~~
16 ~~be issued to a person who has been convicted of a misdemeanor~~
17 ~~associated with the use of firearms or dangerous weapons or who has~~
18 ~~been convicted of a felony~~ exempt from the requirement of obtaining
19 a hunting license and is not prohibited by federal law or section
20 seven, article seven, chapter sixty-one of this code, from
21 possessing or transporting handguns. The director may issue a
22 lifetime Class A-1 stamp to any person qualified to obtain a Class
23 A-1 stamp who holds a valid Class A-L or AB-L license or is a

1 resident sixty-five years of age or older exempt from the
2 requirement of obtaining a hunting license.

3 (b) A holder of a Class A-1 stamp shall purchase the
4 appropriate base license before participating in the activities
5 specified in this section, except as noted. A Class A-1 stamp
6 entitles the licensee to hunt, as otherwise permitted by the
7 provisions of this chapter, but only during small game and big game
8 seasons as established annually by the Director, holder of the stamp
9 to hunt as otherwise permitted by this chapter during the small game
10 and big game hunting seasons established by the director with either
11 a revolver or pistol which handgun that has a barrel at least four
12 inches in length. Unless otherwise permitted by the Code of West
13 Virginia, a Class A-1 stamp entitles the licensee to carry or have
14 in his or her possession only one revolver or pistol when going to
15 and from his or her home or residence and a place of hunting and
16 while hunting: Provided, That the Class A-1 stamp may not be valid
17 unless the licensee has in his or her possession a valid resident
18 or nonresident hunting license or is a resident sixty-five years of
19 age or older. Provided, however, That at all times, when not
20 actually hunting, the revolver or pistol shall be unloaded. While
21 hunting, the licensee shall carry the revolver or pistol in an
22 unconcealed and easily visible place. The fee for the stamp is eight
23 dollars. A lifetime Class A-1 stamp may be issued to anyone

1 ~~otherwise qualified and holding a valid Class A-L or AB-L license~~
2 ~~or to a resident sixty-five years of age or older The lifetime Class~~
3 ~~A-1 stamp will be issued in a form prescribed by the Director.~~

4 (c) The fee for a Class A-1 stamp is \$8. The fee for a lifetime
5 Class A-I stamp is \$75. All fees collected for the issuance of the
6 Class A-1 and lifetime Class A-1 stamps shall be deposited in the
7 State Treasury and credited to the law-enforcement section of the
8 Division of Natural Resources. The fees collected shall be paid out
9 of the State Treasury on order of the Director and used solely for
10 law-enforcement purposes.

11 (d) Before the director may issue, renew or reinstate any Class
12 A-1 stamp, the law-enforcement section of the Division of Natural
13 Resources shall conduct an investigation to determine whether the
14 applicant is prohibited by federal law or section seven, article
15 seven, chapter sixty-one of this code, from possessing or
16 transporting firearms. This investigation shall conform to the
17 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
18 or other applicable federal law for qualifying Class A-1 stamps as
19 an alternative to the National Instant Criminal Background Check
20 System or other similar required background check for a resident of
21 this state to purchase a firearm through a licensed firearms dealer
22 within this state, including a background check conducted through
23 the National Instant Criminal Background Check System and, if the

1 applicant is an alien, a federal Immigration Alien Query. The
2 director shall not issue a Class A-1 stamp to any person who is
3 prohibited by federal law or section seven, article seven, chapter
4 sixty-one of this code, from possessing or transporting firearms.

5 (e) The director shall propose rules for legislative approval
6 in accordance with the provisions of article three, chapter
7 twenty-nine-a of this code to permit a holder of a lifetime Class
8 A-1 stamp to periodically apply for a reissued stamp to permit the
9 holder of the stamp to receive the benefit of an exemption under 18
10 U.S.C. §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) or other applicable
11 federal law, from a background check through the National Instant
12 Criminal Background Check System to purchase or receive a firearm
13 from a licensed firearm dealer in this state.

14 (f) The director shall revoke any Class A-1 stamp or lifetime
15 Class A-1 stamp issued to a person convicted of a misdemeanor
16 associated with the use of firearms or dangerous weapons or
17 convicted of a felony, or any person who becomes legally unable to
18 possess a firearm prohibited by federal law or section seven,
19 article seven, chapter sixty-one of this code, from possessing or
20 transporting firearms. The director shall immediately notify the
21 person of the revocation in writing, delivered either by personal
22 service or certified mail, return receipt requested. The person
23 shall immediately surrender the revoked stamp to the director if

1 served in person with the notice or within five business days if
2 served by certified mail.

3 (g) A holder of a Class A-1 stamp or lifetime Class A-1 stamp
4 who becomes ineligible to continue holding the stamp shall
5 immediately surrender the stamp to the Division of Natural Resources
6 regardless of whether the director discovers the disqualification
7 and initiates revocation proceedings under subsection (f) of this
8 section. A holder of a Class A-1 or lifetime Class A-1 stamp is
9 required to purchase the appropriate base license before
10 participating in the activities specified in this section, except
11 as noted.

12 (h) Any person who knowingly and willfully fails to surrender
13 a revoked Class A-1 stamp or lifetime Class A-1 stamp, as required
14 by subsection (f) of this section, or knowingly and willfully fails
15 to surrender a Class A-1 stamp or lifetime Class A-1 stamp the
16 person has become ineligible to continue holding, as required by
17 subsection (g) of this section, is guilty of a misdemeanor and, upon
18 conviction thereof, shall be fined not more than \$1,000, confined
19 in jail for not more than six months, or both fined and confined.

20 (i) The director shall reinstate Class A-1 stamp or lifetime
21 Class A-1 stamp that was revoked pursuant to subsection (f) of this
22 section or surrendered pursuant to subsection (g) of this section
23 if the person to whom the revoked or surrendered stamp was issued

1 subsequently ceases to be prohibited by federal law or section
2 seven, article seven, chapter sixty-one of this code, from
3 possessing or transporting firearms.

4 **§20-2-42p. Class RG resident and Class RRG nonresident gun firearm**
5 **deer hunting stamp for an additional deer.**

6 (a) The director ~~has the authority to~~ may issue a Class RG
7 resident and a Class RRG nonresident gun firearm deer hunting stamp
8 stamps when deemed the director considers the taking of additional
9 deer essential for the proper management of the wildlife resources.
10 ~~These~~

11 (b) Class RG and Class RRG stamps ~~allow~~ authorize the licensee
12 holders of those stamps to hunt and take an additional deer as
13 designated by the director. A holder of a Class RG or Class RRG
14 stamp shall purchase the appropriate base license before
15 participating in the activities specified in this section, except
16 as noted.

17 (c) The fee for a Class RG stamp is \$20. ~~and~~ The fee for a
18 Class RRG stamp is \$40.

19 (d) Before the director may issue, renew or reinstate any Class
20 RG or RRG stamp, the law-enforcement section of the Division of
21 Natural Resources shall conduct an investigation to determine
22 whether the applicant is prohibited by federal law or section seven,
23 article seven, chapter sixty-one of this code, from possessing or

1 transporting firearms. This investigation shall conform to the
2 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
3 or other applicable federal law for qualifying Class RG and RRG
4 stamps as an alternative to the National Instant Criminal Background
5 Check System or other similar required background check for a
6 resident of this state to purchase a firearm through a licensed
7 firearms dealer within this state, including a background check
8 conducted through the National Instant Criminal Background Check
9 System and, if the applicant is an alien, a federal Immigration
10 Alien Query. The director may not issue a Class RG or Class RRG
11 stamp to any person who is prohibited by federal law or section
12 seven, article seven, chapter sixty-one of this code, from
13 possessing or transporting firearms.

14 (e) The director shall revoke any Class RG or Class RRG stamp
15 issued to a person who becomes prohibited by federal law or section
16 seven, article seven, chapter sixty-one of this code, from
17 possessing or transporting firearms. The director shall immediately
18 notify the person of the revocation in writing, delivered either by
19 personal service or certified mail, return receipt requested. The
20 person shall immediately surrender the revoked stamp to the director
21 if served in person with the notice or within five business days if
22 served by certified mail.

23 (f) A holder of a Class RG or Class RRG stamp who becomes

1 prohibited by federal law or section seven, article seven, chapter
2 sixty-one of this code, from possessing or transporting firearms,
3 shall immediately surrender the stamp to the Division of Natural
4 Resources regardless of whether the director discovers the
5 disqualification and initiates revocation proceedings under
6 subsection (e) of this section.

7 (g) Any person who knowingly and willfully fails to surrender
8 a revoked Class RG or Class RRG stamp, as required by subsection (e)
9 of this section, or knowingly and willfully fails to surrender a
10 Class RG or Class RRG stamp the person has become ineligible to
11 continue holding, as required by subsection (f) of this section, is
12 guilty of a misdemeanor and, upon conviction thereof, shall be fined
13 not more than \$1,000, confined in jail for not more than six months,
14 or both fined and confined.

15 (h) The director shall reinstate Class RG or Class RRG stamp
16 that was revoked pursuant to subsection (e) of this section or
17 surrendered pursuant to subsection (f) of this section if the person
18 to whom the revoked or surrendered stamp was issued subsequently
19 ceases to be prohibited by federal law or section seven, article
20 seven, chapter sixty-one of this code, from possessing or
21 transporting firearms.

22 (i) The director may ~~promulgate~~ propose rules for legislative
23 approval in accordance with article three, chapter twenty-nine-a of

1 this code governing the issuance, ~~and use~~ and revocation of ~~these~~
 2 Class RG and a Class RRG stamps. ~~These stamps require that the~~
 3 ~~licensee purchase the appropriate base license before participating~~
 4 ~~in the activities specified in this section, except as noted.~~

5 **§20-2-46e. Class Q special hunting permit for disabled persons.**

6 (a) A Class Q permit is a special statewide hunting permit
 7 ~~entitling~~ authorizing the permittee to hunt ~~all legal species of~~
 8 ~~game during the designated hunting seasons~~ from a motor vehicle in
 9 accordance with the provisions of subsection (d) of this section.

10 (b) ~~A permit form shall be furnished by~~ The director shall
 11 furnish a permit form to an applicant who: ~~meets the following~~
 12 ~~requirements~~

13 (1) ~~He or she~~ Is permanently disabled in the lower extremities;
 14 and

15 (2) ~~He or she~~ Holds a valid resident or nonresident statewide
 16 hunting license ~~a senior citizens license~~ or is ~~otherwise~~ exempt
 17 from the license requirement.

18 (c) Before the director may issue a Class Q permit, a licensed
 19 physician ~~must~~ shall certify the applicant's permanent disability
 20 by completing the permit form. When completed, the permit form
 21 constitutes a Class Q permit. The Class Q permit and a completed
 22 license application shall be submitted to the division, which ~~will~~
 23 shall issue ~~a wallet sized card to~~ the permittee a permit card not

1 larger than a driver's license and in a form suitable for carrying
2 in a wallet, similar to a driver's license. ~~The card and all other~~
3 ~~documents and identification required to be carried by this article~~
4 ~~shall be in the permittee's possession when hunting.~~

5 (d) A Class Q ~~permit entitles the holder to~~ permittee may hunt
6 from a motor vehicle and ~~notwithstanding the provisions of~~
7 ~~subdivision (9), section five of this article to possess a loaded~~
8 firearm or, if the Class Q permittee possesses a Class Y permit, a
9 crossbow with a nocked bolt, in and discharge it from a motor
10 vehicle ~~but only under the following circumstances~~ if:

11 (1) The motor vehicle is stationary;

12 (2) The engine of the motor vehicle is not operating;

13 (3) The permittee and one individual, who is at least sixteen
14 years of age, to assist the permittee, are the only occupants of the
15 motor vehicle;

16 (4) The individual assisting the permittee ~~may~~ does not hunt
17 with a firearm, bow or ~~cross-bow~~ crossbow while assisting the
18 permittee;

19 (5) The motor vehicle is not parked on the right-of-way of any
20 public road or highway; and

21 (6) The permittee ~~observes~~ complies with all other ~~pertinent~~
22 applicable laws and ~~regulations~~ rules.

23 (e) The director may propose legislative rules for legislative

1 approval in accordance with the provisions of article three, chapter
2 twenty-nine-a of this code ~~setting forth~~ specifying the
3 qualifications of applicants and the permitting process.

4 **§20-2-58. Shooting across road or near building or crowd;**
5 **exceptions.**

6 ~~It shall be unlawful for any person to shoot or~~ (a) Except as
7 otherwise provided by subsections (b) and (c) of this section, a
8 person may not knowingly and willfully discharge any firearms
9 firearm:

10 (1) Across or ~~in~~ from within any public ~~road~~ street or highway
11 in this state, at any time; or

12 (2) Within four hundred feet of any schoolhouse or church; or

13 (3) Within five hundred feet of any dwelling house other than
14 a dwelling house owned, leased or lawfully occupied or possessed by
15 the person who discharges the firearm, unless:

16 (A) The owners or lessees of all dwelling houses within five
17 hundred feet of the place where the person discharges the firearm
18 have given prior consent to the discharge in writing; and

19 (B) The person discharging the firearm does not knowingly
20 violate any condition of consent specified in any written grant of
21 consent pursuant to paragraph (A) of this subdivision; or ~~on or near~~

22 (4) Within any state, county, municipal or other public park
23 or other place where persons gather for purposes of pleasure, except

1 in an established firearm shooting range.

2 ~~and any person violating this section is guilty of a~~
3 ~~misdemeanor: *Provided, That*~~

4 (b) Subsection (a) of this section does not apply to the
5 discharge of a firearm under circumstances in which the use of
6 deadly force is justified or excused under the laws of this state
7 to defend persons or property.

8 (c) Notwithstanding subsection (a) of this section, any person
9 operating a gun repair shop, licensed to do business in the State of
10 West Virginia and duly licensed under applicable federal statutes,
11 may be exempted from the prohibition established by subsection (a)
12 of this section and section twelve, article seven, chapter sixty one
13 of this code for the purpose of test firing a firearm. The director
14 ~~of the department of natural resources~~ shall ~~prescribe such~~ propose
15 ~~rules as may be necessary to carry out the purposes of~~ for
16 legislative approval in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code, to implement the
18 exemption under this ~~section and section twelve, article seven,~~
19 ~~chapter sixty one and~~ subsection. These rules shall ensure that any
20 person residing in any dwelling ~~home~~ house within five hundred feet
21 of ~~such~~ the gun repair shop ~~be~~ is given an opportunity to protest
22 the granting of such exemption before the director decides whether
23 to grant the exemption.

1 **ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

2 **§20-7-9. Violations of chapter generally; penalties.**

3 (a) Any person ~~violating~~ who knowingly violates any ~~of the~~
 4 ~~provisions~~ provision of this chapter or rules promulgated under the
 5 provisions of this chapter, ~~the punishment~~ for which another
 6 punishment is not prescribed in this chapter, ~~shall be~~ is guilty of
 7 a misdemeanor and, upon conviction thereof, shall for each offense
 8 be fined not less than \$20 nor more than \$300, ~~or~~ confined in jail
 9 for not less than ten ~~or~~ days nor more than one hundred days, or ~~be~~
 10 both, fined and confined ~~imprisoned within the limitations aforesaid~~
 11 and, in the case of a violation by a corporation, every officer or
 12 agent ~~thereof directing~~ of the corporation who directs or ~~engaging~~
 13 engages in ~~such the~~ violation ~~shall be~~ is guilty of a misdemeanor
 14 and, upon conviction thereof, shall be subject to the same penalties
 15 ~~and punishment as herein provided~~ Provided, That in this subsection
 16 for a violation committed by a natural person.

17 (b) Any person ~~violating~~ who knowingly violates subdivision
 18 (3), subsection (a), section five, article two of this chapter ~~shall~~
 19 ~~be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be
 20 fined not less than \$100 nor more than \$500 and shall be ~~imprisoned~~
 21 confined in jail for not less than ten days nor more than one
 22 hundred days. ~~Provided, however, That~~

23 (c) Any person who knowingly hunts any wild animal or wild bird

1 after the hour of five o'clock antemeridian on Sunday, in violation
2 of subdivision (26), (27), (28) or (29), subsection (a), section
3 five, article two of this chapter, is guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined not less than \$20 nor more
5 than \$400, confined in jail for not less than ten days nor more than
6 one hundred days, or both fined and confined.

7 (d) Any person who knowingly uses dynamite or any like
8 explosive or poisonous mixture placed in any waters of the state to
9 fish, in violation of subdivision (17), subsection (a), section
10 five, article two of this chapter, is guilty of a felony and, upon
11 conviction thereof, shall be fined not more than \$500, imprisoned in
12 a state correctional facility not less than six months nor more than
13 three years, or both fined and imprisoned.

14 (e) Any person who ~~is in violation of~~ violates section
15 twenty-seven, article two of this chapter ~~as a result of their~~
16 ~~failure~~ by failing to have a valid Class E nonresident hunting and
17 trapping license, as defined by section forty-two-d, article two of
18 this chapter, or a valid Class EE nonresident bear hunting license,
19 as defined by section forty-two-e, article two of this chapter,
20 ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof,
21 shall be fined not less than \$250 nor more than \$500, ~~or~~ confined in
22 jail for not less than ten days nor more than one hundred days, or
23 both fined and confined. ~~imprisoned: Provided further, That~~

1 (f) Any person who ~~is in violation of~~ violates section
2 twenty-seven, article two of this chapter ~~as a result of their~~
3 ~~failure by failing~~ to have a Class F nonresident fishing license, as
4 defined by section forty-two-f, article two of this chapter, ~~shall~~
5 ~~be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not less than \$100 nor more than \$300, ~~or~~ confined in jail for
7 not less than ten days nor more than one hundred days, or both fined
8 and confined. ~~finned and imprisoned: And provided further, That~~

9 (g) Any person who violates subsection (a), section two-a,
10 article two of this chapter is guilty of a misdemeanor and, upon
11 conviction thereof, shall be fined not less than \$100 nor more than
12 \$1,000, confined in jail for not less than ten days nor more than
13 six months, or both fined and confined; but upon conviction of an
14 offense occurring subsequent to a conviction for a previous offense
15 and within five years of the date on which the previous offense was
16 committed, shall be fined not more than \$2,500, confined in jail for
17 not more than one year, or both fined and confined. The director
18 shall revoke any hunting or fishing license issued to a person
19 convicted of violating subsection (a), section two-a, article two of
20 this chapter.

21 (h) Any person ~~violating~~ who violates any parking or speeding
22 regulations as promulgated by the director on any state parks, state
23 forests, public hunting and fishing areas and all other lands and

1 waters owned, leased or under the control of the Division of Natural
 2 Resources ~~shall be~~ is guilty of a misdemeanor and, upon conviction
 3 thereof, shall be fined not less than \$2 nor more than \$100, ~~or~~
 4 ~~imprisoned~~ confined in jail for not more than ten days, or both
 5 fined and confined. ~~imprisoned~~

6 **~~§20-7-11. Motorboats and other terms defined~~ Definitions.**

7 ~~As used~~ In this section and ~~subsequent~~ the succeeding sections
 8 of this article: ~~unless the context clearly requires a different~~
 9 ~~meaning~~

10 (1) ~~"Vessel" means every description of watercraft, other than~~
 11 ~~a seaplane on the water, used or capable of being used as a means of~~
 12 ~~transportation on water;~~ "Commissioner" has the same meaning as in
 13 section one, article one, chapter seventeen-a of this code.

14 (2) ~~"Motorboat" means any vessel propelled by an electrical,~~
 15 ~~steam, gas, diesel or other fuel propelled or driven motor, whether~~
 16 ~~or not the motor is the principal source of propulsion, but does not~~
 17 ~~include a vessel which has a valid marine document issued by the~~
 18 ~~bureau of customs of the United States government or any federal~~
 19 ~~agency successor thereto;~~

20 ~~(3)~~ "Owner" means ~~a~~ any person, other than a lienholder, having
 21 the property in or title to a motorboat ~~The term~~ and includes a
 22 person entitled to the use or possession of a motorboat subject to
 23 an interest in another person, reserved or created by agreement and

1 securing payment or performance of an obligation, but ~~the term~~
2 excludes a lessee under a lease not intended as security.

3 ~~(4) "Commissioner" means the commissioner of the Division of~~
4 ~~Motor Vehicles;~~

5 ~~(5) "Director" means the director of the Division of Natural~~
6 ~~Resources; and~~

7 ~~(6) "Personal watercraft" means a small vessel of less than~~
8 ~~sixteen feet in length which uses an inboard motor powering a water~~
9 ~~jet pump as its primary source of motive power and which is designed~~
10 ~~to be operated by a person sitting, standing, or kneeling on the~~
11 ~~vessel, rather than the conventional manner of sitting or standing~~
12 ~~inside the vessel. For purposes of this article, the term "personal~~
13 ~~watercraft" also includes "specialty prop-crafts" which are vessels~~
14 ~~similar in appearance and operation to a personal watercraft but~~
15 ~~which are powered by an outboard motor or propeller driven motor.~~

16 **CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.**

17 **ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.**

18 **§24A-7-6. Duty of prosecuting attorneys and law-enforcement**
19 **officers to enforce chapter; regulatory authority of**
20 **commission; qualifications of commission employees**
21 **designated as motor carrier inspectors.**

22 ~~It shall be the duty of the West Virginia State Police and the~~

1 ~~sheriffs of the counties in West Virginia to~~

2 (a) Law-enforcement officers, as defined in section one,
3 article twenty-nine, chapter thirty of this code, shall make arrests
4 or issue citations for and ~~the duty of~~ the prosecuting attorneys of
5 ~~the several counties to~~ shall prosecute all violations of this
6 chapter and of other chapters governing the regulatory authority of
7 the commission.

8 (b) The commission employees designated as motor carrier
9 inspectors ~~shall~~ have the same authority as law-enforcement
10 officers, as defined in section one, article twenty-nine, chapter
11 thirty of this code, to enforce the provisions of this chapter and
12 the provisions of other chapters of this code governing the
13 regulatory authority of the commission as ~~such~~ those provisions
14 apply to entities and persons regulated by the commission in any
15 county or ~~city~~ municipality of this state.

16 ~~Notwithstanding any provision of this code to the contrary,~~
17 ~~such~~

18 (c) Motor carrier inspectors designated pursuant to subsection
19 (b) of this section may carry ~~handguns~~ concealed weapons without a
20 license in the course of their official duties after meeting
21 specialized qualifications established by the Governor's Committee
22 on Crime, Delinquency and Correction, which ~~qualifications~~ shall
23 include the successful completion of handgun training, including a

1 minimum of four hours training in handgun safety, paid for by the
2 commission and comparable to the handgun training provided to
3 law-enforcement officers by the West Virginia State Police.

4 ~~Provided, That~~

5 (d) Nothing in this section ~~shall~~ may be construed to include
6 motor carrier inspectors within the meaning of law-enforcement
7 officers as defined in section one, article twenty-nine, chapter
8 thirty of this code.

9 **CHAPTER 25. DIVISION OF CORRECTIONS.**

10 **ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

11 **§25-1-11c. Hiring of other assistants and employees; duties of**
12 **correctional employees; right to carry weapons;**
13 **powers of correctional peace officers.**

14 (a) The warden or administrator of the correctional
15 institutions or units shall, in the manner provided in section
16 eleven of this article, hire all assistants and employees required
17 for the management of the correctional institutions or units,
18 including a sufficient number of correctional employees to preserve
19 order and enforce discipline among the inmates, to prevent escapes
20 and to remove all persons convicted and sentenced to the custody of
21 the Division of Corrections, from the place confined to a
22 correctional institution, all of whom shall be under the control of

1 the warden.

2 **(b)** The commissioner may issue a certificate authorizing any
3 correctional employee who has successfully completed the division's
4 training program for firearms certification, which shall be the
5 equivalent of that required of deputy sheriffs, to carry ~~firearms~~
6 ~~and~~ concealed weapons without a license while on duty. Any
7 correctional employee authorized by the commissioner ~~has the right,~~
8 ~~without a state license, to~~ may carry ~~firearms and~~ concealed weapons
9 without a license while on duty. Each correctional employee,
10 authorized by the commissioner, shall carry with him or her a
11 certificate, authorizing him or her to carry ~~a firearm or~~ concealed
12 ~~weapon~~ weapons without a license when performing his or her official
13 duties as a correctional employee, bearing the official signature of
14 the commissioner and warden or administrator. The ~~right~~ privilege
15 conferred by this subsection is extended to a correctional employee
16 during the time the employee travels from place to place within the
17 state for the purpose of removing prisoners from jails to a
18 correctional institution of the Division of Corrections, and during
19 the time the employee is pursuing and apprehending escaped inmates,
20 and during any other time the employee is performing official duties
21 as a correctional employee. ~~No correctional employee shall have the~~
22 ~~right to carry a firearm or concealed weapon~~ The privilege conferred
23 by this subsection does not apply for any other purpose or during

1 any other time, including when ~~traveling to and from~~ commuting
 2 between the employee's residence and a correctional institution.
 3 ~~unless the employee has obtained a state license in the manner~~
 4 ~~prescribed in article seven, chapter sixty-one of this code~~

5 ~~(b)~~ (c) The Commissioner of Corrections may designate
 6 correctional employees as correctional peace officers. ~~who have the~~
 7 ~~following powers~~ Correctional peace officers designated pursuant to
 8 this subsection may:

9 (1) ~~To~~ Enforce rules and laws necessary for the control and
 10 management of correctional units and the maintenance of public
 11 safety that is within the scope of responsibilities of the Division
 12 of Corrections;

13 ~~(1)~~ (2) ~~To detain~~ Arrest persons for violations of state law
 14 committed on the property of any state correctional institution;

15 ~~(2)~~ (3) ~~To~~ Conduct investigations regarding criminal activity
 16 occurring within a correctional facility, pursue and apprehend
 17 escapees from the custody of the commissioner or any state
 18 correctional institution; and

19 (4) ~~To~~ Execute criminal process or other process in furtherance
 20 of these duties on persons in the custody of the commissioner, or
 21 who surrender themselves at any state correctional institution.

22 **CHAPTER 27. MENTALLY ILL PERSONS.**

23 **ARTICLE 3. CONFIDENTIALITY.**

1 **§27-3-1. Definition of confidential information; disclosure.**

2 (a) (1) Communications and information obtained in the course
3 of treatment or evaluation of any client or patient are confidential
4 information. ~~Such~~

5 (2) Confidential information includes:

6 (A) The fact ~~that~~ a person is or has been a client or patient;

7 (B) Information transmitted by a patient or client or family
8 ~~thereof~~ of a patient or client, for purposes relating to diagnosis
9 or treatment;

10 (C) Information transmitted by persons participating in the
11 accomplishment of the objectives of diagnosis or treatment;

12 (D) All diagnoses or opinions formed regarding ~~a client's or~~
13 ~~patient's~~ the physical, mental or emotional condition of any patient
14 or client;

15 (E) Any advice, instructions or prescriptions issued in the
16 course of diagnosis or treatment; and

17 (F) Any record or characterization of the matters ~~hereinbefore~~
18 described in paragraphs (A) through (E) of this subdivision. ~~It~~

19 (3) Confidential information does not include:

20 (A) Information ~~which~~ that does not identify a client or
21 patient;

22 (B) Information from which a person acquainted with a client or
23 patient would not recognize ~~such~~ the client or patient; ~~and~~ or

1 (C) Uncoded information from which there is no possible means
2 to identify a client or patient.

3 (b) Confidential information shall not be disclosed, except:

4 (1) In a proceeding under section four, article five of this
5 chapter to disclose the results of an involuntary examination made
6 pursuant to section two, three or four, ~~of said article~~ five of this
7 chapter;

8 (2) In a proceeding under article six-a of this chapter to
9 disclose the results of an involuntary examination made pursuant
10 ~~thereto~~ to article six-a of this chapter;

11 (3) Pursuant to an order of any court based upon a finding of
12 the court that the information is sufficiently relevant to a
13 proceeding before the court to outweigh the importance of
14 maintaining the confidentiality established by this section;

15 (4) To provide notice to the ~~federal~~ National Instant Criminal
16 Background Check System established pursuant to section 103(d) of
17 the Brady Handgun Violence Prevention Act, Public Law 103-159, §103,
18 107 Stat. 1536 (1993), reprinted in 18 U.S.C. §922 notes, or the
19 central state mental health registry established pursuant to article
20 seven-a, chapter sixty-one of this code, on individuals prohibited
21 by federal law or section seven, article seven, chapter sixty-one of
22 this code, from possessing firearms, in accordance with the
23 provisions of article seven-a, chapter sixty-one of this code;

1 (5) To conduct mental health background checks on an applicant
2 for or current holder of a federal firearm license or any license or
3 permit issued in this or any other state that authorizes the
4 licensee or permittee to receive, purchase, possess, carry or
5 transport a firearm or concealed weapon;

6 ~~(5)~~ (6) To protect against a clear and substantial danger of
7 imminent injury by a patient or client to himself, herself or
8 another;

9 ~~(6)~~ (7) For treatment or internal review purposes, to staff of
10 the mental health facility where the patient is being cared for or
11 to other health professionals involved in treatment of the patient;
12 ~~and~~ or

13 ~~(7)~~ (8) Without the patient's consent as provided ~~for~~ under the
14 Privacy Rule of the federal Health Insurance Portability and
15 Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from
16 the date of admission to a mental health facility, if:

17 ~~(i)~~ (A) The provider makes a good faith effort to obtain
18 consent from the patient or the patient's legal representative prior
19 to disclosure;

20 ~~(ii)~~ (B) The minimum information necessary is released for a
21 specifically stated purpose; and

22 ~~(iii)~~ (C) Prompt notice of the disclosure, the recipient of the
23 information and the purpose of the disclosure is given to the

1 patient or the patient's legal representative.

2 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

3 **§27-5-6. Determination of eligibility to lawfully possess firearms**
4 **in certain proceedings.**

5 (a) The court or mental hygiene commissioner shall, upon
6 issuing any order described in subsection (b) of this section, enter
7 findings of fact and conclusions of law as to whether the order
8 causes the person named in the order to become prohibited from
9 possessing firearms or ammunition by 18 U.S.C. §922(g)(4) or
10 subdivision (4), subsection (a), section seven, article seven,
11 chapter sixty-one of this code. Before the court or mental hygiene
12 commissioner issues its findings of fact and conclusions of law
13 under this section, it shall permit the parties to the proceeding to
14 present evidence, arguments and proposed findings of fact and
15 conclusions of law and may hold a separate hearing on the issue.

16 (b) This section applies to:

17 (1) A final commitment order entered pursuant to section four
18 of this article;

19 (2) An order of incompetence to stand trial entered pursuant to
20 section three, article six-a of this chapter;

21 (3) Acquittal in a criminal case by reason of mental illness as
22 provided in section four, article six-a of this chapter;

23 (4) Adjudication as a mentally incompetent ward subject to

1 article fifteen, chapter forty-four of this code;

2 (5) A final order of guardianship or conservatorship entered by
3 a circuit court pursuant to section thirteen, article two, chapter
4 forty-four-a of this code; or

5 (6) Any determination that a person, as a result of an
6 intellectual disability or mental illness, incompetency, condition
7 or disease:

8 (A) Is a danger to himself or to others; or

9 (B) Lacks the mental capacity to contract or manage his or her
10 own affairs.

11 (c) If the court or mental hygiene commissioner finds that the
12 order described in subsection (b) of this section causes the person
13 named in the order to become prohibited from possessing firearms or
14 ammunition by 18 U.S.C. §922(g)(4) or subdivision (4), subsection
15 (a), section seven, article seven, chapter sixty-one of this code,
16 the court or mental hygiene commissioner shall:

17 (1) Enter an order containing its findings of fact and
18 conclusions of law;

19 (2) Notify the person orally and in writing that, as a result
20 of the order, the person has become prohibited from possessing
21 firearms and ammunition by 18 U.S.C. §922(g)(4), subdivision (4),
22 subsection (a), section seven, article seven, chapter sixty-one of
23 this code or a combination thereof;

1 (3) Notify the person orally and in writing that if he or she
2 has a license to carry concealed weapons, the onset of firearm
3 disabilities under federal or state law requires the person to
4 immediately surrender the license to the issuing agency;

5 (4) Query the State Police concealed weapons license database
6 maintained pursuant to subdivision (2), subsection (1), section
7 four, article seven, chapter sixty-one of this code to determine
8 whether the person is licensed in this state to carry concealed
9 weapons and, if so, order the clerk of the court to notify the
10 sheriff of the order and the licensee's probable disqualification
11 from continued licensure immediately in electronic form and in
12 writing within five business days on a form prescribed by the
13 Attorney General;

14 (5) Determine the appropriate public or private individual or
15 entity to act as conservator for the person's firearms and
16 ammunition; and

17 (6) Order the person to immediately surrender to the
18 conservator designated pursuant to subdivision (5) of this
19 subsection, all firearms and ammunition the person owns or
20 possesses.

21 (d) The clerk of the court shall forward a certified copy of
22 any order finding a person to be prohibited from possessing firearms
23 or ammunition by 18 U.S.C. §922(g)(4) or subdivision (4), subsection

1 (a), section seven, article seven, chapter sixty-one of this code,
2 to the Superintendent of the State Police as required by article
3 seven-a, chapter sixty-one of this code.

4 (e) In this section, the terms "firearm" and "ammunition" have
5 the same meanings as in section two, article seven, chapter
6 sixty-one of this code.

7 (f) The Legislature declares that the purpose of this section
8 is to provide an efficient and uniform mechanism for providing
9 individuals subject to the proceedings described in subsection (b)
10 of this section a fair and adequate notice of the likely
11 implications of the proceedings on the person's eligibility to
12 lawfully possess firearms. A determination by any judge or mental
13 hygiene commissioner under this section that a person is prohibited
14 from possessing firearms and ammunition by 18 U.S.C. §922(g)(4),
15 subdivision (4), subsection (a), section seven, article seven,
16 chapter sixty-one of this code, or a combination thereof, may not be
17 used in any subsequent legal proceeding in which the person's
18 eligibility to lawfully possess firearms under 18 U.S.C. §922(g)(4)
19 or subdivision (4), subsection (a), section seven, article seven,
20 chapter sixty-one of this code, is at issue, to preclude any
21 legitimate argument that the findings of fact and conclusions of law
22 were incorrect and that the named person is not prohibited by
23 applicable federal or state law from possessing firearms.

1 CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

2 ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

3 §30-29-11. Certification of law-enforcement officers to carry
4 concealed firearms under federal Law-Enforcement
5 Officers Safety Act of 2004.

6 (a) Every qualified law-enforcement officer employed by a West
7 Virginia law-enforcement agency shall receive the qualification and
8 certification required to be considered a qualified law-enforcement
9 officer under 18 U.S.C. §926B to carry a concealed firearm
10 nationwide as provided therein. Each law-enforcement official shall
11 provide to each qualified law-enforcement officer under his or her
12 command the identification prescribed therein. A West Virginia
13 law-enforcement agency shall not charge any officer any fees or
14 costs for issuing the certification. This subsection shall not be
15 construed to require nor prohibit a law-enforcement agency from
16 permitting, requiring or prohibiting a law-enforcement officer to
17 carry his or her agency-owned service weapon off-duty.

18 (b) (1) Every West Virginia law-enforcement agency shall, at
19 least once annually, notify each honorably retired law-enforcement
20 officer who retired from that agency of the provisions of 18 U.S.C.
21 §926C that permit a qualified retired law-enforcement officer to
22 carry a concealed firearm nationwide. Each agency shall permit a

1 retired offer who meets the eligibility requirements of said law to
2 receive the qualification and certification required for the retired
3 officer to qualify as a qualified retired law-enforcement officer as
4 provided in 18 U.S.C. §926C. Each qualifying retired officer shall
5 be offered the required periodic recertification as provided in 18
6 U.S.C. §926C, which shall reasonably accommodate any physical
7 disability of the retired officer.

8 (2) Each retired officer who qualifies under this subsection
9 shall be issued a photo identification that shall be no larger than
10 three and three-eighths inches wide by two and one-eighth inches
11 long, shall be made of a hard, laminated material suitable for
12 carrying in a wallet, similar to a driver's license, and shall
13 contain the qualified retired law-enforcement officer's name,
14 address, signature and full-face color photograph, the signature of
15 the chief law-enforcement official of the issuing agency or a
16 facsimile thereof affixed by any person authorized to act on the
17 chief law-enforcement official's behalf pursuant to section five,
18 article two, chapter two of this code, the dates of issue and
19 expiration, the words "Qualified Retired Law-Enforcement Officer
20 under 18 U.S.C. §926C" in conspicuous type and such other
21 information as the chief law-enforcement official of the issuing
22 agency determines appropriate.

23 (3) Before issuing, renewing or reinstating any certification

1 as a qualified retired law-enforcement officer under this
2 subsection, the certifying agency shall conduct an investigation
3 which shall verify that the retired officer is not prohibited by
4 federal law or section seven, article seven, chapter sixty-one of
5 this code, from possessing or transporting firearms or carrying a
6 concealed weapon in a public place. This investigation shall conform
7 to the requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R.
8 §478.102(d)(1) or other applicable federal law for qualifying
9 certifications issued under this subsection as an alternative to the
10 National Instant Criminal Background Check System or other similar
11 required background check for a resident of this state to purchase
12 a firearm through a licensed firearms dealer within this state,
13 including a background check conducted through the National Instant
14 Criminal Background Check System and, if the retired officer is not
15 a citizen of the United States, a federal Immigration Alien Query.

16 (4) A West Virginia law-enforcement agency may not charge its
17 retired officers a fee for periodic qualification and certification
18 under this subsection. However, the person who wishes to qualify
19 shall provide, at his or her own expense, a suitable firearm and any
20 ammunition actually expended in the qualification.

21 (5) The law-enforcement official who issued a certification
22 under this subsection shall revoke any certification under this
23 subsection if the retired officer to whom the certification was

1 issued becomes prohibited by federal law or section seven, article
2 seven, chapter sixty-one of this code, from possessing or
3 transporting firearms or carrying a concealed weapon in a public
4 place. The issuing law-enforcement official shall immediately notify
5 the retired officer of the revocation in writing, delivered either
6 by personal service or certified mail, return receipt requested. The
7 person shall immediately surrender the revoked certification to the
8 issuing law-enforcement official if served in person with the notice
9 or within five business days if served by certified mail.

10 (6) Any person who has been issued a certification under this
11 subsection and becomes ineligible to continue holding the
12 certification shall immediately surrender the certification to the
13 issuing law-enforcement official regardless of whether the issuing
14 law-enforcement official discovers the disqualification and
15 initiates revocation proceedings under subdivision (5) of this
16 subsection.

17 (7) Any person who knowingly and willfully fails to surrender
18 a revoked certification, as required by subdivision (5) of this
19 subsection or knowingly and willfully fails to surrender a
20 certification the person has become ineligible to continue holding,
21 as required by subdivision (6) of this subsection, is guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined not more
23 than \$1,000, confined in jail for not more than six months, or both

1 fined and confined.

2 (8) The issuing law-enforcement official shall reinstate a
3 certification under this subsection that was revoked pursuant to
4 subdivision (5) of this subsection or surrendered pursuant to
5 subdivision (6) of this subsection if the person to whom the revoked
6 or surrendered certification was issued subsequently ceases to be
7 prohibited by federal law or section seven, article seven, chapter
8 sixty-one of this code, from possessing or transporting firearms or
9 carrying a concealed weapon in a public place and fulfills all other
10 requirements to receive the certification under this subsection.

11 (c) (1) Notwithstanding any provision of this code or other law
12 of this state to the contrary, except as otherwise provided in this
13 subsection, the names, addresses and other personally-identifying
14 information of qualified retired law-enforcement officers who apply
15 for or have been issued a certificate of qualification under this
16 section or otherwise participates in a program under this section,
17 shall be confidential, are not public records and may be copied or
18 inspected only by:

19 (A) The qualified retired law-enforcement officer to whom the
20 record pertains;

21 (B) The duly qualified conservator or guardian of the qualified
22 retired law-enforcement officer to whom the record pertains;

23 (C) The duly qualified personal representative of a deceased

1 person to whom the record pertains or, if a personal representative
2 has not qualified, the next of kin of the deceased person to whom
3 the record pertains;

4 (D) An attorney, attorney-in-fact or other agent or
5 representative acting pursuant to a written power of attorney or
6 other written authorization signed by the qualified retired
7 law-enforcement officer to whom the record pertains; or

8 (E) A duly authorized representative of a law-enforcement
9 agency for any official purpose or any other agency or
10 instrumentality of federal, state or local government seeking the
11 record in the ordinary course of performing its official duties;

12 (F) By any licensed firearm dealer within this state from which
13 a qualified retired law-enforcement officer proposes purchasing a
14 firearm, for the purpose of verifying the validity of the
15 certificate; or

16 (G) (i) A person authorized by an order of any court, based
17 upon a finding of the court that the information is sufficiently
18 necessary to a proceeding before the court to substantially outweigh
19 the importance of maintaining the confidentiality established by
20 this subsection, to copy or inspect information protected by this
21 subsection.

22 (ii) Before any court may grant access to any records pursuant
23 to this paragraph, the court shall order the moving party to give

1 each affected person notice of the proceedings, the request for
2 confidential records under this paragraph and the opportunity of
3 affected persons to confidentially intervene and object to the
4 request by directing the applicable law-enforcement official to
5 print and mail by first-class mail to each affected person, the
6 costs for which the moving party shall prepay in full to the
7 law-enforcement official, and perform this notification in a manner
8 not inconsistent with the confidentiality provisions of this
9 subsection.

10 (2) Any person who knowingly misrepresents his or her identity
11 to obtain any information whose disclosure is restricted by
12 subdivision (1) of this subsection, knowingly and willfully
13 misrepresents his or her authority to obtain any information whose
14 disclosure is restricted by subdivision (1) of this subsection,
15 knowingly makes a false statement to obtain any information whose
16 disclosure is restricted by subdivision (1) of this subsection or
17 knowingly and willfully discloses any information whose disclosure
18 is restricted by subdivision (1) of this subsection in violation of
19 subdivision (1) of this subsection, is guilty of a felony and, upon
20 conviction thereof, shall be imprisoned in a state correctional
21 facility for not less than one year nor more than ten years, fined
22 not more than \$10,000, or both fined and imprisoned.

23 (3) This subsection does not prohibit disclosure or publication

1 of statistical summaries, abstracts or other records containing
2 information in an aggregate or statistical form that does not
3 disclose any personally-identifying information protected from
4 public disclosure under this subsection.

5 (4) (A) The custodian of records shall furnish to any nonprofit
6 firearm-related or hunting-related educational or issue-advocacy
7 organization exempt from federal income taxation under §501(c) of
8 the Internal Revenue Code that has not obtained records pursuant to
9 this subdivision within the immediate preceding six months, a
10 current list of the names, mailing addresses, telephone numbers,
11 e-mail addresses and county of residence if a resident of this
12 state, of all qualified retired law-enforcement officers who apply
13 for or have been issued a certificate of qualification under this
14 section, in a commonly-used electronic database format acceptable to
15 the requesting organization.

16 (B) The custodian of records shall furnish to the state
17 executive committee of any political party, as defined in section
18 eight, article one, chapter three of this code, that has not
19 obtained records pursuant to this subdivision within the immediate
20 preceding six months, a current list of the names, birthdates,
21 mailing addresses, telephone numbers, e-mail addresses and county of
22 residence of all qualified retired law-enforcement officers who
23 reside in this state and have applied for or been issued a

1 certificate of qualification under this section, in a commonly-used
2 electronic database format acceptable to the requesting committee.

3 (C) A personally-identifying information other than the
4 information described in paragraph (A) or (B) of this subdivision,
5 as applicable, may not be disclosed pursuant to this subdivision.

6 (D) Each custodian of records under this section shall create
7 and maintain an electronic database of all information described in
8 paragraphs (A) and (B) of this subdivision for the purpose of
9 promptly responding to requests for such information. A custodian of
10 records may charge any entity requesting information pursuant to
11 paragraph (A) or (B) of this subdivision, a reasonable fee, not to
12 exceed the actual marginal cost incurred in fulfilling the request,
13 which may not include any portion of overhead or other fixed costs
14 incurred in creating or maintaining the database required by this
15 paragraph.

16 (E) Before any personally-identifying information of any
17 qualified retired law-enforcement officers who apply for or have
18 been issued a certificate of qualification under this section, may
19 disclose pursuant to this subdivision, the person obtaining the
20 information shall complete and verify under oath a notarized request
21 form prescribed by the Attorney General, which shall be a public
22 record, and file the request form at the office of the custodian of
23 records in person or by certified mail, return receipt requested.

1 The custodian of records shall maintain a record of requests
2 fulfilled under this subdivision for at least five years and not
3 more than seven years. The custodian of records shall, upon request
4 of any qualified retired law-enforcement officer who has applied for
5 or been issued a certificate of qualification under this section,
6 notify the qualified retired law-enforcement officer of all
7 organizations to which the person's personally-identifying
8 information has been disclosed pursuant to this subdivision during
9 the period for which the custodian of records maintains those
10 records and provide a copy of all requests for disclosure made to
11 the custodian of records pursuant to this subdivision.

12 (d) A certification as a qualified law-enforcement officer or
13 qualified retired law-enforcement officer under this section is
14 cumulative and supplemental to any license to carry concealed
15 weapons under section four, article seven, chapter sixty-one of this
16 code or authorization under federal law or the laws of this state to
17 carry a concealed weapon without a license. This section is
18 supplemental and additional to existing rights to bear arms, and
19 nothing in this section may be construed to impair or diminish those
20 rights.

21 **CHAPTER 32. UNIFORM SECURITIES ACT.**

22 **ARTICLE 4. GENERAL PROVISIONS.**

23 **§32-4-407. Sworn investigator, investigations and subpoenas.**

1 (a) *Sworn Investigators.* --

2 (1) The commissioner may appoint special investigators to aid
3 in investigations conducted pursuant to chapter thirty-two,
4 thirty-two-a or thirty-two-b of this code.

5 (2) The commissioner, deputy commissioners and each
6 investigator, prior to entering upon the discharge of his or her
7 duties, shall take an oath before any justice of the West Virginia
8 Supreme Court of Appeals, circuit judge or magistrate which is to be
9 in the following form:

10 State of West Virginia

11 County of, to wit: I,
12, do solemnly swear that I will support the
13 Constitution of the United States, the Constitution of the State of
14 West Virginia, and I will honestly and faithfully perform the duties
15 imposed upon me under the provisions of law as a member of the
16 securities commission of West Virginia to the best of my skill and
17 judgment.

18 (Signed).....

19 Taken, subscribed and sworn to before me, this day of
20 2

21 (3) The oaths of the commissioner, deputy commissioner or
22 commissioners and investigators of the West Virginia Securities
23 Commission are to be filed and preserved in the office of the State

1 Auditor.

2 (b) *Investigations and subpoenas.* --

3 (1) The commissioner in his or her discretion: (A) May make
4 such public or private investigations within or outside of this
5 state as he or she considers necessary to determine whether any
6 person has violated or is about to violate any provision of this
7 chapter or any rule or order hereunder, or to aid in the enforcement
8 of this chapter or in the prescribing of rules and forms hereunder;
9 (B) may require or permit any person to file a statement in writing,
10 under oath or otherwise as the commissioner determines, as to all
11 the facts and circumstances concerning the matter to be
12 investigated; and (C) may publish information concerning any
13 violation of this chapter or any rule or order hereunder.

14 (2) For the purpose of any investigation or proceeding under
15 this chapter, the commissioner, deputy commissioner or
16 commissioners, if any, and special investigators appointed pursuant
17 to this section may administer oaths and affirmations, subpoena
18 witnesses, compel attendance of witnesses, take and store evidence
19 in compliance with the policies and procedures of the West Virginia
20 State Police and require the production of any books, papers,
21 correspondence, memoranda, agreements or other documents or records
22 which the commissioner finds relevant or material to the inquiry.

23 (3) In case of contumacy by, or refusal to obey a subpoena

1 issued to, any person, the circuit court of Kanawha County, upon
2 application by the commissioner, may issue to the person an order
3 requiring him or her to appear before the commissioner, or the
4 officer designated by him or her, to produce documentary evidence if
5 so ordered or to give evidence touching the matter under
6 investigation or in question. Failure to obey the order of the court
7 may be punished by the court as a contempt of court.

8 (4) No person is excused from attending and testifying or from
9 producing any document or record before the commissioner, or in
10 obedience to the subpoena of the commissioner or any officer
11 designated by him or her, or in any proceeding instituted by the
12 commissioner on the ground that the testimony or evidence
13 (documentary or otherwise) required of him or her may tend to
14 incriminate him or her or subject him or her to a penalty or
15 forfeiture; but no individual may be prosecuted or subjected to any
16 penalty or forfeiture for or on account of any transaction, matter
17 or thing concerning which he or she is compelled, after claiming his
18 or her privilege against self-incrimination to testify or produce
19 evidence (documentary or otherwise), except that the individual
20 testifying is not exempt from prosecution and punishment for perjury
21 or contempt committed in testifying.

22 (5) Civil and criminal investigations undertaken by the West
23 Virginia Securities Commission are not subject to the requirements

1 of article nine-a, chapter six of this code and chapter
2 twenty-nine-b of this code.

3 (6) Nothing in this chapter may be construed to authorize the
4 commissioner, a deputy commissioner, a special investigator
5 appointed pursuant to this section or any other employee of the
6 State Auditor, to carry ~~or use a hand gun or other firearm in the~~
7 ~~discharge of his or her duties under this article~~ concealed weapon
8 without a license.

9 (7) Nothing in this chapter ~~limits~~ may be construed to limit
10 the power of the state to punish any person for any conduct which
11 constitutes a crime.

12 **CHAPTER 33. INSURANCE.**

13 **ARTICLE 41. PRIVILEGES AND IMMUNITY.**

14 **§33-41-8. Creation of insurance fraud unit; purpose; duties;**
15 **personnel qualifications.**

16 (a) There is established the West Virginia Insurance Fraud Unit
17 within the office of the Insurance Commissioner of West Virginia.
18 The commissioner may employ full-time supervisory, legal and
19 investigative personnel for the unit, who shall be qualified by
20 training and experience in the areas of detection, investigation or
21 prosecution of fraud within and against the insurance industry to
22 perform the duties of their positions. The Director of the Fraud

1 Unit is a full-time position and shall be appointed by the
2 commissioner and serve at his or her will and pleasure. The
3 commissioner shall provide office space, equipment, supplies,
4 clerical and other staff that is necessary for the unit to carry out
5 its duties and responsibilities under this article.

6 (b) The Fraud Unit may in its discretion:

7 (1) Initiate inquiries and conduct investigations when the unit
8 has cause to believe violations of any of the following provisions
9 of this code relating to the business of insurance have been or are
10 being committed: Chapter twenty-three; chapter thirty-three; article
11 three of chapter sixty-one; and section five, article four of
12 chapter sixty-one.

13 (2) Review reports or complaints of alleged fraud related to
14 the business of insurance activities from federal, state and local
15 law-enforcement and regulatory agencies, persons engaged in the
16 business of insurance and the general public to determine whether
17 the reports require further investigation; and

18 (3) Conduct independent examinations of alleged fraudulent
19 activity related to the business of insurance and undertake
20 independent studies to determine the extent of fraudulent insurance
21 acts.

22 (c) The insurance fraud unit may:

23 (1) Employ and train personnel to achieve the purposes of this

1 article and to employ legal counsel, investigators, auditors and
2 clerical support personnel and other personnel as the commissioner
3 determines necessary from time to time to accomplish the purposes of
4 this article;

5 (2) Inspect, copy or collect records and evidence;

6 (3) Serve subpoenas issued by grand juries and trial courts in
7 criminal matters;

8 (4) Share records and evidence with federal, state or local
9 law-enforcement or regulatory agencies, and enter into interagency
10 agreements. For purposes of carrying out investigations under this
11 article, the unit shall be deemed a criminal justice agency under
12 all federal and state laws and regulations and as such shall have
13 access to any information that is available to other criminal
14 justice agencies concerning violations of the insurance laws of West
15 Virginia or related criminal laws;

16 (5) Make criminal referrals to the county prosecutors;

17 (6) Conduct investigations outside this state. If the
18 information the insurance fraud unit seeks to obtain is located
19 outside this state, the person from whom the information is sought
20 may make the information available to the insurance fraud unit to
21 examine at the place where the information is located. The insurance
22 fraud unit may designate representatives, including officials of the
23 state in which the matter is located, to inspect the information on

1 behalf of the insurance fraud unit, and the insurance fraud unit may
2 respond to similar requests from officials of other states;

3 (7) The insurance fraud unit may initiate investigations and
4 participate in the development of, and if necessary, the prosecution
5 of any health care provider, including a provider of rehabilitation
6 services, suspected of fraudulent activity related to the business
7 of insurance;

8 (8) Specific personnel, designated by the commissioner, shall
9 be permitted to operate vehicles owned or leased for the state
10 displaying Class A registration plates;

11 (9) ~~Notwithstanding any provision of this code to the contrary,~~
12 Specific personnel designated by the commissioner may carry ~~firearms~~
13 concealed weapons without a license in the course of their official
14 duties after meeting specialized qualifications established by the
15 Governor's Committee on Crime, Delinquency and Correction, which
16 shall include the successful completion of handgun training provided
17 to law-enforcement officers by the West Virginia State Police.
18 ~~Provided, That~~ However, nothing in this subsection ~~shall~~ may be
19 construed to include any person designated by the commissioner ~~as~~
20 within the definition of a law-enforcement officer as ~~that term is~~
21 ~~defined by the provisions of~~ in section one, article twenty-nine,
22 chapter thirty of this code; and

23 (10) The insurance fraud unit shall not be subject to the

1 provisions of article nine-a, chapter six of this code and the
2 investigations conducted by the insurance fraud unit and the
3 materials placed in the files of the unit as a result of any such
4 investigation are exempt from public disclosure under the provisions
5 of chapter twenty-nine-b of this code.

6 (d) The insurance fraud unit shall perform other duties as may
7 be assigned to it by the commissioner.

8 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP**

9 **AND CONSERVATORSHIP ACT.**

10 **ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

11 **§44A-2-6. Notice of hearing.**

12 (a) Upon the filing of the petition and evaluation report, the
13 court shall promptly issue a notice fixing the date, hour and
14 location for a hearing to take place within sixty days.

15 (b) The ~~alleged protected person~~ petitioner shall be personally
16 ~~served~~ serve the alleged protected person with the notice, a copy of
17 the petition and the evaluation report not less than fourteen days
18 before the hearing. The alleged protected person may not waive
19 notice, and a failure to properly notify the alleged protected
20 person shall be jurisdictional.

21 (c) The petitioner shall, at least fourteen days before the
22 hearing, mail a copy of the notice, together with a copy of the

1 petition, ~~shall be mailed~~ by certified mail, return receipt
2 requested, ~~by the petitioner, at least fourteen days before the~~
3 ~~hearing,~~ to all individuals seven years of age or older and to all
4 entities whose names and post office addresses appear in the
5 petition. In the case of a missing person, the petitioner shall, at
6 least fourteen days before the hearing, mail a copy of the petition
7 for the appointment of a conservator ~~shall be mailed~~ by certified
8 mail, return receipt requested, ~~by the petitioner, at least fourteen~~
9 ~~days before the hearing~~ to the last known address of the missing
10 person. The petitioner shall file a copy of certified mail return
11 receipts ~~shall be filed~~ in the office of the circuit clerk on or
12 before the date of hearing.

13 (d) The notice shall include a brief statement in large print
14 of the purpose of the proceedings, and shall inform the alleged
15 protected person of the right to appear at the hearing, the right to
16 an attorney and the right to object to the proposed appointment.
17 Additionally, the notice shall include the following statement in
18 large print:

19 **POSSIBLE CONSEQUENCES OF A COURT FINDING**

20 **THAT YOU ARE INCAPACITATED**

21 At the hearing you may lose many of your rights. A guardian may
22 be appointed to make personal decisions for you. A conservator may
23 be appointed to make decisions concerning your property and

1 finances. The appointment may affect control of how you spend your
 2 money, how your property is managed and controlled, who makes your
 3 medical decisions, where you live, whether you are allowed to vote
 4 and other important rights. If the court enters a final order
 5 appointing a guardian or conservator for you, you may become
 6 prohibited by federal law and state law or both federal law and
 7 state law from possessing firearms and ammunition.

8 (e) ~~No~~ A person may not be appointed a guardian or conservator
 9 without first receiving proper notice and having the opportunity for
 10 a hearing.

11 **CHAPTER 48. DOMESTIC RELATIONS.**

12 **ARTICLE 22. ADOPTION.**

13 **§48-22-804. Prohibited conditions on adoptions--firearms and**
 14 **ammunition.**

15 (a) An agency may not:

16 (1) Make a determination that a person is unsuitable to adopt
 17 based on the lawful possession, storage or use of a firearm or
 18 ammunition by any member of the adoptive home;

19 (2) Require an adoptive parent or prospective adoptive parent
 20 to disclose information relating to a person's lawful possession,
 21 storage or use of a firearm or ammunition as a condition to adopt;
 22 or

1 records shall not be required to be present to authenticate such
2 records for any proceeding held pursuant to this subsection. ~~If the
3 magistrate court determines to enter an emergency protective order,
4 the order shall prohibit the respondent from possessing firearms.~~

5 (b) Following the proceeding, the magistrate court shall order
6 a copy of the petition to be served immediately upon the respondent,
7 together with a copy of any emergency protective order entered
8 pursuant to the proceedings, a notice of the final hearing before
9 the family court and a statement of the right of the respondent to
10 appear and participate in the final hearing, as provided in
11 subsection (d) of this section. Copies of any order entered under
12 the provisions of this section, a notice of the final hearing before
13 the family court and a statement of the right of the petitioner to
14 appear and participate in the final hearing, as provided in
15 subsection (d) of this section, shall also be delivered to the
16 petitioner. Copies of any order entered shall also be delivered to
17 any law-enforcement agency having jurisdiction to enforce the order,
18 including municipal police, the county sheriff's office and local
19 office of the State Police, within twenty-four hours of the entry of
20 the order. An emergency protective order is effective until modified
21 by order of the family court upon hearing as provided in subsection
22 (d) of this section. The order is in full force and effect in every
23 county in this state.

1 (c) Subsequent to the entry of the emergency protective order,
2 service on the respondent and the delivery to the petitioner and
3 law-enforcement officers, the court file shall be transferred to the
4 office of the clerk of the circuit court for use by the family
5 court.

6 (d) The family court shall schedule a final hearing on each
7 petition in which an emergency protective order has been entered by
8 a magistrate. The hearing shall be scheduled not later than ten days
9 following the entry of the order by the magistrate. The notice of
10 the final hearing shall be served on the respondent and delivered to
11 the petitioner, as provided in subsection (b) of this section, and
12 ~~must set forth~~ shall specify the hearing date, time and place and
13 include a statement of the right of the parties to appear and
14 participate in the final hearing. The notice ~~must~~ shall also ~~provide~~
15 contain a warning that the petitioner's failure to appear will
16 result in a dismissal of the petition and that the respondent's
17 failure to appear may result in the entry of a protective order
18 against him or her for a period of ninety or one hundred eighty
19 days, as determined by the court. The notice ~~must~~ shall also
20 include the name, mailing address, physical location and telephone
21 number of the family court having jurisdiction over the proceedings.
22 The notice to the respondent shall also include a clear and
23 conspicuous warning that, if the court issues an order, the

1 respondent may become prohibited by federal and state law from
2 possessing firearms while the order is in effect and that if he or
3 she is licensed to carry concealed weapons, the license may be
4 suspended while the order is in effect. To facilitate the
5 preparation of the notice of final hearing required by the
6 provisions of this subsection, the family court ~~must~~ shall provide
7 the magistrate court with a day and time in which final hearings may
8 be scheduled before the family court within the time required by
9 law.

10 (e) Upon final hearing the petitioner ~~must~~ shall prove, by a
11 preponderance of the evidence, the allegation of domestic violence
12 or that he or she reported or witnessed domestic violence against
13 another and has, as a result, been abused, threatened, harassed or
14 has been the subject of other actions to attempt to intimidate him
15 or her, or such petition shall be dismissed by the family court. If
16 the respondent has not been served with notice of the emergency
17 protective order, the hearing may be continued to permit service to
18 be effected. The failure to obtain service upon the respondent does
19 not constitute a basis to dismiss the petition. Copies of medical
20 reports may be admitted into evidence to the same extent as though
21 the original thereof, upon proper authentication, by the custodian
22 of such records.

23 (f) ~~No~~ A person requested by a party to be present during a

1 hearing held under the provisions of this article ~~shall~~ may not be
2 precluded from being present unless ~~such~~ that person is to be a
3 witness in the proceeding and a motion for sequestration has been
4 made and such motion has been granted. A person found by the court
5 to be disruptive may be precluded from being present.

6 (g) Upon hearing, the family court may dismiss the petition or
7 enter a protective order for a period of ninety days or, in the
8 discretion of the court, for a period of one hundred eighty days.
9 The hearing may be continued on motion of the respondent, at the
10 convenience of the court. Otherwise, the hearing may be continued by
11 the court no more than seven days. If a hearing is continued, the
12 family court may modify the emergency protective order as it deems
13 necessary.

14 (h) Notwithstanding any other provision of this code to the
15 contrary, a petition filed pursuant to this section that results in
16 the issuance of an emergency protective order naming a juvenile as
17 the respondent in which the petition for the emergency protective
18 order is filed by or on behalf of the juvenile's parent, guardian or
19 custodian or other person with whom the juvenile resides shall be
20 treated as a petition authorized by section seven, article five,
21 chapter forty-nine of this code, alleging the juvenile is a juvenile
22 delinquent: *Provided*, That the magistrate court shall notify the
23 prosecuting attorney in the county where the emergency protective

1 order is issued within twenty-four hours of the issuance of the
2 emergency protective order and the prosecuting attorney may file an
3 amended verified petition to comply with the provisions of
4 subsection (a) of section seven, article five, chapter forty-nine of
5 this code within two judicial days.

6 **§48-27-502. Mandatory provisions in protective order.**

7 (a) Every protective order shall contain the full legal name
8 and date of birth of the respondent and a clear and conspicuous
9 statement of the order's dates of issue and expiration. A protective
10 order ~~must~~ shall order the respondent to refrain from abusing,
11 harassing, stalking, threatening or otherwise intimidating the
12 petitioner or the minor children, or engaging in other conduct that
13 would place the petitioner or the minor children in reasonable fear
14 of bodily injury.

15 (b) ~~The~~ Every protective order ~~must~~ shall inform the
16 respondent: ~~that he or she is prohibited from possessing any firearm~~
17 ~~or ammunition, notwithstanding the fact that the respondent may have~~
18 ~~a valid license to possess a firearm, and~~

19 (1) Of the provisions of 18 U.S.C. §§922(g) and 924(a)(2) and
20 subdivision (8), subsection (a), section seven, article seven,
21 chapter sixty-one of this code;

22 (2) That possession of a firearm or ammunition while subject to
23 the court's protective order is may constitute a criminal offense

1 under ~~federal law~~ 18 U.S.C. §922(g)(8) and subdivision (8),
2 subsection (a), section seven, article seven, chapter sixty-one of
3 this code;

4 (3) That, if the protective order causes the respondent to
5 become prohibited from possessing firearms by 18 U.S.C. §922(g)(8)
6 or subdivision (8), subsection (a), section seven, article seven,
7 chapter sixty-one of this code, the respondent must immediately
8 surrender any licenses to purchase, possess, carry or transport
9 firearms or concealed weapons issued by this state or any other
10 state to the respective issuing agencies;

11 (4) That a delay or failure of an issuing agency to suspend or
12 revoke any license to purchase, possess, carry or transport firearms
13 or concealed weapons does not constitute a defense to any alleged
14 violation of 18 U.S.C. §922(g)(8) or subdivision (8), subsection
15 (a), section seven, article seven, chapter sixty-one of this code;
16 and

17 (5) That a conviction under 18 U.S.C. §922(g)(8) for unlawfully
18 possessing a firearm or ammunition while under the protective order
19 may result in the respondent being prohibited for life from
20 possessing a firearm or ammunition pursuant to 18 U.S.C. §922(g)(1),
21 notwithstanding any future expiration, revocation or other
22 termination of the protective order.

23 (c) The protective order ~~must~~ shall inform the respondent that

1 the order is in full force and effect in every county of this state.

2 (d) The protective order ~~must~~ shall contain on its face the
3 following statement, printed in bold-faced type or in capital
4 letters:

5 "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE THAT MAY BE
6 PUNISHED BY CONFINEMENT IN A REGIONAL ~~OR COUNTY~~ JAIL FOR AS LONG AS
7 ONE YEAR AND BY A FINE OF AS MUCH AS ~~TWO THOUSAND DOLLARS~~ \$4,000".

8 **§48-27-601. Filing of orders with law-enforcement agency; affidavit**
9 **as to award of possession of real property; service**
10 **of order on respondent.**

11 (a) (1) Upon entry of an order pursuant to section 27-403 or
12 part 27-501, *et seq.*, or an order entered pursuant to part 5-501, *et*
13 *seq.*, granting relief provided ~~for~~ by this article, ~~a copy of the~~
14 ~~order~~ the court or the clerk of the court shall, no later than the
15 close of the next business day, ~~be transmitted by the court or the~~
16 ~~clerk of the court~~ transmit a certified copy of the order to a local
17 office of the municipal police, the county sheriff and the West
18 Virginia State Police, where it shall be placed in a confidential
19 file, with access provided only to the law-enforcement agency and
20 the respondent named on the order.

21 (2) Every court that issues an order described in subdivision
22 (1) of this subsection shall, at the time of issuing the order,

1 enter findings of fact and conclusions of law regarding whether the
2 order results in the respondent becoming prohibited by subdivision
3 (8), subsection (a), section seven, article seven, chapter sixty-one
4 of this code or 18 U.S.C. §922(g)(8) from possessing firearms while
5 the order is in effect. The respondent shall have a reasonable
6 opportunity to be heard and to present evidence and arguments
7 against a proposed finding that the order will cause the respondent
8 to be prohibited by subdivision (8), subsection (a), section seven,
9 article seven, chapter sixty-one of this code or 18 U.S.C.
10 §922(g)(8) from possessing firearms while the order is in effect. If
11 the court finds that the order results in the respondent becoming
12 prohibited by subdivision (8), subsection (a), section seven,
13 article seven, chapter sixty-one of this code or 18 U.S.C.
14 §922(g)(8) from possessing firearms while the order is in effect,
15 the court shall immediately transmit three certified copies of the
16 order to the Superintendent of the State Police for the purposes
17 described in subdivisions (3) through (5) of this subsection.

18 (3) Upon receipt of a certified copy of an order pursuant to
19 subdivision (2) of this subsection by the superintendent of the
20 State Police, the superintendent shall:

21 (A) Transmit a certified copy of the order to the Federal
22 Bureau of Investigation or other federal agency responsible for
23 maintaining the National Instant Criminal Background Check System

1 established pursuant to Section 103(d) of the Brady Handgun Violence
2 Protection Act, Public Law 103-159, §103, 107 Stat. 1536 (1993),
3 reprinted in 18 U.S.C. §922 notes; and

4 (B) Search the state concealed weapons license database
5 maintained pursuant to section four, article seven, chapter
6 sixty-one of this code to determine whether the respondent is
7 currently licensed in this state to carry concealed weapons and, if
8 so, notify the issuing sheriff of record of the licensee's probable
9 disqualification from continued licensure and transmit a certified
10 copy of the order to that sheriff.

11 (4) Upon receipt of a certified copy of an order described in
12 paragraph (B), subdivision (3) of this subsection by a sheriff, the
13 sheriff shall determine whether the respondent is currently licensed
14 to carry concealed weapons pursuant to section four or five, article
15 seven, chapter sixty-one of this code and, if the respondent is so
16 licensed, the sheriff shall:

17 (A) If the sheriff is the issuing sheriff of record, determine,
18 in consultation with the prosecuting attorney, whether the order is
19 an order that results in the respondent becoming prohibited by
20 subdivision (8), subsection (a), section seven, article seven,
21 chapter sixty-one of this code or 18 U.S.C. §922(q)(8) from
22 possessing firearms and, if so, comply with the applicable license
23 suspension provisions of subsection (q), section four, article

1 seven, chapter sixty-one of this code; or

2 (B) If the sheriff is not the issuing sheriff of record,
3 forward a certified copy of the order to the issuing sheriff of
4 record, who shall comply with this subdivision and subdivision (5)
5 of this subsection upon receipt of a certified copy of the order.

6 (5) Before any sheriff may initiate suspension or revocation
7 proceedings against any licensee under section four or five, article
8 seven, chapter sixty-one of this code, the sheriff shall
9 independently verify that the information received by the sheriff
10 pertains to the named licensee and not another person and that the
11 information proves an actual disqualification of the named licensee
12 from continued licensure, as provided by subsection (q), section
13 four, article seven, chapter sixty-one of this code.

14 (b) A sworn affidavit may be executed by a party who has been
15 awarded exclusive possession of the residence or household, pursuant
16 to an order entered pursuant to section 27-503 and shall be
17 delivered to ~~such~~ the appropriate law-enforcement agencies
18 simultaneously with any order giving the party's consent for a
19 law-enforcement officer to enter the residence or household, without
20 a warrant, to enforce the protective order or temporary order.

21 (c) Orders shall be promptly served upon the respondent.
22 Failure to serve a protective order on the respondent does not stay
23 the effect of a valid order if the respondent has actual notice of

1 the existence and contents of the order.

2 (d) Any law-enforcement agency in this state in possession of
3 or with notice of the existence of an order issued pursuant to the
4 provisions of sections 27-403 or 27-501 of this article or the
5 provisions of section 5-509 of this chapter which is in effect or
6 has been expired for thirty days or less that receives a report that
7 a person protected by such an order has been reported to be missing
8 shall immediately follow its procedures for investigating missing
9 persons. ~~No~~ An agency or department policy delaying the beginning of
10 an investigation ~~shall~~ may not have any force or effect.

11 (e) The provisions of subsection (d) of this section shall be
12 applied where a report of a missing person is made which is
13 accompanied by a sworn affidavit that the person alleged to be
14 missing was, at the time of his or her alleged disappearance, being
15 subjected to treatment which meets the definition of domestic
16 battery or assault set forth in section twenty-eight, article two,
17 chapter sixty-one of this code.

18 **§48-27-1002. Arrest in domestic violence matters; conditions.**

19 (a) Notwithstanding any provision of this code to the contrary,
20 if a person is alleged to have committed ~~a violation of the~~
21 ~~provisions of subsection (a) or (b),~~ any offense under section
22 twenty-eight, article two, chapter sixty-one of this code, ~~against~~
23 ~~a family or household member~~ in addition to any other authority to

1 arrest granted by this code, a law-enforcement officer ~~has authority~~
2 ~~to~~ may arrest that person without ~~first obtaining~~ a warrant if:

3 (1) The law-enforcement officer has observed credible
4 corroborative evidence that an offense under section twenty-eight,
5 article two, chapter sixty-one of this code, has occurred; and
6 ~~either:~~

7 (2) (A) The law-enforcement officer has received, from the
8 victim or a witness, an oral or written allegation of facts
9 constituting a violation of section twenty-eight, article two,
10 chapter sixty-one of this code; or

11 ~~(3)~~ (B) The law-enforcement officer has observed credible
12 evidence that the accused committed the offense.

13 (b) For the purposes of this section, credible corroborative
14 evidence means evidence that is worthy of belief and corresponds to
15 the allegations of one or more elements of the offense and may
16 include, but is not limited to, the following:

17 (1) *Condition of the alleged victim.* -- One or more contusions,
18 scratches, cuts, abrasions, or swellings; missing hair; torn
19 clothing or clothing in disarray consistent with a struggle;
20 observable difficulty in breathing or breathlessness consistent with
21 the effects of choking or a body blow; observable difficulty in
22 movement consistent with the effects of a body blow or other
23 unlawful physical contact.

1 (2) *Condition of the accused.* -- Physical injury or other
2 conditions similar to those set out for the condition of the victim
3 which are consistent with the alleged offense or alleged acts of
4 self-defense by the victim.

5 (3) *Condition of the scene.* -- Damaged premises or furnishings;
6 disarray or misplaced objects consistent with the effects of a
7 struggle.

8 (4) *Other conditions.* -- Statements by the accused admitting
9 one or more elements of the offense; threats made by the accused in
10 the presence of an officer; audible evidence of a disturbance heard
11 by the dispatcher or other agent receiving the request for police
12 assistance; written statements by witnesses.

13 (c) Whenever any person is arrested pursuant to subsection (a)
14 of this section, the arrested person shall be taken before a
15 magistrate within the county in which the offense charged is alleged
16 to have been committed in a manner consistent with the provisions of
17 Rule 1 of the Administrative Rules for the Magistrate Courts of West
18 Virginia.

19 (d) If an arrest for a violation of subsection (c), section
20 twenty-eight, article two, chapter sixty-one of this code is
21 authorized pursuant to this section, that fact constitutes prima
22 facie evidence that the accused constitutes a threat or danger to
23 the victim or other family or household members for the purpose of

1 setting conditions of bail pursuant to section seventeen-c, article
2 one-c, chapter sixty-two of this code.

3 (e) Whenever any person is arrested pursuant to the provisions
4 of this article or for a violation of an order issued pursuant to
5 section five hundred nine or subsections (b) and (c) of section six
6 hundred eight, article five of this chapter, the arresting officer,
7 subject to the requirements of the Constitutions of this state and
8 of the United States:

9 (1) Shall seize all weapons that are alleged to have been
10 involved or threatened to be used in the commission of domestic
11 violence;

12 (2) May seize a weapon that is in plain view of the officer or
13 was discovered pursuant to a consensual search, as necessary for the
14 protection of the officer or other persons; and

15 (3) May seize all weapons that are possessed in violation of a
16 ~~valid protective order~~ federal law or article seven, chapter
17 sixty-one of this code.

18 **CHAPTER 49. CHILD WELFARE.**

19 **ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR**
20 **CHILD WELFARE.**

21 **§49-2B-3. Licensure, certification, approval and registration**
22 **requirements.**

1 (a) Any person, corporation or child welfare agency, other than
2 a state agency, which operates a residential child care facility, a
3 child-placing agency or a day care center shall obtain a license
4 from the department.

5 (b) Any residential child care facility, day care center or any
6 child-placing agency operated by the state shall obtain approval of
7 its operations from the secretary. ~~Provided, That this requirement~~
8 ~~does not apply to any juvenile detention facility or juvenile~~
9 ~~correctional facility operated by or under contract with the~~
10 ~~Division of Juvenile Services, created pursuant to section two,~~
11 ~~article five-e of this chapter, for the secure housing or holding of~~
12 ~~juveniles committed to its custody~~ The facilities and placing
13 agencies shall maintain the same standards of care applicable to
14 licensed facilities, centers or placing agencies of the same
15 category.

16 (c) Any family day care facility which operates in this state,
17 including family day care facilities approved by the department for
18 receipt of funding, shall obtain a statement of certification from
19 the department.

20 (d) Every family day care home which operates in this state,
21 including family day care homes approved by the department for
22 receipt of funding, shall obtain a certificate of registration from
23 the department.

1 (e) This section does not apply to:

2 (1) A kindergarten, preschool or school education program which
3 is operated by a public school or which is accredited by the state
4 Department of Education, or any other kindergarten, preschool or
5 school programs which operate with sessions not exceeding four hours
6 per day for any child;

7 (2) An individual or facility which offers occasional care of
8 children for brief periods while parents are shopping, engaging in
9 recreational activities, attending religious services or engaging in
10 other business or personal affairs;

11 (3) Summer recreation camps operated for children attending
12 sessions for periods not exceeding thirty days;

13 (4) Hospitals or other medical facilities which are primarily
14 used for temporary residential care of children for treatment,
15 convalescence or testing;

16 (5) Persons providing family day care solely for children
17 related to them; or

18 (6) Any juvenile detention facility or juvenile correctional
19 facility operated by or under contract with the Division of Juvenile
20 Services, created pursuant to section two, article five-e of this
21 chapter, for the secure housing or holding of juveniles committed to
22 its custody.

23 (f) The secretary ~~is hereby authorized to issue~~ may promulgate

1 an emergency rule relating to conducting a survey of existing
2 facilities in this state in which children reside on a temporary
3 basis in order to ascertain whether they should be subject to
4 licensing under this article or applicable licensing provisions
5 relating to behavioral health treatment providers.

6 (g) Any informal family child care home or relative family
7 child care home may voluntarily register and obtain a certificate of
8 registration from the department.

9 (h) Any child care service that is licensed or receives a
10 certificate of registration shall have a written plan for evacuation
11 in the event of fire, natural disaster or other threatening
12 situation that may pose a health or safety hazard to the children in
13 the child care service.

14 (1) The plan shall include, but not be limited to:

15 (A) A designated relocation site and evacuation;

16 (B) Procedures for notifying parents of the relocation and
17 ensuring family reunification;

18 (C) Procedures to address the needs of individual children
19 including children with special needs;

20 (D) Instructions relating to the training of staff or the
21 reassignment of staff duties, as appropriate;

22 (E) Coordination with local emergency management officials; and

23 (F) A program to ensure that appropriate staff are familiar

1 with the components of the plan.

2 (2) A child care service shall update the evacuation plan by
3 December 31, of each year. If a child care service fails to update
4 the plan, no action shall be taken against the child care service's
5 license or registration until notice is provided and the child care
6 service is given thirty days after the receipt of notice to provide
7 an updated plan.

8 (3) A child care service shall retain an updated copy of the
9 plan for evacuation and shall provide notice of the plan and
10 notification that a copy of the plan will be provided upon request
11 to any parent, custodian or guardian of each child at the time of
12 the child's enrollment in the child care service and when the plan
13 is updated.

14 (4) All child care centers and family child care facilities
15 shall provide the plan and each updated copy of the plan to the
16 Director of the Office of Emergency Services in the county where the
17 center or facility is located.

18 (i) The requirements for the licensure and operation of a
19 child-placing agency shall include compliance with the requirements
20 of section eight hundred four, article twenty-two, chapter
21 forty-eight of this code and sections sixteen and seventeen, article
22 seven, chapter sixty-one of this code.

23 **CHAPTER 50. MAGISTRATE COURTS.**

1 **ARTICLE 1. COURTS AND OFFICERS.**

2 **§50-1-14. Duties of sheriff; service of process; bailiff.**

3 (a) ~~It shall be the duty of~~ Each sheriff ~~to~~ shall execute all
4 civil and criminal process from any magistrate court which may be
5 directed to ~~such~~ the sheriff. Process shall be served in the same
6 manner as provided by law for process from circuit courts.

7 **(b)** Subject to the supervision of the chief justice of the
8 Supreme Court of Appeals or of the judge of the circuit court, or
9 the chief judge thereof if there is more than one judge of the
10 circuit court, ~~it shall be the duty of~~ the sheriff or his or her
11 designated deputy ~~to~~ shall serve as bailiff of a magistrate court
12 upon the request of the magistrate. ~~Such~~ This service shall also be
13 subject to such administrative rules as may be promulgated by the
14 Supreme Court of Appeals. A writ of mandamus shall lie on behalf of
15 a magistrate to enforce the provisions of this section.

16 ~~(b)~~ **(c)** The sheriff of any county may employ, by and with the
17 consent of the county commission, one or more persons whose sole
18 duties shall be the service of civil process and the service of
19 subpoenas and subpoenas duces tecum. ~~Any such person~~ A sheriff's
20 process server employed pursuant to this subsection shall not be
21 considered a deputy or deputy sheriff within the meaning of
22 subdivision (2), subsection (a), section two, article fourteen,
23 chapter seven of this code. ~~nor shall any such person be authorized~~

1 to

2 (d) A sheriff's process server employed pursuant to subsection
 3 (c) of this section may carry ~~deadly~~ concealed weapons without a
 4 license in the performance of his or her official duties ~~Provided,~~
 5 ~~That the sheriff may authorize an employee whose sole duties involve~~
 6 ~~service of civil process to carry a firearm if the employee if: (1)~~
 7 The employee: (A) Has been previously certified as a West Virginia
 8 law-enforcement officer; or (B) completes all training requirements
 9 otherwise applicable to deputy sheriffs for the use and handling of
 10 firearms; ~~Provided, however, That (2) the sheriff may authorize~~
 11 ~~previously certified West Virginia law-enforcement officers~~
 12 authorizes the employee, in writing, to carry a ~~deadly~~ weapon
 13 concealed weapons without a license in the performance of ~~the~~ his or
 14 her official duties ~~of the officers~~ under the provisions of this
 15 section; ~~Provided further, That these officers and employees~~
 16 ~~maintain~~ (3) the employee maintains yearly weapons qualifications
 17 otherwise applicable to deputy sheriffs; and are (4) the employee is
 18 bonded through the office of the sheriff. This subsection may not be
 19 construed to diminish the right of a sheriff's process server to
 20 keep and bear arms in the same manner as he or she may lawfully do
 21 so as a private citizen.

22 **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

23 **ARTICLE 18. LIMITATIONS OF ACTIONS REGARDING FIREARMS MANUFACTURE,**

1 **SALE, INSTRUCTION AND TRAINING.**

2 **§55-18-1. Legislative declarations and purpose.**

3 The Legislature hereby finds and declares:

4 (a) The lawful design, marketing, manufacture or sale of
5 firearms or ammunition to the public is not an unreasonably
6 dangerous activity and does not constitute a nuisance per se.

7 (b) To the extent the Constitution of this state and the United
8 States protect citizens' rights to keep and bear arms, the
9 Legislature finds and declares that it is within the strict
10 prerogative of its own authority, and not the authority of any
11 county or municipality, to determine whether any manufacturer,
12 dealer or seller of firearms has engaged in any act or omission that
13 would create a cognizable action for damages, injunction or
14 otherwise.

15 (c) Providing qualified immunity from civil liability for
16 qualified firearms safety instructors, certifying organizations,
17 course sponsors and course participants, is a reasonable and proper
18 means of promoting and encouraging widespread availability of and
19 participation in instruction and training in reasonable and accepted
20 firearms safety principles and techniques.

21 **§55-18-3. Firearms safety instruction; limitations on civil**
22 **liability.**

1 (a) In this section:

2 (1) "Certifying organization" means a public department, agency
3 or office with responsibility for or oversight of firearms and
4 firearms-related issues, or an established not-for-profit
5 organization with expertise and experience with firearms safety
6 issues.

7 (2) "Firearm" means any firearm, as defined in section two,
8 article seven, chapter sixty-one of this code, and any ammunition
9 and accoutrements attendant to the lawful possession and use of a
10 firearm.

11 (3) "Qualified firearms safety instructor" means the
12 instructor, assistant instructor or acting instructor of a firearms
13 education and safety course or program who has been certified by a
14 certifying organization as a trained, knowledgeable and responsible
15 adult qualified to provide firearms education and safety instruction
16 to youth or adults.

17 (4) "Reasonable and accepted firearms safety principles and
18 techniques" include, but are not limited to, treating a firearm as
19 if it is always loaded, safe handling and transport of a firearm and
20 proper use of the firearm within diverse environmental surroundings.

21 (b) (1) Except as otherwise provided by subdivision (2) of this
22 subsection, a qualified firearms safety instructor is immune from
23 liability in a civil action resulting from:

1 (A) Any death, injury, or damage that occurs during the course
2 of instruction as a result of the reasonable inherent risks of
3 firearms use; or

4 (B) Any firearms-related death, injury, or damage caused by a
5 course participant after completion of the course.

6 (2) Subdivision (1) of this subsection does not apply if:

7 (A) The acts or omissions of the qualified firearms safety
8 instructor during the course of instruction demonstrate a willful or
9 reckless disregard for reasonable and accepted firearms safety
10 principles and techniques; or

11 (B) A claim against the qualified firearms safety instructor is
12 unrelated to the conduction of the firearms safety course.

13 (c) (1) Except as otherwise provided in subdivision (2) of this
14 subsection, a certifying organization or course sponsor, including
15 an organization that permits a course to be conducted within its
16 facility, is immune from liability in a civil action resulting from:

17 (A) Any death, injury, or damage that occurs during the course
18 of instruction as a result of the reasonable inherent risks of
19 firearms use; or

20 (B) Any firearms-related death, injury, or damage caused by a
21 course participant after completion of the course.

22 (2) Subdivision (1) of this subsection does not apply if a
23 claim against the certifying organization or course sponsor

1 resulting from the actions of a participant after completion of a
2 course is unrelated to the conduction of the firearms safety course.

3 (d) (1) Except as otherwise provided by subdivision (2) of this
4 subsection, a student in a firearms safety course taught by a
5 qualified firearms safety instructor is immune from liability in a
6 civil action resulting from any death, injury, or damage that occurs
7 during the course of instruction as a result of the reasonable
8 inherent risks of firearms use.

9 (2) Subdivision (1) of this subsection does not apply if the
10 acts or omissions of the student demonstrate a willful or reckless
11 disregard for reasonable and accepted firearms safety principles and
12 techniques or a willful or reckless disregard for the directions of
13 the course instructor.

14 (e) This section shall be construed only to provide immunity
15 from liability in civil actions for individuals who engage in
16 conduct protected by this section and may not be construed to create
17 any new duty of care or cause of action.

18 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

19 **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

20 **§61-5-8. Aiding escape and other offenses relating to adults and**
21 **juveniles in custody or confinement; penalties.**

22 ~~(a) Where any adult or juvenile is lawfully detained in custody~~

1 ~~or confinement in any jail, state correctional facility, juvenile~~
2 ~~facility or juvenile detention center, if Any other person who~~
3 knowingly and willfully delivers anything into the place of custody
4 or confinement of ~~the adult or juvenile~~ any inmate with the intent
5 to aid or facilitate the ~~adult's or juvenile's~~ inmate's escape or
6 attempted escape ~~therefrom~~ from lawful custody or confinement, or if
7 ~~the other person~~ forcibly rescues or attempts to forcibly rescue an
8 ~~adult or a juvenile therefrom~~ inmate from lawful custody or
9 confinement, ~~the other person~~ is guilty of a felony and, upon
10 conviction thereof, shall be ~~confined in a state correctional~~
11 ~~facility~~ imprisoned for not less than one year nor more than ten
12 years.

13 (b) ~~Where any adult or juvenile is lawfully detained in custody~~
14 ~~or confinement in any jail, a state correctional facility or a~~
15 ~~juvenile facility or juvenile detention center, if Any other person~~
16 who, without the express authority and permission of the facility
17 supervisor, knowingly and willfully delivers any money or other
18 thing of value, any written or printed matter, any article of
19 merchandise, food or clothing, any medicine, utensil or instrument
20 of any kind to ~~the adult or juvenile without the express authority~~
21 ~~and permission of the supervising officer and~~ any inmate with
22 knowledge that the ~~adult or juvenile~~ inmate is lawfully detained ~~the~~
23 ~~other person~~ is guilty of a misdemeanor and, upon conviction

1 thereof, shall be fined not less than \$50 nor more than \$500, and
2 confined in jail for not less than three months nor more than ~~twelve~~
3 ~~months:~~ ~~Provided,~~ ~~That the provisions of~~ one year, or both.
4 However, this ~~section do~~ subsection does not ~~prohibit~~ apply to an
5 attorney or ~~his or her employees from supplying~~ or any employee or
6 other agent of an attorney who supplies any written or printed
7 material to an ~~adult or juvenile~~ inmate which pertains to ~~that the~~
8 attorney's representation of the ~~adult or juvenile~~ inmate.

9 (c) (1) ~~If~~ Any person who, without the express authority and
10 permission of the facility supervisor, knowingly and willfully
11 transports any alcoholic liquor, nonintoxicating beer, poison,
12 implement of escape, dangerous material, weapon or ~~any~~ controlled
13 substance ~~as defined by chapter sixty-a of this code onto~~ into the
14 ~~grounds~~ secure area of ~~any jail, state~~ a correctional facility
15 ~~juvenile facility or juvenile detention center~~ within this state and
16 ~~is unauthorized by law to do so, or is unauthorized by the persons~~
17 ~~supervising the facility, the person~~ is guilty of a felony and, upon
18 conviction thereof, shall be fined not less than \$1,000 nor more
19 than \$5,000, or ~~confined~~ imprisoned in a state correctional facility
20 not less than ~~two years~~ one year nor more than ~~ten~~ five years, or
21 both fined or imprisoned, or, in the discretion of the court, be
22 confined in jail not more than one year and fined not more than
23 \$500. Subsection (e), section fifteen, article seven of this

1 chapter, applies to this subdivision only when the proscribed
2 contraband is a weapon and the defendant is licensed to carry
3 concealed weapons pursuant to section four or five, article seven of
4 this chapter, or authorized to carry a concealed weapon without a
5 license pursuant to subsection (d), section three, article seven of
6 this chapter.

7 (2) ~~If Any person who, without the express authority and~~
8 permission of the facility supervisor, knowingly and willfully and
9 ~~knowingly~~ transports or causes to be transported any
10 telecommunications device into ~~or upon any portion of any jail,~~
11 state the secure area of a correctional facility, juvenile facility
12 ~~or juvenile detention center within this state that is not generally~~
13 ~~open and accessible to members of the public without prior approval~~
14 ~~from the Warden/Administrator or designee, and such person is~~
15 ~~unauthorized by law to do so, or is unauthorized by the persons~~
16 supervising the facility after having been given notice in the form
17 required by paragraph (C), subdivision (3) of this subsection, that
18 the act is unlawful, the person is guilty of a misdemeanor and, upon
19 conviction thereof, shall be fined not less than \$100 nor more than
20 \$500, or confined in jail not more than one year, or both fined and
21 confined.

22 (3) The facility supervisor of each correctional facility
23 within this state shall:

1 (A) Establish at the primary public entrance to the secure area
2 of a correctional facility, a secure weapon storage area, as defined
3 in section two, article seven of this chapter;

4 (B) Permit visitors to the secure area of the correctional
5 facility to use the secure weapon storage area designated pursuant
6 to paragraph (A) of this subdivision for the storage of weapons and
7 telecommunications devices while the visitor is in the secure area
8 of a correctional facility; and

9 (C) Cause to be posted at all entrances to the secure area of
10 a correctional facility signs conforming to the requirements of
11 section fifteen, article seven of this chapter, which shall include
12 a notice of the provisions of subdivisions (1) and (2) of this
13 subsection and the availability of the secure weapon storage area
14 for the storage of weapons and telecommunications devices pursuant
15 to paragraphs (A) and (B) of this subdivision.

16 (d) If Any person who, without the express authority and
17 permission of the facility supervisor, knowingly and willfully
18 delivers any alcoholic liquor, nonintoxicating beer, poison,
19 implement of escape, dangerous material, weapon or any controlled
20 substance as defined by chapter sixty-a of this code to an adult or
21 juvenile in custody or confinement in any jail, state correctional
22 facility, juvenile facility or juvenile detention center within this
23 state and is unauthorized by law to do so, or is unauthorized by the

1 ~~persons supervising the facility, the person~~ inmate is guilty of a
2 felony and, upon conviction thereof, shall be fined not less than
3 \$1,000 nor more than \$5,000, or ~~confined~~ imprisoned in a state
4 correctional facility not less than ~~one year~~ two years nor more than
5 ~~five ten~~ years, or both fined and imprisoned. Section fifteen,
6 article seven of this chapter, does not apply to this subsection.

7 (e) ~~Whoever~~ Any person who knowingly and willfully purchases,
8 accepts as a gift, or secures by barter, trade or in any other
9 manner, any article or articles manufactured at or belonging to any
10 ~~jail, state correctional facility juvenile facility or juvenile~~
11 ~~detention center from any adult or juvenile~~ inmate detained therein
12 in the correctional facility is guilty of a misdemeanor and, upon
13 conviction thereof, shall be fined not less than \$50 nor more than
14 \$500, ~~and~~ confined in jail not less than three months nor more than
15 ~~twelve months: Provided, That the provisions of~~ one year, or both
16 fined and confined. However, this subsection ~~do~~ does not apply to
17 articles specially manufactured in any correctional facility under
18 the authorization of the ~~persons supervising the facility~~ supervisor
19 and which are offered for sale within or outside ~~of~~ the correctional
20 facility.

21 (f) ~~Whoever~~ Any person who knowingly and willfully persuades,
22 induces or entices or attempts to persuade, induce or entice any
23 ~~person who is in custody or confined in any jail, state correctional~~

1 ~~facility, juvenile facility or juvenile detention center~~ inmate to
2 escape ~~therefrom~~ from lawful custody or confinement or to engage or
3 aid in any insubordination to the ~~persons supervising the facility~~
4 supervisor is guilty of a misdemeanor and, upon conviction thereof,
5 shall be fined not less than \$50 nor more than \$500, ~~and~~ confined in
6 jail not less than three months nor more than ~~twelve months~~ one
7 year, or both fined and confined.

8 (g) (1) An inmate ~~of a jail, state correctional facility,~~
9 ~~juvenile facility or juvenile detention center~~ having in his or her
10 ~~possession~~ who, without the express authority and permission of the
11 facility supervisor, knowingly possesses any poison, implement of
12 escape, dangerous material, weapon, telecommunication device or ~~any~~
13 controlled substance ~~as defined by chapter sixty-a of this code~~ is
14 guilty of a felony and, upon conviction thereof, shall be fined not
15 less than \$1,000 nor more than \$5,000, or ~~confined~~ imprisoned in a
16 state correctional facility not less than one year nor more than
17 five years, or both fined and imprisoned, or, in the discretion of
18 the court, be confined in jail for not more than one year, ~~and~~ fined
19 not more than \$500, or both fined and imprisoned.

20 (2) An inmate ~~of a jail, state correctional facility, juvenile~~
21 ~~facility or juvenile detention center~~ having in his or her
22 ~~possession~~ who, without the express authority and permission of the
23 facility supervisor, knowingly possesses any alcoholic liquor,

1 nonintoxicating beer, money or other thing of value, any written or
 2 printed matter, any article of merchandise, food or clothing, any
 3 medicine, utensil or instrument of any kind ~~without the express~~
 4 ~~authority and permission of the supervising officer~~ is guilty of a
 5 misdemeanor and, upon conviction thereof, shall be fined not less
 6 than \$50 nor more than \$500, ~~and~~ or confined in jail for not more
 7 than ~~twelve months~~ one year, or both fined and confined.

8 (3) Section fifteen, article seven of this chapter, does not
 9 apply to this subsection.

10 (h) ~~As used~~ In this section:

11 (1) "Controlled substance" has the same meaning as in chapter
 12 sixty-a of this code.

13 (2) "Correctional facility" means any local jail facility,
 14 regional jail facility, juvenile facility or correctional facility,
 15 as those terms are defined in section two, article twenty, chapter
 16 thirty-one of this code.

17 ~~(1)~~ (3) "Dangerous material" means any incendiary material or
 18 device, highly flammable or caustic liquid, explosive, bullet or
 19 other material readily capable of causing death or serious bodily
 20 injury.

21 ~~(2)~~ (4) "Delivers" means to knowingly and willfully transfer an
 22 item to an ~~adult or juvenile who is detained in custody or~~
 23 ~~confinement in any jail, correctional facility, juvenile facility or~~

1 ~~juvenile detention center, or a building appurtenant to those~~
2 ~~places. The term includes bringing inmate, to knowingly and~~
3 ~~willfully bring the item into a ~~jail, correctional facility juvenile~~~~
4 ~~facility or juvenile detention center or a building appurtenant to~~
5 ~~those places. The term includes putting the correctional facility~~
6 ~~with the specific intent of effecting a transfer of that item to an~~
7 ~~inmate or to knowingly and willfully put an item in a place where it~~
8 ~~may be obtained by an inmate with the specific intent of effecting~~
9 ~~a transfer of that item to an inmate.~~

10 (5) "Facility supervisor" means the warden, administrator or
11 other person in charge of a correctional facility.

12 ~~(3)~~ (6) "Inmate" means an adult or juvenile who is detained in
13 custody or confinement in any ~~jail, correctional facility juvenile~~
14 facility or juvenile detention center, regardless of whether the
15 individual is temporarily absent due to medical treatment,
16 transportation, court appearance or other reason for a temporary
17 absence.

18 ~~(4)~~ (7) "Implement of escape" means a tool, implement, device,
19 equipment or other item which an inmate is not authorized to
20 possess, capable of facilitating, aiding or concealing an escape or
21 attempted escape by an inmate.

22 (8) "Secure area of a correctional facility" means the portions
23 of a correctional facility designated by the facility supervisor as

1 the portions of the correctional facility that house inmates, into
2 which inmates are permitted access as part of the ordinary course of
3 operation of the facility or into which introduction of any of the
4 articles described in subsection (c) of this section would be
5 reasonably expected to threaten the safety or security of inmates,
6 staff or visitors to the facility or the maintenance of general
7 discipline and order within the inmate population. However, this
8 term does not include the portions of the grounds of a correctional
9 facility constituting motor vehicle parking lots or ways of travel
10 that are outside the areas into which inmates are ordinarily
11 confined and which are accessible to members of the public without
12 prior approval from the facility supervisor.

13 ~~(5)~~ (9) "Telecommunication device" means any type of
14 instrument, device, machine or equipment which is capable of
15 transmitting telephonic, electronic, digital, cellular or radio
16 communications or any part of an instrument, device, machine or
17 equipment which is capable of facilitating the transmission of
18 telephonic, electronic, digital, cellular or radio communications
19 regardless of whether the part itself is able to transmit, ~~The term~~
20 and includes, but is not limited to, cellular phones, digital phones
21 and modem equipment devices.

22 ~~(6)~~ (10) "Weapon" means ~~an~~ any implement readily capable of
23 lethal use and includes:

1 (A) Any firearm deadly weapon as defined in section two,
2 article seven of this chapter;

3 (B) Any knife, dagger, razor, other cutting or stabbing
4 implement or club; The term includes

5 (C) Any item which has been modified or adapted so that it can
6 be used as a firearm, knife, dagger, razor, other cutting or
7 stabbing implement or club. For purposes of this definition, the
8 term "firearm" includes an unloaded firearm weapon; or

9 (D) The unassembled components of a any firearm or other
10 weapon.

11 **ARTICLE 6. CRIMES AGAINST THE PEACE.**

12 **§61-6-1a. Control of riots and unlawful assemblages.**

13 (a) Members of the department of public safety State Police,
14 sheriffs and mayors, and those acting under their order, may, when
15 engaged in suppressing a riot, rout or unlawful assemblage, cordon
16 off any area or areas threatened by such riot, rout or unlawful
17 assemblage, and may take all actions which are necessary and
18 reasonable under the emergency to restore law and order, and such
19 actions may be, but are not limited to, the following:

20 ~~(a)~~ (1) Prohibit the sale, offering for sale, dispensing,
21 furnishing or transportation of firearms or other dangerous weapons,
22 ammunition, dynamite or other dangerous explosives in, to or from
23 such areas.

1 ~~(b)~~ (2) Prohibit the sale, offering for sale, dispensing,
2 furnishing or consumption of alcoholic beverages or nonintoxicating
3 beer in a public place in such areas, and prohibit the
4 transportation of alcoholic beverages or nonintoxicating beer in, to
5 or from such areas.

6 ~~(c)~~ (3) Impose curfews, as required, to control movement of
7 persons in, to and from such areas.

8 ~~(d)~~ (4) Enter a private dwelling or other building or other
9 private place in such areas when in fresh pursuit of a rioter, when
10 in search of a sniper who has fired upon a person from such a
11 dwelling or other building or place or when in search of ~~firearms,~~
12 ~~other dangerous weapons, ammunition,~~ dynamite or other dangerous
13 explosives when there is reason to believe that such items are
14 stored in the ~~said~~ dwelling, building or place and that they will be
15 removed therefrom before a search warrant could be obtained.

16 ~~No person shall wilfully fail~~ (b) Any person who willfully
17 fails to obey a lawful order of any mayor, sheriff, deputy sheriff,
18 municipal police officer, member of the ~~department of public safety~~
19 State Police, or other officer, given pursuant to subsection (a) of
20 this section, ~~Any person who violates an order given pursuant to the~~
21 ~~authority of this section shall be~~ is guilty of a misdemeanor and,
22 upon conviction thereof, shall be fined not more than \$500, ~~or~~
23 ~~imprisoned~~ confined in the ~~county~~ jail for not more than six months,

1 or both. ~~fined and imprisoned~~

2 (c) Notwithstanding any provision of this section to the
 3 contrary, this section does not authorize any prohibition or
 4 impairment of the otherwise lawful possession, carrying,
 5 transportation or storage of privately owned firearms or ammunition
 6 or the suspension of otherwise lawful firearm sales or transfers or
 7 any other lawful firearms-related activity conducted by any person
 8 possessing a federal firearms license.

9 **§61-6-19. Willful disruption of governmental processes; offenses**
 10 **occurring at state capitol complex; penalties.**

11 (a) ~~If any~~ No person may willfully ~~interrupts~~ interrupt or
 12 ~~molests~~ molest the orderly and peaceful process of any department,
 13 division, agency or branch of state government or of its political
 14 subdivisions. ~~he or she is guilty of a misdemeanor and, upon~~
 15 ~~conviction thereof, shall be fined not more than one hundred~~
 16 ~~dollars, or imprisoned in the county or regional jail not more than~~
 17 ~~six months, or both fined and imprisoned~~ Provided, That However, any
 18 assembly in a peaceable, lawful and orderly manner for a redress of
 19 grievances ~~shall~~ is not ~~be~~ a violation of this ~~section~~ subsection.

20 (b) ~~It is unlawful for any person to bring upon the State~~
 21 ~~Capitol complex any weapon, as defined by the provisions of section~~
 22 ~~two, article seven of this chapter. It is unlawful for any~~ No person
 23 ~~to~~ may willfully deface any trees, wall, floor, stairs, ceiling,

1 column, statue, monument, structure, surface, artwork or adornment
2 in the state capitol complex. ~~It is unlawful for any~~

3 (c) ~~A person or persons to~~ may not knowingly and willfully
4 block or otherwise knowingly and willfully obstruct any public
5 access, stair or elevator in the state capitol complex after being
6 asked by a law-enforcement officer acting in his or her official
7 capacity to desist. ~~Provided, That in order to preserve the~~
8 ~~Constitutional right of the people to assemble, it is not willful~~
9 ~~blocking or willful obstruction for~~ This subsection does not apply
10 to persons gathered in a group or crowd, if the persons move to the
11 side or part to allow other persons to pass by the group or crowd to
12 gain ingress or egress. ~~Provided, however, That this subsection~~
13 ~~shall not apply to a law-enforcement officer acting in his or her~~
14 ~~official capacity~~

15 (d) Any person who violates any provision of this ~~subsection~~
16 section is guilty of a misdemeanor and, upon conviction thereof,
17 shall be fined not ~~less than one hundred dollars~~ more than \$1,000,
18 ~~or~~ confined in ~~the county or regional~~ jail for not more than six
19 months, or both fined and confined.

20 **ARTICLE 7. DANGEROUS WEAPONS.**

21 **§61-7-1. Legislative findings and intent.**

22 The Legislature finds and declares that: ~~the overwhelming~~
23 ~~support of the citizens of West Virginia for~~

1 (1) The Second Amendment of the Constitution of the United
2 States, as incorporated against the states by the Due Process Clause
3 of the Fourteenth Amendment of the Constitution of the United
4 States, and article three, section twenty-two of the Constitution of
5 this state, commonly known as the "Right to Keep and Bear Arms
6 Amendment", combined with the obligation of the state to reasonably
7 regulate protect as a fundamental individual right, the right of
8 persons an individual to keep and bear arms for self-defense
9 requires the reenactment defense of this article self, family, home
10 and state, and for lawful hunting and recreational use.

11 (2) In Syllabus Point 4, State ex rel. City of Princeton v.
12 Buckner, 377 S.E.2d 139, 180 W. Va. 457 (1988), the Supreme Court of
13 Appeals held that "the West Virginia Legislature may, through the
14 valid exercise of its police power, reasonably regulate the right of
15 a person to keep and bear arms in order to promote the health,
16 safety and welfare of all citizens of this state, provided that the
17 restrictions or regulations imposed do not frustrate the
18 Constitutional freedoms guaranteed by article III, §22 of the West
19 Virginia Constitution, known as the 'Right to Keep and Bear Arms
20 Amendment.'"

21 (3) In Buckner, the Supreme Court of Appeals held
22 unconstitutional a former enactment of this article that generally
23 prohibited the carrying of any deadly weapon openly or concealed

1 without a state license, as an overly broad restriction of the
2 individual's right to keep and bear arms.

3 (4) In response to *Buckner*, the Legislature revised this
4 article to eliminate the requirement of a state license to openly
5 carry weapons and established a uniform, nondiscretionary system for
6 licensing qualified individuals to carry concealed weapons.

7 (5) Requiring a state license to carry a concealed weapon and
8 providing for a uniform, nondiscretionary system for issuing
9 licenses to carry concealed weapons is a valid exercise of the
10 state's police power that does not violate an individual's right to
11 keep and bear arms.

12 (6) Since the Legislature revised this article in response to
13 *Buckner*, the overwhelming majority of other states have adopted laws
14 of varying similarity to section four of this article that permit
15 individuals who meet specified, objective licensing criteria to be
16 licensed to carry concealed weapons or certain types of concealed
17 weapons, predominately handguns only, without subjective licensing
18 standards that empower an issuing agency to determine whether an
19 applicant has a "need" or "good cause" for a license to carry
20 concealed weapons.

21 (7) The overwhelming majority of other right-to-carry states
22 have established recognition or reciprocity laws of varying natures
23 that provide procedures for either unilaterally recognizing licenses

1 to carry concealed weapons issued by other states, either with or
2 without further qualifications pertaining to the other state's
3 licensing requirements.

4 (8) The principal qualification for receiving reciprocity from
5 another right-to-carry state is the willingness of a state to honor
6 the licenses to carry concealed weapons issued by the other state.

7 (9) The licensing laws of every right-to-carry state have
8 unique features to the individual state to which the licensing laws
9 of some, many or all other right-to-carry states may fail to
10 conform.

11 (10) Many states that have previously included elements in
12 their reciprocity statutes requiring other states to meet specified
13 licensing standards or meet a statutorily undefined standard of
14 having substantially similar licensing requirements have found these
15 provisions to be unworkable and have repealed them.

16 (11) Licensees under section four of this article should enjoy
17 maximum reciprocity with other states to enable them to exercise
18 their right to provide for their self-defense when visiting other
19 states.

20 (12) Nonresidents who have a license to carry concealed
21 weapons, whether issued by the nonresident's state of residence or
22 another state, should be able to have the same ability to provide
23 for their self-defense while visiting West Virginia as West Virginia

1 licensees.

2 (13) Under the Brady Handgun Violence Prevention Act, Public
3 Law 103-159, 18 U.S.C. §922(t), licensed firearm dealers are
4 generally required to perform a background check on each purchaser
5 or transferee of a firearm through the National Instant Criminal
6 Background Check System prior to completing the transfer.

7 (14) Although most National Instant Criminal Background Check
8 System background checks are completed and approved within a few
9 minutes, National Instant Criminal Background Check System computer
10 breakdowns and mistakes of identity frequently delay lawful firearm
11 purchases and impede the exercise of the right to keep and bear arms
12 by law-abiding gun owners.

13 (15) Under 18 U.S.C. §922(t)(3)(A), one of the exceptions to
14 the requirement for a National Instant Criminal Background Check
15 System background check on a prospective firearm purchaser is "a
16 firearm transfer between a licensee and another person if: (i) Such
17 other person has presented to the licensee a permit that: (I) Allows
18 such other person to possess or acquire a firearm; and (II) was
19 issued not more than five years earlier by the state in which the
20 transfer is to take place; and (ii) the law of the state provides
21 that such a permit is to be issued only after an authorized
22 government official has verified that the information available to
23 such official does not indicate that possession of a firearm by such

1 other person would be in violation of law."

2 (16) Many right-to-carry states have adopted licensing statutes
3 whose background check requirements satisfy the requirements of 18
4 U.S.C. §922(t)(3)(A) and the regulations promulgated thereunder and
5 thus have qualified those states' licensees to acquire firearms
6 through licensed firearm dealers within those states without
7 undergoing a redundant background check at the time of acquiring a
8 firearm and often encountering database errors or delays that
9 unnecessarily impede the lawful acquisition of a firearm by a person
10 who has passed the generally more extensive background checks
11 required for a license to carry concealed weapons.

12 (17) West Virginia licensees should enjoy the same ability to
13 lawfully purchase firearms from licensed firearm dealers within this
14 state without the unnecessary risk of delays arising from the need
15 to complete a redundant background check that can be satisfied
16 through the background check process for a license to carry
17 concealed weapons. Therefore, the Legislature intends that licenses
18 issued under section four of this article, other than licenses
19 extended pursuant to subdivision (2), subsection (g) of that
20 section, be designated as a qualifying alternative pursuant to 18
21 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1) and other applicable
22 federal laws.

23 (18) A NICS-exempt license to carry concealed weapons does not

1 exempt a licensed firearm dealer from the requirement of 18 U.S.C.
2 §923(g) (3) to report multiple handgun transfers to one person within
3 a five business day period to state and local law enforcement.

4 (19) The former enactment of section four of this article as it
5 existed prior to the effective date of the amendments to that
6 section enacted during the 2011 Regular Session of the Legislature:

7 (A) Provided for the issuing of licenses to carry concealed
8 pistols and revolvers to residents of this state who met specified,
9 objective licensing standards; and

10 (B) Contained many deficiencies in its provisions governing
11 licensing standards and procedures that:

12 (i) Provided inadequate guidance to sheriffs, applicants and
13 licensees on many licensing issues;

14 (ii) Impeded efforts by the Attorney General to establish
15 reciprocity with other states under former section six-a of this
16 article, as it existed prior to its repeal the effective date of the
17 amendments to section four of this article enacted during the 2011
18 Regular Session of the Legislature; and

19 (iii) Would continue to stand as an impediment to several
20 states recognizing licenses issued under section four of this
21 article unless corrected, notwithstanding the enactment of
22 subdivision (1), subsection (d), section three of this article.

23 (20) The combined deficiencies in the former enactment of

1 section four of this article as it existed prior to the effective
2 date of the amendments to that section enacted during the 2011
3 Regular Session of the Legislature resulted in licensees not
4 receiving many of the legal rights, benefits, privileges and
5 immunities to which licensees under the licensing laws of many other
6 states enjoyed, including broad-based reciprocity with other states
7 and a federal firearm purchase background check exemption under 18
8 U.S.C. §922 (t) (3) (A).

9 (21) The overwhelming majority of right-to-carry states have
10 closed public access to information concerning applicants and
11 licensees because:

12 (A) Access to information concerning individual applicants and
13 licensees has been used by criminals to facilitate thefts of
14 firearms and to locate intended victims such as current or former
15 judges, corrections officers, law-enforcement officers, adverse
16 witnesses in judicial proceedings, victims of domestic violence and
17 family members of these individuals;

18 (B) Although the former enactment of section four of this
19 article contained some deficiencies, incidents of disqualified
20 individuals receiving licenses to carry concealed weapons in both
21 this state and other states that have similar, nondiscretionary
22 licensing systems are rare;

23 (C) Sufficient public scrutiny of licensing systems can be

1 achieved through comprehensive statistical reporting; and

2 (D) Although the Right to Keep and Bear Arms Amendment does not
3 provide an individual right to carry a concealed weapon without a
4 license, an individual's right to self-defense and effective access
5 to the means of self-defense substantially outweigh all public
6 policy arguments for maintaining public access to records
7 identifying individual applicants for or current or former holders
8 of licenses to carry concealed weapons.

9 (22) As a matter of public policy, it is necessary to provide
10 statewide uniform standards for issuing licenses to carry concealed
11 weapons and to fully occupy and preempt the entire field of
12 regulation of the carrying of concealed weapons to ensure that no
13 person who qualifies under the provisions of section four of this
14 article is denied his or her rights.

15 (23) Section five of this article is enacted to establish a
16 system of temporary emergency licenses to carry concealed weapons
17 pending completion of the required demonstration of competence with
18 a handgun under subsection (d), section four of this article, and
19 the full performance of all required background checks under
20 subsection (b), section four of this article, otherwise required to
21 obtain a license to carry concealed weapons, to provide an adequate
22 means of protection to victims of domestic violence and other
23 serious crimes, witnesses who cooperate with law-enforcement and

1 face the danger of immediate retaliation and other qualified
2 individuals who develop a sudden and emergent need to carry a
3 concealed weapon for personal protection.

4 (24) In *District of Columbia v. Heller*, 554 U.S. _____ (2008),
5 the Supreme Court of the United States held that the Second
6 Amendment of the Constitution of the United States secures, as the
7 right of an individual, the right to keep and bear arms for
8 self-defense.

9 (25) In *McDonald v. Chicago*, 561 U.S. _____ (2010), the Supreme
10 Court of the United States held that the Second Amendment of the
11 Constitution of the United States is incorporated against the states
12 under the Fourteenth Amendment of the Constitution of the United
13 States.

14 (26) In both *Heller* and *McDonald*, the Supreme Court of the
15 United States affirmed that an individual's right to keep and bear
16 arms for self-defense is "deeply rooted in this Nation's history and
17 tradition" and that the Second Amendment applies to handguns because
18 they are "the most preferred firearm in the nation to 'keep' and use
19 for protection of one's home and family." However, the Second
20 Amendment's protections are not limited to handguns or even firearms
21 generally.

22 (27) The *Heller* and *McDonald* decisions mark a beginning, rather
23 than an end, of litigation and legislation that will develop and

1 refine the body of Constitutional law on the full scope, nature, and
2 limits of the Second Amendment's protection of an individual's right
3 to keep and bear arms.

4 (28) An individual's right to keep and bear arms is as
5 fundamental to our nation's system of ordered liberty and as deeply
6 rooted in this nation's history and tradition as other fundamental,
7 individual rights enumerated under the Constitution of the United
8 States, e.g., freedom of speech, freedom of religion, freedom of the
9 press, and freedom of assembly, as protected by the First Amendment
10 of the Constitution of the United States.

11 (29) A consistent, principled application of the extensive body
12 of Constitutional law regarding the protection of fundamental
13 individual rights, particularly those, such as the right to keep and
14 bear arms under the Second Amendment, that are specifically
15 enumerated in the Constitution, requires that all federal, state,
16 and local government policies that implicate an individual's right
17 to keep and bear arms be subjected to strict judicial scrutiny with
18 a presumption of unconstitutionality unless the government can
19 demonstrate that the challenged policy is Constitutional by showing
20 that the policy is necessary to achieve a compelling state interest
21 and that the challenged policy is narrowly-tailored to achieve the
22 intended result and does so by the least restrictive means possible.

23 (30) Almost all regulations of firearms and firearm-related

1 activities can be argued as necessary on some level to protect the
2 public against both criminal and noncriminal, but nevertheless
3 reckless, negligent, or accidental, deaths and injuries. However, as
4 a necessary part of strict scrutiny, the burden must rest with the
5 government to show substantial scientific proof that the challenged
6 policy is actually necessary to achieve the purported compelling
7 state interest.

8 (31) The protection accorded to an individual's right to keep
9 and bear arms under the Second Amendment of the Constitution of the
10 United States, as incorporated against the states by the Due Process
11 Clause of the Fourteenth Amendment of the Constitution of the United
12 States, and Article III, §22 of the Constitution of this state, like
13 the protection accorded to other fundamental individual rights,
14 represents a minimal standard of protection. It does not preclude
15 the Legislature from enacting laws less restrictive than the most
16 restrictive laws that would survive judicial scrutiny.

17 (32) Some public buildings in this state may be subject to
18 special security concerns that may necessitate a prohibition on the
19 possession of weapons in all or parts of a particular public
20 building. However, any concerns about purportedly sensitive
21 locations must balance the applicable security concerns with respect
22 for an individual's right to keep and bear arms for self-defense and
23 the overarching need to protect the safety of all persons within

1 particularly sensitive areas. A mere prohibition on the possession
2 of weapons, without adequate security measures to effectively
3 enforce such prohibition guarantee the safety of the alleged
4 sensitive area, not only creates a false sense of security for the
5 alleged protected persons while actually increasing their exposure
6 to violent crime by signaling to potential criminals that potential
7 victims within a particular area are unarmed and unable to
8 effectively defend themselves, but also would not meet strict
9 judicial scrutiny in light of its empirical ineffectiveness. To
10 effectively balance legitimate public building security concerns
11 with an individual's right to keep and bear arms and to genuinely
12 protect the security of truly sensitive areas of public buildings,
13 the Legislature specifies in section eleven-c of this article,
14 detailed requirements for establishing secure restricted access
15 areas in public buildings into which the possession or conveyance of
16 deadly weapons may be prohibited, that balances the competing
17 interests involved in regulating weapons in public buildings, which
18 shall be the sole and exclusive procedure for establishing
19 location-specific prohibitions on possessing or conveying weapons
20 into public buildings and other public property, except where the
21 Legislature has provided otherwise by section eight, article five of
22 this chapter, and sections eleven-a and eleven-b of this article.

23 (33) Many court proceedings bring together antagonistic

1 litigants, witnesses and their relatives and friends and arouse and
2 agitate personal grievances and passions that tend to trigger
3 personal conflicts and altercations.

4 (34) Some criminal cases involve defendants in custody who pose
5 a flight risk, which must be mitigated by security measures designed
6 to prevent escape and include securing the court facility and other
7 areas to which the defendant in custody may have access from the
8 introduction of weapons or other implements of escape.

9 (35) The tendency of many court proceedings to produce sudden,
10 passionate outbursts and altercations requires the imposition of
11 enhanced security measures, including, but not limited to, the
12 disarming of most individuals in court proceedings and the provision
13 of armed bailiffs and security screening measures to prevent the
14 introduction of weapons into court proceedings.

15 (36) While the state has a legitimate interest in generally
16 prohibiting the possession of weapons in court proceedings, imposing
17 such prohibition throughout the entirety of any courthouse
18 unnecessarily frustrates the right of individuals who are attending
19 to business before the executive or legislative branches of
20 government, which do not conduct the same sensitive proceedings as
21 the judiciary, is unnecessary to adequately protect the security of
22 court proceedings.

23 (37) Each of the state's court facilities are housed in unique

1 courthouses of varying designs and configurations, many of which
2 have implemented enhanced security measures for either the entire
3 courthouse building or the court facilities specifically.

4 (38) Due to the unique and widely-varying designs and
5 configurations of each of the state's courthouses, the Legislature
6 finds impractical the imposition of a uniform rule governing the
7 portions of courthouses in which weapons are prohibited and in which
8 they are not.

9 (39) To address the issues identified in subdivisions (24)
10 through (38) of this section, the Legislature hereby replaces the
11 general prohibition on possessing a deadly weapon within a
12 courthouse with a narrowly-tailored prohibition limited to judges'
13 chambers and courtrooms with an option for the court or local
14 governing body to include the court facility in a more expansive
15 secure restricted access area under section eleven-c of this
16 article.

17 (40) To protect all persons entering and leaving areas in which
18 the possession or conveyance of weapons is prohibited by
19 subdivisions (1) through (4), subsection (b), section three of this
20 article, or section eleven-b or eleven-c of this article, from the
21 heightened danger of being targeted for the commission of a crime
22 because of the general knowledge that persons traveling to and from
23 a restricted area are disarmed, the Legislature directs the

1 establishment of secure weapon storage areas at each place into
2 which the possession or conveyance of weapons is prohibited by
3 subdivisions (1) through (4), subsection (b), section three of this
4 article, or section eleven-b or eleven-c of this article, to provide
5 individuals who exercise their right to keep and bear arms for
6 self-defense as a matter of ordinary course, a legal and safe means
7 of personal protection and compliance with those sections.

8 (41) A list, record or registry of legally-owned firearms,
9 concealable weapons or law-abiding owners thereof is not a law
10 enforcement tool and can become an instrument for profiling,
11 harassing or abusing law-abiding citizens based on their choice to
12 own a firearm or concealable weapon and exercise their individual
13 right to keep and bear arms. Furthermore, such a list, record or
14 registry has the potential to fall into the wrong hands and become
15 a shopping list for thieves.

16 (42) A list, record or registry of legally-owned firearms,
17 concealable weapons or law-abiding owners of firearms or concealable
18 weapons is not a tool for fighting terrorism, but rather is an
19 instrument that can be used as a means to profile innocent citizens
20 and to harass and abuse citizens based solely on their choice to own
21 firearms or concealable weapons and exercise their individual right
22 to keep and bear arms.

23 (43) Lists, records and registries of legally-owned firearms,

1 concealable weapons and law-abiding owners of firearms or
2 concealable weapons have been used in other jurisdictions both
3 domestically and internationally as the foundation for the eventual
4 prohibition and confiscation of firearms or concealable weapons or
5 certain classes of firearms or concealable weapons, in violation of
6 the natural right of free people to keep and bear arms.

7 (44) Law-abiding owners of firearms and concealable weapons
8 whose names have been illegally recorded in a list, record or
9 registry are entitled to redress.

10 (45) There is a need to provide uniform laws throughout the
11 state regulating the ownership, possession, purchase, other
12 acquisition, transport, storage, carrying, sale and other transfer
13 of concealable weapons, firearms and parts, components and
14 ammunition for firearms (including without limitation the possession
15 and carrying thereof in or on any public building or other property
16 owned, leased or controlled by any public agency), and, except as
17 specified in subsection (d), section sixteen of this article, for
18 the Legislature, to the exclusion of all other public agencies in
19 this state, to exercise exclusive occupation of and preempt the
20 field of regulation in these areas.

21 (46) It is the intent of the Legislature that disabilities
22 regarding possession of firearms under subsection (a), section seven
23 of this article, be construed as no more restrictive than 18 U.S.C.

1 §922(g) except to the extent the Legislature has, in sections two
2 and seven of this article, expressly decoupled state law from
3 federal law and established more restrictive provisions under this
4 article with respect to disregarding certain convictions of crimes
5 punishable by imprisonment for a term exceeding one year based upon
6 the restoration of civil rights.

7 (47) The purpose of establishing multiple classes of licenses
8 to carry concealed weapons under section four of this article is to
9 create an efficient and effective mechanism to maximize West
10 Virginia's reciprocity with other states while not subjecting
11 current licensees to fingerprinting or new training requirements or
12 continuing to deny adults between eighteen and twenty years of age
13 the full right to self-defense. The Legislature anticipates that
14 based upon the system of multiple classes of licenses under section
15 four of this article, other states that have more restrictive
16 reciprocity requirements will liberally construe their respective
17 laws to maximize the classes of licenses under section four of this
18 article that they will honor. The Legislature has established the
19 several classes of licenses under section four of this article with
20 the intent of qualifying Class 1 licenses for reciprocity with every
21 other state that has in effect some form of reciprocity law. The
22 Legislature intends for states that require live fire shooting
23 proficiency qualifications under their respective reciprocity laws

1 to honor Class 1 licenses and, depending on their requirements for
2 fingerprinting and minimum licensure age, Class 2 and 4 licenses.
3 The Legislature intends for states that deny reciprocity to states
4 that issue licenses to adults under 21 years of age to honor Class
5 1 licenses and, depending upon their respective requirements for
6 fingerprinting and live fire shooting proficiency qualifications,
7 Class 2 and 4 licenses. For these reasons, except as otherwise
8 required to comply with federal law, all licensees of all classes
9 under sections four and five of this article shall have equal
10 rights, benefits, privileges and immunities under this code.

11 (48) This legislation of the 2011 Regular Session of the
12 Legislature shall be known and may be cited as "The West Virginia
13 Gun Owners' Protection Act of 2011".

14 **§61-7-2. Definitions.**

15 In this article:

16 (1) "Aggravated felony" means any felony crime of violence,
17 felony drug offense or felony sexual offense.

18 (2) "Alien" means any person not a citizen or national of the
19 United States.

20 (3) "Ammunition" means ammunition or cartridge cases, primers,
21 bullets, or propellant powder designed for use in any firearm other
22 than an antique firearm.

23 (4) "Antique firearm" means:

1 (A) Any firearm (including any firearm with a matchlock,
2 flintlock, percussion cap, or similar type of ignition system)
3 manufactured in or before 1898; or

4 (B) Any replica of any firearm described in paragraph (A) of
5 this subdivision if such replica:

6 (i) Is not designed or redesigned for using rimfire or
7 conventional centerfire fixed ammunition; or

8 (ii) Uses rimfire or conventional centerfire fixed ammunition
9 which is no longer manufactured in the United States and which is
10 not readily available in the ordinary channels of commercial trade;
11 or

12 (C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle
13 loading pistol, which is designed to use black powder, or a black
14 powder substitute, and which cannot use fixed ammunition. For
15 purposes of this paragraph, the term "antique firearm" does not
16 include any weapon which incorporates a firearm frame or receiver,
17 any firearm which is converted into a muzzle loading weapon, or any
18 muzzle loading weapon which can be readily converted to fire fixed
19 ammunition by replacing the barrel, bolt, breechblock, or any
20 combination thereof.

21 (5) "Blackjack" means a short bludgeon consisting, at the
22 striking end, of an encased piece of lead or some other heavy
23 substance and, at the handle end, a strap or springy shaft which

1 increases the force of impact when a person or object is struck. The
2 term "blackjack" includes, but is not limited to, a billy, billy
3 club, sand club, sandbag or slapjack.

4 (6) "Ballistic knife" means any knife with a detachable blade
5 that is propelled by a spring-operated mechanism.

6 (7) "Body armor" means any personal protective body covering
7 intended to protect against gunfire, regardless of whether the
8 product is to be worn alone or is sold as a complement to another
9 product or garment.

10 (8) "Club" means an instrument that is specially designed,
11 made, or adapted for the purpose of inflicting serious bodily injury
12 or death by striking a person with the instrument, and includes, but
13 is not limited to, a blackjack, mace, metallic or false knuckles,
14 nightstick, nunchuka or tomahawk.

15 (9) "Concealable weapon" means any club, handgun, offensive
16 knife, spring stick or other deadly weapons of like kind or
17 character that can be easily concealed on the person. For the
18 purposes of sections sixteen through twenty of this article, the
19 term "concealable weapon" also includes any air gun, firearm or
20 knife not otherwise included within this definition.

21 (10) "Concealed weapon" means any deadly weapon that is hidden
22 from ordinary observation so as to prevent disclosure or recognition
23 to the extent that another person in the ordinary course of events

1 would not be placed on notice that the deadly weapon was being
2 carried. For the purposes of section three of this article and
3 subsection (c), section seven of this article, a handgun is not
4 concealed if it is carried in: (i) A manner where any portion of the
5 handgun or holster in which the handgun is carried is visible; (ii)
6 a holster that is wholly or partially visible; or (iii) a scabbard
7 or case designed for carrying one or more handguns that is wholly or
8 partially visible.

9 (11) "Contacted by a law-enforcement officer" means a lawful
10 traffic or criminal investigation, arrest or detention or an
11 investigatory stop by a law-enforcement officer that is based on
12 reasonable suspicion that an offense has been or is about to be
13 committed.

14 (12) "Controlled substance" has the same meaning as in section
15 one hundred one, article one, chapter sixty-a of this code.

16 (13) "Conviction" or "convicted," for the purposes of
17 determining whether a person is eligible to obtain or hold a license
18 to carry concealed weapons or prohibited from possessing firearms,
19 shall be determined in accordance with the law of the jurisdiction
20 in which the proceedings were held, but does not include any
21 conviction which has been expunged, set aside, vacated or for which
22 the person has been pardoned, unless the expungement or pardon
23 expressly provides that the person may not possess firearms.

1 (14) "Court facility" means the courtroom of the Supreme Court
2 of Appeals, a circuit court, a family court, a magistrate court or
3 a municipal court; the chambers of any justice, judge or magistrate;
4 those portions of a courthouse designated as witness rooms, jury
5 deliberation rooms, attorney conference rooms, prisoner holding
6 cells or law library; and offices of the court clerks or other
7 employees of the judicial department of this state; but does not
8 include any common area of ingress or egress to a courthouse that
9 provides access to any area of a courthouse not comprising a court
10 facility.

11 (15) "Courthouse" means any state or local government office
12 facility that houses a court facility.

13 (16) "Crime punishable by imprisonment for a term exceeding one
14 year" does not include:

15 (A) Any federal or state offenses pertaining to antitrust
16 violations, unfair trade practices, restraints of trade, or other
17 similar offenses relating to the regulation of business practices;

18 (B) Any state offense classified by the laws of the state in
19 which the offense was committed as a misdemeanor and, punishable by
20 a term of imprisonment of two years or less;

21 (C) Any conviction whose effect is disregarded pursuant to
22 subdivision (12) of this section;

23 (D) Any offense other than an aggravated felony for which the

1 person has had civil rights restored, unless:

2 (i) The restoration of civil rights expressly provides that the
3 person may not ship, transport, possess or receive firearms; or

4 (ii) Less than five years have elapsed since the completion of
5 any sentence, probation, parole, other supervision and payment in
6 full of all fines, court costs and restitution, whichever last
7 occurs; or

8 (E) Any aggravated felony for which the person has had civil
9 rights restored pursuant to a discretionary process in the
10 jurisdiction in which the offense was committed under which the
11 person was not entitled to restoration of civil rights as a matter
12 of right and the person received restoration of civil rights based
13 upon an individualized determination and review of the person by the
14 officer, agency, board, commission, court or other tribunal granting
15 restoration of civil rights in which the person was granted
16 restoration of civil rights as an expressly, individually-named
17 person and not as a member of any group or class of persons, unless:

18 (i) The restoration of civil rights provides that the person
19 may not ship, transport, possess, carry or receive firearms;

20 (ii) Under the laws of the jurisdiction in which the offense
21 was committed and civil rights were restored, the restoration of
22 civil rights failed to remove all legal disabilities under the laws
23 of that jurisdiction relating to shipping, transporting, possessing,

1 carrying or receiving firearms or concealed weapons that resulted
2 from the conviction;

3 (iii) Less than ten years have elapsed since the completion of
4 any sentence, probation, parole, other supervision and payment in
5 full of all fines, court costs, restitution and civil judgments
6 arising from the acts or omissions to which the conviction
7 pertained, whichever last occurs; or

8 (iv) Subsequent to the person's conviction for any prior
9 aggravated felony whose conviction is not disregarded pursuant to
10 subdivision (12) of this section, the person has been convicted of
11 any aggravated felony whose conviction is not disregarded pursuant
12 to subdivision (12) of this section.

13 (17) "Deadly weapon" means an instrument which is designed to
14 be used to produce serious bodily injury or death or is readily
15 adaptable to such use and includes, but is not limited to, firearms,
16 antique firearms and concealable weapons. For the purposes of
17 section one-a, article five, chapter eighteen-a of this code and
18 sections eleven-a through eleven-d of this article, the term "deadly
19 weapon" also includes explosive, chemical, biological and
20 radiological materials. For the purposes of section one-a, article
21 five, chapter eighteen-a of this code and section eleven-a of this
22 article, the term "deadly weapon" does not include any item or
23 material owned by the school or board of education, intended for

1 curricular use, and used by the defendant at the time of the alleged
2 offense solely for curricular purposes.

3 (18) "Drug" has the same meaning as in section one hundred one,
4 article one, chapter sixty-a of this code.

5 (19) "Family or household member" has the same meaning as in
6 section two hundred four, article twenty-seven, chapter forty-eight
7 of this code.

8 (20) "Felony crime of violence":

9 (A) Means any felony that:

10 (i) Has as an element the use, attempted use, or threatened use
11 of physical force, against another person or the presentment or use
12 of a deadly weapon, or

13 (ii) By its nature, involves a substantial risk that physical
14 force against another person may be used in the course of committing
15 the offense;

16 (B) Includes without limitation, but is not limited to, the
17 following offenses:

18 (i) Treason under section one, article one of this chapter;

19 (ii) Murder under sections one, two or three, article two of
20 this chapter;

21 (iii) Attempt to kill or injure by poison under section seven,
22 article two of this chapter;

23 (iv) Malicious wounding under subsection (a), section nine,

1 article two of this chapter;

2 (v) Assault during the commission of or attempt to commit a
3 felony under section ten, article two of this chapter;

4 (vi) Malicious assault or unlawful assault under section ten-b,
5 article two of this chapter;

6 (vii) Robbery or attempted robbery under section twelve,
7 article two of this chapter;

8 (viii) Kidnapping or holding a person hostage under section
9 fourteen-a, article two of this chapter;

10 (ix) First or second degree arson under sections one or two,
11 article three of this chapter;

12 (x) Causing injuries during an arson-related crime under
13 section seven, article three of this chapter, regardless of the
14 degree of the underlying arson offense involved;

15 (xi) Any felony under section eight, article five of this
16 chapter not involving a controlled substance;

17 (xii) A felony offense of retaliating against a juror or
18 witness for performing his or her official duties in an official
19 proceeding, in violation of section twenty-seven, article five of
20 this chapter, if such offense involved actual violence or threats of
21 violence;

22 (xiii) Any sexually violent offense as defined in article
23 twelve, chapter fifteen of this code;

1 (xiv) Any attempt or conspiracy to commit any of the offenses
2 described in subparagraphs (i) through (xiii) of this paragraph; but

3 (C) Does not include any conviction whose effect is disregarded
4 pursuant to subdivision (12) of this section.

5 (21) "Felony drug offense":

6 (A) Means any:

7 (i) Felony under sections four hundred one, four hundred six,
8 four hundred nine or four hundred eleven, article four, chapter
9 sixty-a of this code;

10 (ii) Felony involving a controlled substance under section
11 eight, article five of this chapter; or

12 (iii) Unlawful act committed in violation of federal law or the
13 law of any other state that:

14 (I) Is a felony or crime punishable by imprisonment for a term
15 exceeding one year in the jurisdiction in which the offense was
16 committed; and

17 (II) Would, if committed in this state, based upon the facts
18 determined by the trier of fact beyond a reasonable doubt in the
19 proceedings in which the conviction was had, constitute an offense
20 described in subparagraph (i) or (ii) of this paragraph; but

21 (B) Does not include any conviction whose effect is disregarded
22 pursuant to subdivision (12) of this section.

23 (22) "Felony sexual offense":

1 (A) Means any felony upon conviction of which a person is
2 required to register for any period of time as a sex offender under
3 article twelve, chapter fifteen of this code;

4 (B) Includes, but is not limited to:

5 (i) Any offense under the following provisions of this chapter
6 that, at the time the offense was committed, was punishable as a
7 felony:

8 (I) Section fourteen, article two;

9 (II) Sections six, seven or twelve, article eight of this
10 chapter; or

11 (III) Article eight-b, including the provisions of former
12 section six of said article, relating to the offense of sexual
13 assault of a spouse, which was repealed by Chapter 85, Acts of the
14 Legislature, 2000 Regular Session;

15 (IV) Article eight-c;

16 (V) Sections five or six, article eight-d;

17 (VI) Section fourteen-b, article three-c, as it relates to
18 violations of those provisions of this chapter that are listed in
19 clauses (I) through (IV) of this paragraph; or

20 (ii) Any unlawful act committed in violation of federal law or
21 the law of any other state that:

22 (I) Is a felony or crime punishable by imprisonment for a term
23 exceeding one year in the jurisdiction in which the offense was

1 committed; and

2 (II) Would, if committed in this state, based upon the facts
3 determined by the trier of fact beyond a reasonable doubt in the
4 proceedings in which the conviction was had, constitute an offense
5 described in subparagraph (i) of this paragraph; but

6 (C) Does not include any conviction whose effect is disregarded
7 pursuant to subdivision (12) of this section.

8 (23) "Firearm" means any weapon which will, is designed to or
9 may readily be converted to expel a projectile by action of an
10 explosion. However, for the purposes of section seven of this
11 article and section six, article five, chapter twenty-seven of this
12 code, the term "firearm" does not include an antique firearm. For
13 the purposes of section nine of this article, "firearm" has the same
14 meaning as in 26 U.S.C. §5845(a), as it exists as of January 1,
15 2011. For the purposes of section fourteen-a of this article, in
16 addition to the meaning otherwise given by this subdivision,
17 "firearm" also includes all ammunition and accoutrements attendant
18 to the lawful possession or use of a firearm.

19 (24) "Fugitive from justice" means any person who has fled from
20 any state to avoid prosecution for a crime or to avoid giving
21 testimony in any criminal proceeding.

22 (25) "Gravity knife" means any knife that has a blade released
23 from the handle by the force of gravity or the application of

1 centrifugal force and when so released is locked in place by means
2 of a button, spring, lever or other locking or catching device.

3 (26) "Handgun" means any firearm which has a short stock and is
4 designed to be held and fired by the use of a single hand and
5 includes any pistol or revolver.

6 (27) "Higher education institution" has the same meaning as in
7 section two, article one, chapter eighteen-b of this code.

8 (28) "Indictment" includes an indictment or information in any
9 court under which a crime punishable by imprisonment for a term
10 exceeding one year may be prosecuted.

11 (29) "Intimate partner" means, with respect to a person, the
12 spouse of the person, a former spouse of the person, an individual
13 who is a parent of a child of the person, and an individual who
14 cohabitates or has cohabited with the person.

15 (30) "Intoxication-related offense":

16 (A) Means any criminal offense:

17 (i) That includes an element that the person:

18 (I) Be under the influence of alcohol;

19 (II) Be under the influence of a controlled substance or other
20 drug;

21 (III) Be under the combined influence of alcohol, a controlled
22 substance or any other drug; or

23 (IV) Have a blood alcoholic concentration of eight hundredths

1 of one percent or more, by weight; and

2 (ii) For which the person was convicted was pursuant to one or
3 more of the elements described in clauses (I) through (IV),
4 subparagraph (i) of this paragraph; and

5 (B) Includes:

6 (i) Any offense under section two, article five, chapter
7 seventeen-c of this code other than the acts of (I) driving a
8 vehicle while under the age of 21 years with an alcohol
9 concentration in the person's blood of two hundredths of one percent
10 or more, by weight, but less than eight hundredths of one percent,
11 by weight and (II) knowingly permitting the person's vehicle to be
12 driven in violation of that section;

13 (ii) Any offense under section eighteen-b, article seven,
14 chapter twenty of this code other than the acts of (I) operating a
15 motorboat, jet ski or other motorized vessel while under the age of
16 21 years with an alcohol concentration in the person's blood of two
17 hundredths of one percent or more, by weight, but less than eight
18 hundredths of one percent, by weight and (II) knowingly permitting
19 the person's motorboat, jet ski or other motorized vessel to be
20 operated in this state in violation of that section;

21 (iii) Any offense under section eleven, article two-a, chapter
22 twenty-nine of this code other than knowingly permitting the
23 person's aircraft to be operated in this state in violation of that

1 section;

2 (iv) Public intoxication in violation of subdivision (1),
3 subsection (a), section nine, article six, chapter sixty of this
4 code; or

5 (v) Any offense under any municipal ordinance or law of any
6 other state or political subdivision thereof or of the United States
7 that has the same elements as any offense described in subparagraphs
8 (i) through (iv) of this paragraph.

9 (31) "Knife" means an instrument, intended to be used or
10 readily adaptable to be used as a weapon, consisting of a
11 sharp-edged or sharp-pointed blade, usually made of steel, attached
12 to a handle which is capable of inflicting cutting, stabbing or
13 tearing wounds. The term "knife" includes, but is not limited to,
14 any offensive knife or any other instrument capable of inflicting
15 cutting, stabbing or tearing wounds. A pocket knife with a blade
16 three and one-half inches or less in length, a hunting or fishing
17 knife carried for hunting, fishing, sports or other recreational
18 uses, or a knife designed for use as a tool or household implement
19 shall not be included within the term "knife" as defined in this
20 subdivision and shall not be considered an offensive knife,
21 concealable weapon or deadly weapon unless such knife is knowingly
22 used or intended to be used to produce serious bodily injury or
23 death.

1 (32) "Law-enforcement officer" means:

2 (A) Any law-enforcement officer or law-enforcement official, as
3 those terms are defined in section one, article twenty-nine, chapter
4 thirty of this code;

5 (B) Law-enforcement agents of the Armed Forces of the United
6 States, the Naval Criminal Investigative Service and federal agents
7 who are otherwise authorized by federal law to carry firearms in the
8 performance of their duties, including without limitation the
9 officers described in subsection (b), section five, article ten,
10 chapter fifteen of this code; or

11 (C) Any law-enforcement officer or law-enforcement official of
12 any state or other political subdivision of the United States whose
13 duties are similar to those of a law-enforcement officer or
14 law-enforcement official of this state and who is authorized to
15 carry firearms in the performance of his or her duties.

16 (33) "Licensed firearm dealer" means any person licensed as a
17 dealer under 18 U.S.C. Chapter 44 (18 U.S.C. §§921 et seq.).

18 (34) "Loaded," with respect to a firearm, means that the
19 firearm:

20 (A) Has live, unexpended ammunition in the firing position or
21 a position whereby the manual operation of any mechanism once would
22 cause live, unexpended ammunition to be fired;

23 (B) Has live, unexpended ammunition in a magazine that is

1 locked in place in the firearm;

2 (C) Has live, unexpended ammunition anywhere in the cylinder,
3 if the firearm is a revolver; or

4 (D) Is capped or primed and has a powder charge and ball or
5 shot in the barrel or cylinders, if the firearm is a muzzle-loader.

6 (35) "Metallic or false knuckles" means a set of finger rings
7 attached to a transverse piece to be worn over the front of the hand
8 for use as a weapon and constructed in such a manner that, when
9 striking another person with the fist or closed hand, considerable
10 physical damage may be inflicted upon the person struck, without
11 regard to the metal or other substance or substances from which the
12 metallic or false knuckles are made.

13 (36) (A) Except as otherwise provided in this subdivision,
14 "misdemeanor crime of violence":

15 (i) Means any offense other than a crime punishable by
16 imprisonment for a term exceeding one year or a traffic offense
17 under chapter seventeen-c of this code or a similar municipal
18 ordinance or law of another state, that has, as an element of the
19 offense, the intentional or knowing commission of an act involving:

20 (I) The use or attempted use of physical force against another
21 person;

22 (II) The threatened immediate use of a deadly weapon against
23 another person; or

1 (III) Any other act done with intent to cause fear in another
2 person of such other person suffering immediate bodily harm or
3 death; and

4 (ii) Includes, without limitation, any offense under sections
5 nine, nine-a, ten-b, eleven, fifteen, fifteen-a, sixteen-a,
6 twenty-eight or twenty-nine, article two of this chapter or section
7 eleven of this article, other than any offense that is a crime
8 punishable by imprisonment for a term exceeding one year, or any
9 offense under federal law or the laws of another state or political
10 subdivision thereof, other than an offense that is a crime
11 punishable by imprisonment for a term exceeding one year, that, if
12 committed within this state, would constitute an offense under
13 sections nine, nine-a, ten-b, eleven, fifteen, fifteen-a, sixteen-a,
14 twenty-eight or twenty-nine, article two of this chapter or section
15 eleven of this article.

16 (B) A person shall not be considered to have been convicted of
17 such an offense for purposes of this article, unless:

18 (i) The person was represented by counsel in the case, or
19 knowingly and intelligently waived the right to counsel in the case;
20 and

21 (ii) In the case of a prosecution for an offense described in
22 this paragraph for which a person was entitled to a jury trial in
23 the jurisdiction in which the case was tried, either:

1 (I) The case was tried by a jury, or

2 (II) The person knowingly and intelligently waived the right to
3 have the case tried by a jury, by guilty plea or otherwise.

4 (C) A person shall not be considered to have been convicted of
5 such an offense for purposes of this article if the conviction's
6 effect is disregarded pursuant to subdivision (12) of this section.

7 (37) (A) Except as otherwise provided in this subdivision,
8 "misdemeanor drug offense" means any misdemeanor offense under
9 section four hundred one, four hundred three-a or four hundred nine,
10 article four, chapter sixty-a of this code or an offense under
11 federal law or the law of any other state, other than a felony or a
12 crime punishable by imprisonment for a term exceeding one year,
13 that, if committed in this state, would constitute a misdemeanor
14 offense under section four hundred one, four hundred three-a or four
15 hundred nine, article four, chapter sixty-a of this code.

16 (B) A person shall not be considered to have been convicted of
17 such an offense for purposes of this article, unless:

18 (i) The person was represented by counsel in the case, or
19 knowingly and intelligently waived the right to counsel in the case;
20 and

21 (ii) In the case of a prosecution for an offense described in
22 this paragraph for which a person was entitled to a jury trial in
23 the jurisdiction in which the case was tried, either:

1 (I) The case was tried by a jury, or

2 (II) The person knowingly and intelligently waived the right to
3 have the case tried by a jury, by guilty plea or otherwise.

4 (C) A person shall not be considered to have been convicted of
5 such an offense for purposes of this article if the conviction's
6 effect is disregarded pursuant to subdivision (12) of this section.

7 (38) "Motor vehicle" has the same meaning as in section one,
8 article one, chapter seventeen-a of this code.

9 (39) "Nonresident" has the same meaning as in section one,
10 article one, chapter seventeen-b of this code.

11 (40) "Nunchuka" means a flailing instrument consisting of two
12 or more rigid parts, connected by a chain, cable, rope or other
13 nonrigid, flexible or springy material, constructed in such a manner
14 as to allow the rigid parts to swing freely so that one rigid part
15 may be used as a handle and the other rigid part may be used as the
16 striking end.

17 (41) "Offensive knife" means a:

18 (A) Knife with a blade over three and one-half inches;

19 (B) Hand instrument designed to cut or stab another by being
20 thrown, including, but not limited to, any throwing star or oriental
21 dart;

22 (C) Ballistic knife;

23 (D) Dagger, including, but not limited to, a dirk, stiletto or

1 poniard;

2 (E) Bowie knife;

3 (F) Gravity knife;

4 (G) Switchblade knife;

5 (H) Sword; or

6 (I) Spear, but does not include any pocket knife with a blade
7 three and one-half inches or less in length, a hunting or fishing
8 knife carried for hunting, fishing, sports or other recreational
9 uses, or a knife designed for use as a tool or household implement.

10 (42) "Personal knowledge" means knowledge of a fact that a
11 person has himself or herself gained through his or her own senses,
12 or knowledge that was gained by a law-enforcement officer or
13 prosecutor through the performance of his or her official duties.

14 (43) "Personally-identifying information" includes, but is not
15 limited to, the name, date of birth, Social Security number,
16 residence address, mailing address, telephone number or e-mail
17 address of any person.

18 (44) "Pistol" means a short firearm having a chamber which is
19 integral with the barrel, designed to be aimed and fired by the use
20 of a single hand.

21 (45) "Place of instruction" includes, but is not limited to,
22 any hunting club, rifle club, rifle range, pistol range, shooting
23 range, the premises of a licensed firearm dealer or a lawful gun

1 show or meet.

2 (46) "Private property" does not include any real or personal
3 property owned, leased or controlled, in whole or in part, by any
4 public agency, regardless of whether the property is generally open
5 to the public or subject to access restrictions.

6 (47) "Private property owner" means any property owner other
7 than:

8 (A) The United States;

9 (B) A public agency; or

10 (C) A lessee or other person charged with the care, custody or
11 control of any property owned, leased or controlled by a public
12 agency, except where the person is a lessee of a residential
13 premises or is exercising temporary control over other premises the
14 person exclusively occupies as a temporary place of lodging.

15 (48) "Property owner" means an owner, lessee or other person
16 charged with the care, custody and control of real property. For
17 the purposes of this definition, "person" means an individual or any
18 entity which may acquire title to real property.

19 (49) "Prosecutor" means any prosecuting attorney or assistant
20 prosecuting attorney of this state, any United States attorney or
21 assistant United States attorney, any officer, employee or agent of
22 another state or political subdivision thereof who exercises powers
23 substantially similar to those of a prosecuting attorney or

1 assistant prosecuting attorney of this state, or any special
2 prosecutor of this state, the United States or another state or
3 political subdivision of another state.

4 (50) "Public agency" means:

5 (A) This state or any political subdivision of this state;

6 (B) Any department, agency, authority, board, commission,
7 council, state institution of higher education, airport operator as
8 defined in section two, article twenty-nine-b, chapter eight of this
9 code, government corporation or other entity or instrumentality of
10 this state or any political subdivision of this state;

11 (C) Any public agency within the meaning of section two,
12 article nine-a, chapter six of this code;

13 (D) Any public body within the meaning of section two, article
14 one, chapter twenty-nine-b of this code;

15 (E) Any other entity or instrumentality:

16 (i) Whose chief executive or administrative officer or a
17 majority of whose board of directors or substantially similar
18 governing body, is elected, appointed or subject to the confirmation
19 of or removal by one or more entities described in paragraphs (A),
20 (B), (C) or (D) of this subdivision;

21 (ii) That receives a majority of its annual operating revenue
22 from one or more entities described in paragraphs (A), (B), (C) or
23 (D) of this subdivision; or

1 (iii) For the purposes of subdivisions (46) and (47) of this
2 section and sections four, five, eleven-c, eleven-d, fourteen,
3 fourteen-a, sixteen, seventeen and twenty of this article, that is
4 a recipient of any form of financial assistance, direct or indirect,
5 from any entity described in paragraphs (A), (B), (C) or (D) of this
6 subdivision, for any program or activity. For the purposes of this
7 subparagraph, the term "program or activity" includes all of the
8 operations of:

9 (I) A higher education institution, primary or secondary school
10 or other school system, whether public or private, any part of which
11 is extended financial assistance, direct or indirect, from any
12 entity described in paragraphs (A), (B), (C) or (D) of this
13 subdivision;

14 (II) An entire corporation, partnership, limited liability
15 company or other private organization or legal entity, any part of
16 which is extended financial assistance, direct or indirect, from any
17 entity described in paragraphs (A), (B), (C) or (D) of this
18 subdivision; or

19 (III) Any agency, as defined by section one hundred four,
20 article twenty-two, chapter forty-eight of this code, or
21 child-placing agency, as defined in section two, article two-b,
22 chapter forty-nine of this code; or

23 (F) Any officer, director, employee or other agent of any

1 entity described in paragraphs (A) through (E) of this subdivision,
2 when acting in his or her representative capacity.

3 (51) "Public building" means any building that is owned by a
4 public agency or those portions of any building that is not owned by
5 a public agency that is leased or controlled by a public agency.

6 (52) "Public event" means a specifically named or sponsored
7 event of limited duration that is conducted by:

8 (A) A public agency;

9 (B) A higher education institution; or

10 (C) A private entity with a permit or license granted by any
11 public agency, but does not include any unsponsored gathering of
12 people in any public place.

13 (53) "Qualified out-of-state license or permit to carry
14 concealed weapons" means any license or permit that:

15 (A) Authorizes the licensee or permittee to carry:

16 (i) Concealed weapons generally; or

17 (ii) Any one or more handguns in a concealed manner, regardless
18 of whether the license or permit contains restrictions that limit
19 the scope of the license or permit to:

20 (I) Only handguns or similar classification of firearms, to the
21 exclusion of other types or classes of firearms or concealable
22 weapons, or to specific, listed handguns or types, classes or
23 calibers of handguns or similar classifications of firearms; or

1 (II) Times, places or purposes for which the licensee or
2 permittee may lawfully carry the licensed or permitted weapons; and

3 (B) Under the laws of the issuing state, throughout the issuing
4 state and all of its political subdivisions, the license:

5 (i) Is current, valid and unexpired; or

6 (ii) Is extended beyond the expiration date printed on the
7 license pursuant to any law of the issuing state, including, but not
8 limited to, any extension for a deployed servicemember or any
9 licensee who has applied for a renewal of the license.

10 (54) "Qualified out-of-state licensee" means any person who is:

11 (A) A licensee or permittee pursuant to a qualified
12 out-of-state license or permit to carry concealed weapons;

13 (B) Not less than the minimum age specified in section four of
14 this article as the minimum age to apply for licensure under section
15 four of this article;

16 (C) Not prohibited by federal law, including without limitation
17 18 U.S.C. §922(g) and (n), as they exist as of January 1, 2011, from
18 possessing or transporting firearms;

19 (D) Not prohibited by section seven of this article from
20 possessing firearms or carrying a concealed weapon in a public
21 place; and

22 (E) (i) A nonresident;

23 (ii) A new resident of this state who has established residence

1 in this state within the immediate preceding ninety days unless,
2 during such period and subsequent to the establishment of residence
3 in this state:

4 (I) The person applied for a license under section four of this
5 article; and

6 (II) The sheriff to whom the person applied for a license under
7 section four of this article, made a final decision to deny a
8 license, unless the denial was based primarily upon the applicant's
9 failure to meet the requirements of subdivision (2), subsection (a),
10 section four of this article, the applicant's failure to have a
11 driver's license or nondriver state photo identification issued by
12 this state or a combination thereof;

13 (iii) A new resident of this state who has established
14 residence in this state for a period greater than the period
15 specified in subparagraph (ii) of this paragraph if, prior to the
16 expiration of the period specified in subparagraph (ii) of this
17 paragraph:

18 (I) The person applied for a license under section four of this
19 article and possesses an application receipt issued by the sheriff
20 pursuant to subdivision (1), subsection (f), section four of this
21 article; and

22 (II) The sheriff to whom the person applied for a license under
23 section four of this article, has not made a final decision on

1 granting or denying the license; or

2 (iv) A servicemember whose permanent duty station is located
3 outside this state or the spouse of a servicemember whose permanent
4 duty station is located outside this state. Nothing contained in
5 this subparagraph may be deemed to disqualify a person described in
6 this subparagraph from obtaining a license under section four or
7 five of this article upon the basis of place of residence or to deem
8 any person described in this subparagraph a nonresident for any
9 other purpose.

10 (55) "Readily accessible for immediate use" or "about the
11 person" means that a deadly weapon or ammunition for a firearm is
12 carried on the person or within such close proximity and in such a
13 manner that it can be retrieved and used as easily and quickly as if
14 carried on the person.

15 (56) "Revolver" means a short firearm having a cylinder of
16 several chambers that are brought successively into line with the
17 barrel to be discharged, designed to be aimed and fired by the use
18 of a single hand.

19 (57) "School bus" has the same meaning as in section one,
20 article one, chapter seventeen-a of this code.

21 (58) "School safety zone" means:

22 (A) Any public or private primary or secondary school building
23 and its improved grounds, whether leased or owned by the school,

1 including any vocational education building, structure, facility or
2 grounds thereof where secondary vocational education programs are
3 conducted;

4 (B) The interior of a school bus while that school bus is
5 actually in use by any school described in paragraph (A) of this
6 subdivision for the purpose of transporting one or more primary or
7 secondary school students to or from school or school-related
8 activities, including curricular, cocurricular, extracurricular or
9 supplementary activities; or

10 (C) That portion of any property not described in paragraph (A)
11 of this subdivision that is open to the public and then used
12 exclusively for a school-sponsored function or curricular,
13 cocurricular, extracurricular or supplementary activity, while that
14 function or activity is occurring.

15 (59) "Secure restricted access area":

16 (A) Means a secure area beyond a security perimeter and
17 security checkpoints where all visitors are screened for weapons
18 prohibited within the area, a secure weapon storage area is provided
19 and in which the safety of all occupants of the area is protected by
20 the security perimeter and the significant presence of
21 law-enforcement officers or professional security guards; and

22 (B) Does not include common areas of ingress and egress open to
23 the general public outside the security perimeter and checkpoints.

1 (60) "Secure weapon storage area" means a facility maintained
2 in conjunction with any area within which the possession or carrying
3 of firearms or other deadly weapons is restricted or prohibited
4 that:

5 (A) Provides free storage of any deadly weapon otherwise lawful
6 for the depositor to possess whose possession within the area within
7 which the possession or carrying of deadly weapons or firearms is
8 restricted or prohibited;

9 (B) (i) Provides, free of charge, self-service storage lockers
10 consisting of individual stationary locked boxes not less than one
11 foot wide by one foot high by two feet deep when the locker is
12 closed, resulting in an interior capacity of not less than two cubic
13 feet, into which a person can secure his or her weapons, ammunition
14 and other personal effects, lock the box, retain the key during his
15 or her presence in the area within which the possession or carrying
16 of firearms or other deadly weapons is restricted or prohibited and
17 personally unlock the box and retrieve the items stored in it upon
18 leaving the area within which the possession or carrying of firearms
19 or other deadly weapons is restricted or prohibited; or

20 (ii) Designates an official to receive weapons for safekeeping,
21 free of charge, during the depositor's visit to restricted areas of
22 the building, who tags each weapon stored and issues a corresponding
23 receipt that protects the weapon from misplacement or erroneous

1 transfer and enables the depositor to retrieve the weapon upon
2 exiting the area within which the possession or carrying of deadly
3 weapons or firearms is restricted or prohibited; and

4 (C) Which is open for retrieval at all times the area within
5 which the possession or carrying of deadly weapons or firearms is
6 restricted or prohibited is occupied plus a reasonable amount of
7 time thereafter for a depositor who has lawfully entered and
8 remained in the area within which the possession or carrying of
9 deadly weapons or firearms is restricted or prohibited to retrieve
10 the weapon and not be unduly denied restoration of his or her lawful
11 possession of the weapon upon leaving the area within which the
12 possession or carrying of deadly weapons or firearms is restricted
13 or prohibited.

14 (61) "Securely encased" means in a glove compartment, whether
15 or not locked; snapped in a holster; in a gun case, whether or not
16 locked; in a zippered gun case; or in a closed box or container
17 which requires a lid or cover to be opened for access.

18 (62) "Servicemember" means a member of the uniformed services,
19 as that term is defined in 10 U.S.C. §101(a)(5) as it exists as of
20 January 1, 2011, and any member of the National Guard while on
21 active service, as that term is defined in 10 U.S.C. §101(d)(3) as
22 it exists as of January 1, 2011.

23 (63) "Spring stick" means a spring-loaded metal stick activated

1 by pushing a button which rapidly and forcefully telescopes the
2 weapon to several times its original length.

3 (64) "State institution of higher education" has the same
4 meaning as in section two, article one, chapter eighteen-b of this
5 code.

6 (65) "State or local government office facility" means any
7 public building in which employees of a public agency regularly are
8 present for the purpose of performing their official duties as
9 employees of the public agency, but excludes: (i) Any public
10 building that is used primarily as a shelter, restroom or rest
11 facility; (ii) any public building or portion of a public building
12 that is used as a parking facility for motor vehicles; or (iii) any
13 portion of any other public building accessible only from the
14 exterior of the public building that is used as a restroom.

15 (66) "Superintendent" means the Superintendent of the State
16 Police.

17 (67) "Switchblade knife" means any knife having a
18 spring-operated blade which opens automatically upon pressure being
19 applied to a button, catch or other releasing device in its handle.

20 (68) "The military forces of this state" means the military
21 forces of the state, as defined in section one, article one, chapter
22 fifteen of this code.

23 (69) "Unloaded," with respect to a firearm, means that a

1 firearm is not loaded, as defined in subdivision (34) of this
2 section.

3 (70) "West Virginia law-enforcement agency" has the same
4 meaning as in section one, article twenty-nine, chapter thirty of
5 this code.

6 **§61-7-3. Carrying concealed weapon; prohibited acts; exceptions;**
7 **penalties.**

8 (a) ~~Any~~ Except as otherwise provided by subsections (c) and (d)
9 of this section, any person who lawfully carries a ~~about his or her~~
10 ~~person any~~ concealed deadly weapon without a state license or other
11 ~~lawful authorization established under the provisions issued~~
12 pursuant to section four or five of this code article shall, be
13 whenever he or she is contacted by a law-enforcement officer:

14 (1) Immediately disclose to the law-enforcement officer that he
15 or she is lawfully carrying one or more concealed weapons without a
16 license;

17 (2) Completely and truthfully answer all inquiries by the
18 law-enforcement officer concerning the description, location and
19 number of concealed weapons the person is lawfully carrying;

20 (3) Completely and truthfully answer all requests by the
21 law-enforcement officer for the person to state his or her full
22 legal name, any aliases by which he or she has ever been known, date
23 and place of birth, current home address and any other

1 personally-identifying information or personal biographical history
2 information that may be reasonably necessary for the law-enforcement
3 officer to ascertain the person's true identity and determine
4 whether the person is prohibited by federal law or the laws of this
5 state from carrying the concealed weapon; and

6 (4) Submit to any lawful request of a law-enforcement officer
7 to:

8 (A) Permit the law-enforcement officer to take temporary
9 custody of and secure all deadly weapons in the person's possession
10 during the duration of the contact. Unless the law-enforcement
11 officer arrests the person, the law-enforcement officer shall, upon
12 termination of the contact, return all weapons to the person in the
13 same condition and configuration as they were taken; or

14 (B) Secure all deadly weapons in the person's possession at the
15 direction of the law-enforcement officer during the duration of the
16 contact.

17 (b) Except as otherwise provided by subsections (c) through (e)
18 of this section, a person may not knowingly carry about his or her
19 person any concealed weapon without a state license issued pursuant
20 to section four or five of this article when the person is
21 knowingly:

22 (1) Within any state or local government office facility, or
23 any portion thereof, in which the public agency in control of the

1 state or local government office facility, or portion thereof, has:

2 (A) Posted at every entrance to the state or local government
3 office facility, or portion thereof, signs conforming to the
4 specifications of section fifteen of this article that include the
5 following text: "Pursuant to WV Code §61-7-3(b)(1), carrying a
6 concealed weapon without a license beyond this point is prohibited
7 by law. This facility provides free, secure weapon storage for
8 individuals to check their weapons while in these premises."; and

9 (B) Established at every entrance to the state or local
10 government office facility, or portion thereof, a secure weapon
11 storage area for any person to check and store any weapons the
12 person is carrying while the person is within the posted area and
13 immediately retrieve the same upon leaving the posted area;

14 (2) In any room in which a meeting of either house of the
15 Legislature or any governing body, as defined in section two,
16 article nine-a, chapter six of this code, is occurring, if the
17 applicable body has:

18 (A) Posted at every entrance to the meeting room or gallery,
19 signs conforming to the specifications of section fifteen of this
20 article that include the following text: "Pursuant to WV Code
21 §61-7-3(b)(2), carrying a concealed weapon without a license beyond
22 this point is prohibited by law. This facility provides free, secure
23 weapon storage for individuals to check their weapons while in these

1 premises.”; and

2 (B) Established at every entrance to the meeting room or
3 gallery, a secure weapon storage area for any person to check and
4 store any weapons the person is carrying while the person is within
5 the posted area and immediately retrieve the same upon leaving the
6 posted area;

7 (3) Attending any public event where the sponsor, organizer,
8 promoter or other person in charge of the public event, or an agent
9 thereof, has:

10 (A) Posted at every entrance to the public event, signs
11 conforming to the specifications of section fifteen of this article
12 that include the following text: “Pursuant to WV Code §61-7-3(b) (3),
13 carrying a concealed weapon without a license at this event is
14 prohibited by law. Free, secure weapon storage is available for
15 individuals to check their weapons while attending this event.”; and

16 (B) Established at every entrance to the public event, a secure
17 weapon storage area for any person to check and store weapons while
18 the person is attending the public event and immediately retrieve
19 the same upon leaving the public event;

20 (4) Within any building owned or leased by a higher education
21 institution, or any portion thereof, if:

22 (A) Signs conforming to the specifications of section fifteen
23 of this article are posted at every entrance to the building, or

1 portion thereof, that include the following text: "Pursuant to WV
2 Code §61-7-3(b) (4), carrying a concealed weapon without a license
3 beyond this point is prohibited by law." If the building is subject
4 to the provisions of paragraph (B) of this subdivision, the signs
5 shall also state: "This facility provides free, secure weapon
6 storage for individuals to check their weapons while in these
7 premises."; and

8 (B) If the higher education institution is a public agency for
9 the purposes of section sixteen of this article, the institution
10 provides a secure weapon storage area for any person to check and
11 store any weapons the person is carrying while the person is within
12 the posted area and immediately retrieve the same upon leaving the
13 posted area;

14 (5) On any private property where the private property owner
15 has posted signs conforming to the specifications of section fifteen
16 of this article that include the following text: "Pursuant to WV
17 Code §61-7-3(b) (5), carrying a concealed weapon without a license on
18 these premises is prohibited by law."; or

19 (6) In the private residence or dwelling place of another
20 person or the curtilage thereof.

21 (c) Subsections (a) and (b) of this section do not apply to:

22 (1) Any person who is in his or her residence, temporary place
23 of abode or fixed place of business or in or on any private property

1 the person or any family or household member of the person possesses
2 or controls as an owner, lessee, tenant or licensee;

3 (2) Any person who is not prohibited from possessing firearms
4 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
5 subsection (a), section seven of this article, and is carrying any
6 concealed weapon in a place not described in subdivision (1), (2),
7 (3), (4) or (5), subsection (b) of this section:

8 (A) When the concealed weapon is a firearm that is unloaded
9 and:

10 (i) Broken down in a nonfunctioning state;

11 (ii) Securely encased;

12 (iii) Enclosed in a case, firearm carrying box, shipping box or
13 other container, other than as described in subparagraph (ii) of
14 this paragraph; or

15 (iv) The firearm and ammunition capable of being discharged
16 from that firearm are not both readily accessible for immediate use;
17 or

18 (B) When the concealed weapon is not a firearm and is securely
19 encased in a locked container that renders the concealed weapon not
20 readily accessible for immediate use;

21 (3) When the concealed weapon is securely encased within or
22 upon any vehicle, vessel or other means of transportation or
23 conveyance on land or water; or

1 (4) When the person is:

2 (A) Engaged in lawful hunting, trapping or fishing or traveling
3 to or from a place of lawful hunting, trapping or fishing;

4 (B) Camping, hiking, backpacking, farming, ranching or engaged
5 in any other lawful outdoor activity in which weapons are often
6 carried for recreation or protection;

7 (C) Engaged in lawful target practice; or

8 (D) Engaged in instruction at a place of instruction intended
9 to teach the safe handling, maintenance or use of the concealed
10 weapon.

11 (d) Subsections (a) and (b) of this section and any provisions
12 of this code from which licensees under section four or five of this
13 article are exempt do not apply to:

14 (1) A qualified out-of-state licensee;

15 (2) Any law-enforcement officer;

16 (3) Any person who is not prohibited from possessing firearms
17 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
18 prohibited by section seven of this article from possessing firearms
19 or carrying a concealed weapon in a public place, who is a
20 prosecutor or a duly appointed investigator employed by a
21 prosecutor;

22 (4) Any person who is not prohibited from possessing firearms
23 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not

1 prohibited by section seven of this article from possessing firearms
2 or carrying a concealed weapon in a public place, who is a justice,
3 judge or magistrate, or a senior status justice or judge, who
4 exercises the judicial power of this state under Article VIII of the
5 Constitution of this state or the judicial power of the United
6 States under Article III of the United States Constitution;

7 (5) Any member of the Armed Forces of the United States or the
8 military forces of this state, who is on duty;

9 (6) Any person who is not prohibited from possessing firearms
10 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
11 subsection (a), section seven of this article, who is an officer,
12 agent or employee of this state, any political subdivision of this
13 state, the United States or any other state or political subdivision
14 thereof, who is authorized by the laws of his or her jurisdiction to
15 possess or carry firearms or other weapons in the course of
16 performance of his or her official duties, while he or she is
17 conducting official business;

18 (7) Any person who is not prohibited from possessing firearms
19 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
20 subsection (a), section seven of this article, and has been summoned
21 to the aid of any officer or agent of the United States, this state
22 or any political subdivision of this state pursuant to any federal
23 law or law of this state requiring the person to aid such officer or

1 agent, while the person is acting in the course of performance of
2 the aid he or she has been summoned to render;

3 (8) Any person who is not prohibited from possessing firearms
4 by 18 U.S.C. §922(q), as it exists as of January 1, 2011, not
5 prohibited by section seven of this article from possessing firearms
6 or carrying a concealed weapon in a public place, possesses an
7 expired license that was previously issued pursuant to section four
8 of this article and is eligible to obtain a new license under
9 section four of this article; or

10 (9) Any person who has specific statutory authorization under
11 federal law or another provision of this code to carry firearms or
12 concealed weapons, subject to any conditions or limitations
13 contained in such authorization.

14 (e) Subsection (b) of this section does not apply to any person
15 who is not prohibited from possessing firearms by 18 U.S.C. §922(q),
16 as it exists as of January 1, 2011, and not prohibited by section
17 seven of this article from possessing firearms or carrying a
18 concealed weapon in a public place, when the person is:

19 (1) Carrying the weapon to or from any courtroom, judge's
20 chambers or court proceeding as authorized by section eleven-b of
21 this article;

22 (2) In a public building and is expressly authorized by the
23 officer or agency that controls the public building to carry a

1 concealed weapon without a license in that public building;

2 (3) In a place described in subdivision (2), subsection (b) of
3 this section, and is expressly authorized by the applicable house of
4 the Legislature or governing body to carry a concealed weapon
5 without a license in a meeting of that house of the Legislature or
6 governing body;

7 (4) In a place described in subdivision (3) or (4), subsection
8 (b) of this section, and is expressly authorized by the authorities
9 in charge of the public event or higher education institution to
10 carry a concealed weapon without a license;

11 (5) On private property and has the express permission of the
12 private property owner to carry a concealed weapon without a license
13 on the premises;

14 (6) In or on any parking garage, parking lot or other motor
15 vehicle parking facility; or

16 (7) Carrying a concealed weapon to the extent reasonably
17 necessary to convey the weapon to a secure weapon storage area
18 established pursuant to subdivision (1), (2), (3) or (4), subsection
19 (b) of this section upon entering a place described in subdivision
20 (1), (2), (3) or (4), subsection (b) of this section, check and
21 store the weapon in the secure weapon storage area during the
22 person's presence in a place described in subdivision (1), (2), (3)
23 or (4), subsection (b) of this section and remove the weapon from

1 the secure weapon storage area and convey the weapon outside a place
2 described in subdivision (1), (2), (3) or (4), subsection (b) of
3 this section upon the person's departure from a place described in
4 subdivision (1), (2), (3) or (4), subsection (b) of this section.

5 (f) A licensee under section four or five of this article or
6 person described in subdivision (1) or (8), subsection (d) of this
7 section shall, whenever he or she is carrying a concealed weapon
8 under the authority of that license or engaging in any other
9 activity that, under the laws of this state, would be unlawful in
10 the absence of such license:

11 (1) Carry his or her license on or about his or her person or
12 in a place from which the person may retrieve it within a reasonable
13 amount of time;

14 (2) If the license does not contain the licensee's photograph,
15 carry a driver's license or a photo identification issued by the
16 licensee's state of residence or the United States that contains the
17 licensee's photograph, on or about his or her person or in a place
18 from which the licensee may retrieve it within a reasonable amount
19 of time; and

20 (3) When contacted by a law-enforcement officer, display the
21 license and, if subdivision (2) of this subsection is applicable,
22 the photo identification required by subdivision (2) of this
23 subsection, if the law-enforcement officer requests the person

1 display the license.

2 (g) A licensee under section four or five of this article or
3 any person who is authorized by subsection (c) or (d) of this
4 section to carry a concealed weapon without a license shall,
5 whenever he or she is carrying about his or her person a concealed
6 weapon under the authority of that license or engaging in any other
7 activity that, under the laws of this state, would be unlawful in
8 the absence of a license or other lawful authorization to carry a
9 concealed weapon, shall:

10 (1) When contacted by a law-enforcement officer, accurately and
11 completely answer any inquiries by a law-enforcement officer
12 regarding whether the person is lawfully carrying any concealed
13 weapons and the locations and description of all concealed weapons
14 the person is lawfully carrying about his or her person; and

15 (2) When contacted by a law-enforcement officer, submit to a
16 lawful request of a law-enforcement officer to permit the
17 law-enforcement officer to take temporary custody of and secure all
18 deadly weapons in the person's possession or secure the weapons at
19 the direction of the law-enforcement officer, during the duration of
20 the contact if the law-enforcement officer clearly and expressly
21 informs the person that the officer reasonably believes temporarily
22 disarming the person is necessary for the protection of the person,
23 the officer or another individual. Unless the law-enforcement

1 officer arrests the person, the law-enforcement officer shall, upon
2 termination of the contact, return all weapons to the person in the
3 same condition and configuration as they were taken. This
4 subdivision applies only when a law-enforcement officer is
5 authorized under the laws of this state to disarm a person and may
6 not be construed to create any independent legal authority for any
7 law-enforcement officer to disarm any person who is lawfully
8 carrying any deadly weapon, whether openly or concealed.

9 (h) Any person who violates subsection (f) of this section is
10 guilty of a misdemeanor and, upon conviction thereof, may be fined
11 not more than \$25 for a first offense; and, upon conviction for a
12 second or subsequent offense occurring within five years, fined not
13 less than \$25 nor more than \$250. However, a charge of violating
14 subsection (f) of this section shall be dismissed and a person may
15 not be convicted of violating subsection (f) of this section if the
16 person produces in court or in the office of the arresting officer
17 a license and, if required by subdivision (2), subsection (f) of
18 this section, secondary photo identification, that was valid at the
19 time of the alleged offense.

20 (i) Any person who violates subsection (a), (b) or (g) of this
21 section is guilty of a misdemeanor and, upon conviction thereof,
22 shall be fined not less than one hundred dollars nor more than
23 \$1,000, and may be imprisoned confined in the county jail for not

1 more than ~~twelve~~ six months, or both fined and confined. for the
2 ~~first offense; but upon conviction of a second or subsequent offense~~
3 ~~he or she shall be guilty of a felony and, upon conviction thereof,~~
4 ~~shall be imprisoned in the penitentiary not less than one nor more~~
5 ~~than five years, and fined not less than one thousand dollars nor~~
6 ~~more than five thousand dollars.~~

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

15 (j) (1) For the purposes of applying the provisions of the
16 federal Law-Enforcement Officers Safety Act of 2004, 18 U.S.C.
17 §§926B and 926C, as amended, to this article, any qualified
18 law-enforcement officer under 18 U.S.C. §926B or qualified retired
19 law-enforcement officer under 18 U.S.C. §926C, is authorized to
20 carry concealed weapons in this state without a license pursuant to
21 subdivision (9), subsection (d) of this section.

22 (2) For the purposes of applying the provisions of 18 U.S.C.
23 §926B(b) (2) and 18 U.S.C. §926C(b) (2) to the laws of this state, the

1 Legislature expressly declares and provides that, as a matter of
2 state law, all qualified law-enforcement officers under 18 U.S.C.
3 §926B and all qualified retired law-enforcement officers under 18
4 U.S.C. §926C, are equally entitled to any exemption under the laws
5 of this state from any prohibition or restriction on the possession
6 of firearms on any state or local government property, installation,
7 building, base or park, that is applicable to any person who is
8 licensed to carry concealed weapons pursuant to section four of this
9 article.

10 (k) When any person is charged with any offense under
11 subsection (a) or (b) of this section:

12 (1) The state shall negate the existence of a license under
13 section four or five of this article valid at the time of the
14 alleged offense in the accusation charging commission of the offense
15 and prove beyond a reasonable doubt as part of its case in chief
16 that the defendant had not been issued a license under section four
17 or five of this article that was valid at the time of the alleged
18 offense.

19 (2) When a person asserts any exemption under subsection (c),
20 (d) or (e) of this subsection, except as otherwise provided by
21 subdivision (3) of this subsection, the exemption shall be a defense
22 that the state is not required to negate in the accusation charging
23 commission of the offense or as part of its case in chief at trial.

1 However, once evidence is admitted by the defendant at trial
2 supporting the existence of an exemption, that person shall be
3 required to prove beyond a reasonable doubt that the asserted
4 exemption did not apply to the defendant.

5 (3) When a person asserts an exemption as a qualified
6 out-of-state licensee but did not exhibit at the time of the alleged
7 offense a facially valid license issued by another state and did not
8 claim to be licensed by an issuing authority that provides the means
9 for instantaneous verification of the validity of all such licenses,
10 accessible twenty-four hours a day, the person's status as a
11 qualified out-of-state licensee shall be an affirmative defense that
12 the defendant shall prove by a preponderance of evidence.

13 (1) When any person carries a concealed weapon in a location
14 described in subsection (b) of this section, possesses a deadly
15 weapon in a school safety zone under subdivision (1), subsection
16 (b), section eleven-a of this article, or engages in any activity
17 that, under the laws of this state, would be unlawful in the absence
18 of a license to carry concealed weapons under section four or five
19 of this article or other lawful authorization to carry a concealed
20 weapon, and:

21 (1) Fails to present to a law-enforcement officer for
22 inspection a license to carry concealed weapons under section four
23 or five of this article or evidence of the person's lawful

1 authorization to carry a concealed weapon, the law-enforcement
2 officer shall ask the person whether he or she is licensed under
3 section four or five of this article or possesses any evidence of
4 qualification to lawfully carry a concealed weapon without a
5 license.

6 (2) Claims to be licensed under section four or five of this
7 article, the law-enforcement officer shall query the concealed
8 weapons license verification service established pursuant to
9 subdivision (2), subsection (1), section four of this article. If
10 the inquiry shows the person is licensed, there is a rebuttable
11 presumption the person is licensed but the law-enforcement officer
12 may, at his or her discretion, issue the person a citation for
13 violating subsection (g) of this section. If the inquiry does not
14 indicate the person is licensed under section four or five of this
15 article, there is a rebuttable presumption the person is not
16 licensed under section four or five of this article and the
17 law-enforcement officer shall ask the person whether he or she is
18 lawfully authorized to carry a concealed weapon without a license
19 and possesses evidence of such authorization.

20 (3) Is not licensed under section four or five of this article
21 claims to be a qualified out-of-state licensee and presents a
22 facially valid qualified out-of-state license to carry concealed
23 weapons, the law-enforcement officer may attempt to verify the

1 validity of the qualified out-of-state license to carry concealed
2 weapons and the person's eligibility under subdivision (1),
3 subsection (d) of this section. If the issuing authority provides
4 the means for instantaneous verification of the validity of all such
5 licenses, accessible twenty-four hours a day, the law-enforcement
6 officer shall immediately contact the issuing authority to verify
7 the validity of the license. If the issuing authority verifies the
8 validity of the license and the law-enforcement officer does not
9 have credible information showing the person is not qualified as a
10 qualified out-of-state licensee, there is a rebuttable presumption
11 the person is a qualified out-of-state licensee.

12 (4) Claims to be a qualified out-of-state licensee, does not
13 have in his or her physical possession a facially valid qualified
14 out-of-state license to carry concealed weapons and the issuing
15 authority provides the means for instantaneous verification of the
16 validity of all such licenses, accessible twenty-four hours a day,
17 the law-enforcement officer shall contact the issuing authority
18 claimed by the person to verify whether the person is licensed. If
19 the issuing authority verifies that the person is currently licensed
20 and the law-enforcement officer does not have credible information
21 showing the person is not qualified as a qualified out-of-state
22 licensee, there is a rebuttable presumption the person is a
23 qualified out-of-state licensee but the law-enforcement officer may

1 issue the person a citation for violating subsection (h) of this
2 section. If the issuing authority responds that its records do not
3 show that the named person is currently licensed, there is a
4 rebuttable presumption that the person is not currently licensed by
5 the issuing authority claimed.

6 (5) Claims to be a qualified out-of-state licensee, does not
7 have in his or her physical possession a facially valid qualified
8 out-of-state license to carry concealed weapons and the issuing
9 authority does not provide the means for instantaneous verification
10 of the validity of all such licenses, accessible twenty-four hours
11 a day, there is a rebuttable presumption that the person is not
12 licensed by the issuing authority by which the person claims to be
13 licensed.

14 (6) Claims to be a qualified out-of-state licensee but is
15 registered to vote in this state, has a child of which the person
16 has primary legal custody enrolled in a public elementary or
17 secondary school in this state, receives any form of public
18 assistance from this state, receives a homestead tax exemption on
19 property in this state, has an application pending for a homestead
20 tax exemption on property in this state, is a student at a state
21 institution of higher education who is not charged nonresident
22 tuition or holds a current, valid West Virginia driver's license,
23 instruction permit or nondriver photo identification card issued by

1 the Division of Motor Vehicles showing a residence address in this
2 state, there is a rebuttable presumption that the person is a
3 resident of this state and disqualified as a qualified out-of-state
4 licensee unless the person produces to the court satisfactory
5 evidence of qualification under paragraph (E), subdivision (54),
6 section two of this article.

7 **§61-7-4. Licenses to carry concealed weapons.**

8 (a) Except as otherwise provided in subsection ~~(h)~~ (y) of this
9 section, any ~~person desiring~~ resident of this state who desires to
10 obtain a state license to carry ~~a concealed deadly weapon~~ weapons
11 shall apply to the sheriff of ~~his or her~~ the county for such
12 ~~license, and shall pay to the sheriff, at the time of application,~~
13 ~~a fee of seventy-five dollars, of which fifteen dollars of that~~
14 ~~amount shall be deposited in the courthouse facilities improvement~~
15 ~~fund created by section six, article twenty-six, chapter twenty-nine~~
16 ~~of this code. Concealed weapons permits may only be issued for~~
17 ~~pistols or revolvers.~~ in which he or she resides. Except as
18 otherwise provided in subdivision (2) of this subsection or
19 subsection (y) of this section, any nonresident who desires to
20 obtain a state license to carry concealed weapons may apply to the
21 sheriff of any county. Each applicant shall, at the time of
22 application, pay the sheriff a nonrefundable license fee computed
23 pursuant to subsection (n) of this section. Each applicant shall

1 file with the sheriff, a complete application, ~~as~~ in writing,
2 verified under oath and notarized as provided in subsection (e) of
3 this section, on the uniform application form prepared by the
4 ~~superintendent of the West Virginia state police, in writing, duly~~
5 ~~verified~~ Attorney General pursuant to subsection (i) of this
6 section, which sets forth shall specify only the following licensing
7 requirements:

8 (1) A complete description by the applicant of the applicant's:

9 (A) Full name;

10 (B) All prior legal names and aliases;

11 (C) Date and place of birth;

12 (D) Country of citizenship;

13 (E) Social Security number, and a description of the
14 applicant's whose submission by the applicant shall be optional;

15 (F) If the applicant has established a Voluntary Appeal File
16 with the Federal Bureau of Investigation pursuant to 28 C.F.R.
17 §25.10(g), the applicant's Voluntary Appeal File unique personal
18 identification number, whose submission by the applicant shall be
19 optional;

20 (G) If the applicant is a naturalized citizen of the United
21 States, the applicant's United States naturalization number;

22 (H) If the applicant is an alien, the applicant's United
23 States-issued alien or admission number and any other information

1 designated by the Attorney General on the application form necessary
2 to determine the applicant's immigration status and whether the
3 applicant is prohibited by federal law from possessing,
4 transporting, shipping or receiving firearms on the basis of
5 immigration status;

6 (I) Driver's license, commercial driver's license, instruction
7 permit or nondriver state photo identification number and the
8 issuing state;

9 (J) Residence address, which, unless the applicant is subject
10 to the provisions of subsection (s) of this section, shall be
11 consistent with the residence address listed by the applicant with
12 the issuing agency of the driver's license or nondriver state
13 identification card the applicant stated pursuant to paragraph (I)
14 of this subdivision;

15 (K) Mailing address if different from the residence address
16 specified pursuant to paragraph (J) of this subdivision;

17 (L) Telephone numbers and e-mail address, if available, at
18 which the applicant desires to be contacted about any questions
19 pertaining to the application or to receive notice of the
20 disposition of the application, whose submission by the applicant
21 shall be optional;

22 (M) Sex;

23 (N) Race;

1 (O) Height;

2 (P) Weight as of the date of the application or any time within
3 the thirty days preceding the date of the application;

4 (Q) Natural hair color;

5 (R) Natural eye color;

6 (S) Other physical features of and descriptive information
7 about the applicant necessary to determine the applicant's
8 eligibility for licensure and performance of the investigation and
9 background checks required by subsection (b) of this section, as
10 specified by the Attorney General on the uniform application form;

11 (T) Desired license class; and

12 (U) If the applicant holds a current, valid license under this
13 section, the class and expiration date of the licensee's current
14 license, the county in which the licensee's current license was
15 issued, if different from the county in which the licensee is
16 applying for renewal or modification, and, if the current license
17 has a unique license number assigned pursuant to subdivision (5),
18 subsection (h) of this section, the licensee's current license
19 number;

20 (2) That, on the date the application is made, the applicant
21 is:

22 (A) A bona fide resident of this state and of the county in
23 which the application is made and, unless the applicant is subject

1 to subsection (s) of this section, has a valid driver's license,
2 commercial driver's license, instruction permit or other
3 state-issued nondriver photo identification issued by the Division
4 of Motor Vehicles showing such the applicant's residence address in
5 this state;

6 (B) A servicemember:

7 (i) Who is domiciled in this state and the county in which the
8 application is made but whose permanent duty station is located
9 outside this state; or

10 (ii) Who is domiciled outside this state, whose permanent duty
11 station is located within this state or an adjoining state and who
12 maintains a place of abode in this state and the county in which the
13 application is made;

14 (C) A nonresident who:

15 (i) Resides within the United States or is a citizen of the
16 United States;

17 (ii) Unless the applicant is a citizen of the United States who
18 resides outside the United States, has a valid driver's license or
19 other photo identification issued by the applicant's state of
20 residence, showing the applicant's residence address; and

21 (iii) If the applicant is a resident of a state the Attorney
22 General has determined, pursuant to paragraph (A), subdivision (3),
23 subsection (u) of this section, grants full faith and credit to

1 licenses issued under this section:

2 (I) The Attorney General has listed the state in which the
3 applicant resides as a state that clearly bars the applicant from
4 lawfully using a license issued pursuant to this section for the
5 purpose of carrying a handgun or concealed weapon in the applicant's
6 state of residence, pursuant to any licensing law of the applicant's
7 state of residence, as an alternative to licensure by the
8 applicant's state of residence. The Attorney General shall, not less
9 than once annually, review the statutory and case law of every state
10 listed pursuant to paragraph (A), subdivision (3), subsection (u) of
11 this section and publish in the State Register a list of all states
12 in which the Attorney General does not find either clear statutory
13 language or an on-point holding of a statewide appellate court in a
14 published opinion of mandatory precedential value that bars a
15 resident of that state other than persons similarly situated to
16 persons described in subparagraphs (ii) through (iv), paragraph (E),
17 subdivision (54), section two of this article, from using a license
18 issued by another state as an alternative to licensure within that
19 state, and publish a list of these states in the State Register and
20 distribute copies of this list to the superintendent and each
21 sheriff;

22 (II) The applicant holds a current, valid qualified
23 out-of-state license or permit to carry concealed weapons, issued by

1 the applicant's state of residence, and encloses a full-color
2 photocopy of it with the application;

3 (III) The applicant is a full-time student at any higher
4 education institution located in this state and presents proof of
5 his or her full-time student status to the sheriff;

6 (IV) The applicant regularly conducts a lawful trade or
7 business within this state in which the applicant devotes
8 significant time, attention and labor to that trade or business with
9 the principal objective of livelihood and profit and presents
10 satisfactory evidence thereof to the sheriff;

11 (V) The applicant is regularly employed in a position in which
12 the applicant is required to carry a concealable weapon in this
13 state in the course of employment and presents satisfactory evidence
14 of such employment to the sheriff; or

15 (VI) The applicant or a family or household member of the
16 applicant owns real property in the county in which the applicant
17 applies for licensure on which the applicant maintains a seasonal or
18 temporary residence and includes with the application a current,
19 certified document from the assessor of that county, on a form
20 prescribed by the Attorney General, verifying the ownership of the
21 real property; or

22 (D) Is the spouse of any person described in paragraph (B) of
23 this subdivision or clauses (III) through (VI), subparagraph (iii),

1 paragraph (C) of this subdivision, who is licensed under this
2 section or has an application for licensure under this section
3 pending before the sheriff, and applies for licensure in the county
4 in which his or her spouse applied or has been licensed;

5 (3) That the applicant is at least twenty-one years of age ~~or~~
6 ~~older: Provided, That any individual who is less than 21 years of~~
7 ~~age and possesses a properly issued concealed weapons license as of~~
8 ~~the effective date of this article shall be licensed to maintain his~~
9 ~~or her concealed weapons license notwithstanding the provisions of~~
10 ~~this section requiring new applicants to be at least twenty-one~~
11 ~~years of age: Provided, however, That upon a showing of any~~
12 ~~applicant who is eighteen years of age or older, that he or she is~~
13 ~~required to carry a concealed weapon as a condition for employment,~~
14 ~~and presents satisfactory proof to the sheriff thereof, then he or~~
15 ~~she shall be issued a license upon meeting all other conditions of~~
16 ~~this section. Upon discontinuance of employment that requires the~~
17 ~~concealed weapons license, if the individual issued the license is~~
18 ~~not yet twenty-one years of age, then the individual issued the~~
19 ~~license is no longer eligible and must return his or her license to~~
20 ~~the issuing sheriff~~ if he or she is applying for a Class 1, 2 or 3
21 license or at least eighteen years of age and, on the date the
22 application is made, less than twenty-one years of age, if he or she
23 is applying for a Class 4 or 5 license;

1 (4) That the applicant is not ~~addicted to alcohol, a controlled~~
2 ~~substance or a drug and is not an unlawful user thereof~~ prohibited
3 by federal law, including without limitation 18 U.S.C. §922(g) or
4 (n), from possessing, transporting, shipping or receiving firearms;

5 (5) That the applicant ~~has~~ is not been convicted of a felony or
6 ~~of an act of violence involving the misuse of a deadly weapon~~
7 prohibited by section seven of this article from possessing
8 firearms;

9 ~~(6) That the applicant has not been convicted of a misdemeanor~~
10 ~~offense of assault or battery either under the provisions of section~~
11 ~~twenty-eight, article two of this chapter or the provisions of~~
12 ~~subsection (b) or (c), section nine, article two of this chapter in~~
13 ~~which the victim was a current or former spouse, current or former~~
14 ~~sexual or intimate partner, person with whom the defendant has a~~
15 ~~child in common, person with whom the defendant cohabits or has~~
16 ~~cohabited, a parent or guardian, the defendant's child or ward or a~~
17 ~~member of the defendant's household at the time of the offense; or~~
18 ~~a misdemeanor offense with similar essential elements in a~~
19 ~~jurisdiction other than this state;~~

20 ~~(7) That the applicant is not under indictment for a felony~~
21 ~~offense or is not currently serving a sentence of confinement,~~
22 ~~parole, probation or other court-ordered supervision imposed by a~~
23 ~~court of any jurisdiction or is the subject of an emergency or~~

1 ~~temporary domestic violence protective order or is the subject of a~~
2 ~~final domestic violence protective order entered by a court of any~~
3 ~~jurisdiction;~~

4 ~~(8) That the applicant is physically and mentally competent to~~
5 ~~carry such weapon;~~

6 ~~(9) That the applicant has not, been adjudicated to be mentally~~
7 ~~incompetent;~~

8 (6) That the applicant is not prohibited by subsection (a),
9 section seven of this article from carrying a concealed weapon
10 outside his or her residence, temporary place of abode, fixed place
11 of business or other real property owned, leased or lawfully
12 possessed by the person;

13 (7) That the applicant is not prohibited by subdivision (1),
14 subsection (c), section seven of this article from carrying a
15 concealed weapon in a public place. For the purposes of this
16 subdivision, the exceptions specified in paragraphs (A) and (B),
17 subdivision (2), subsection (c), section seven of this article, do
18 not apply to the determination of whether a person fulfills the
19 requirements of this subdivision;

20 (8) That the applicant does not suffer a physical infirmity
21 which prevents the safe handling of a handgun;

22 (9) That, on the date of application, the applicant has:

23 (A) Proof of actual or corrected vision rated at 20/40 or

1 better, as demonstrated by:

2 (i) An original or photocopy of an affidavit of an
3 ophthalmologist or optometrist licensed and practicing in either
4 this state or the applicant's state of residence, issued upon the
5 basis of an examination of the applicant conducted within one year
6 immediately preceding the date of application, attesting to the
7 applicant's actual or corrected vision, which the applicant shall
8 enclose with the application; or

9 (ii) Any acceptable means prescribed by the West Virginia
10 Sheriffs' Bureau or, if the West Virginia Sheriffs' Bureau has made
11 no designation pursuant to this subparagraph, the Attorney General,
12 that provides reasonable assurance that the applicant has actual or
13 corrected vision rated at 20/40 or better;

14 (iii) Any other means acceptable to the sheriff that provides
15 reasonable assurance that the applicant has actual or corrected
16 vision rated at 20/40 or better;

17 (B) A current, valid instruction permit or driver's license
18 issued under chapter seventeen-b of this code, other than a Class G
19 driver's license or instruction permit issued pursuant to article
20 two-b, chapter seventeen-b of this code or a bioptic telescopic lens
21 driver's license issued under prior law, or a current, valid
22 commercial driver's license issued under chapter seventeen-e of this
23 code; or

1 (C) A current, valid license to drive or operate motor
2 vehicles, issued by a state listed by the West Virginia Sheriffs'
3 Bureau or, if the West Virginia Sheriffs' Bureau has not promulgated
4 a list of qualifying states pursuant to this paragraph, the Attorney
5 General, as a state that; (i) Has vision standards that, in all
6 material respects, are greater than or equal to the vision
7 requirements to obtain a driver's license in this state; and (ii)
8 has substantially similar requirements for vision screenings of all
9 renewal driver's license applicants, unless the license is a bioptic
10 telescopic lens license similar to a Class G driver's license issued
11 by this state pursuant to article two-b, chapter seventeen-b of this
12 code. The Attorney General shall research the laws, administrative
13 rules or regulations, policies and practices of the licensing
14 agencies of other states and make preliminary recommendations to the
15 West Virginia Sheriffs' Bureau regarding which states qualify under
16 this paragraph. Not less than once annually, the West Virginia
17 Sheriff's Bureau shall, taking into account the research and
18 recommendations of the Attorney General, determine which states'
19 licenses to drive or operate motor vehicles, if any, qualify under
20 this paragraph. The Attorney General shall publish the list of
21 qualifying states in the State Register, distribute copies of the
22 list of qualifying states to the superintendent and each sheriff and
23 make the list of qualifying states available to the public on the

1 Internet and in printed form upon request;

2 (10) That the applicant has qualified under the minimum
3 requirements ~~set forth~~ specified in subsection (d) of this section
4 ~~for handling and firing the weapon: *Provided*, That this requirement~~
5 ~~shall be waived in the case of a renewal applicant who has~~
6 ~~previously qualified~~ demonstrating competence with a handgun based
7 upon the class of license sought by the applicant;

8 (11) That, as of the date the application is made, the
9 applicant has been furnished a copy of the current compendium of
10 West Virginia weapons and self-defense laws described in subsection
11 (w) of this section and has read and is knowledgeable of its
12 contents. However, this subdivision does not apply to any
13 application made prior to the publication of the initial compendium
14 of West Virginia weapons and self-defense laws described in
15 subsection (w) of this section;

16 ~~(11)~~ (12) That the applicant authorizes the sheriff of the
17 county, or his or her designee, to whom the application is made to
18 conduct an investigation relative to the information contained in
19 the application;

20 (13) That the applicant authorizes the sheriff to whom the
21 application is made and the superintendent to examine any records,
22 including mental health records, substance abuse treatment records,
23 military service records and judicial records kept under seal,

1 pertaining to the applicant's eligibility for a license to carry
2 concealed weapons;

3 (14) That, except as otherwise restricted by federal law, the
4 applicant waives any right or privilege to maintain the secrecy of
5 mental health or substance abuse treatment records or any right to
6 conceal any fact the applicant may have the right or privilege of
7 concealing resulting from any law pertaining to the confidentiality
8 of such records, which waiver is limited to the background
9 investigation for determining the applicant's eligibility to receive
10 a license to carry concealed weapons and expires upon completion of
11 the background checks required by subsection (b) of this section and
12 the decision of the sheriff to issue or deny a license;

13 (15) Full-color photocopies of:

14 (A) The driver's license or nondriver state identification card
15 the applicant stated pursuant to paragraph (I), subdivision (1) of
16 this subsection;

17 (B) Documentation of the applicant's fulfillment of the
18 requirements of subdivision (3) of this subsection if the applicant
19 fulfills subdivision (3) of this subsection other than by paragraph
20 (A) of that subdivision;

21 (C) If the applicant is an alien:

22 (i) The applicant's:

23 (I) United States government-issued Permanent Resident Card

1 I-551 or its equivalent successor identification; or

2 (II) Other United States government-issued evidence of lawful
3 admission to the United States, which shall include the applicant's
4 category of admission, if the applicant has not been lawfully
5 admitted for permanent residence; and

6 (ii) If the applicant is an alien who has not been lawfully
7 admitted for permanent residence, evidence of compliance with the
8 provisions of 18 U.S.C. §922 (g) (5) and (y) (2), 27 C.F.R. §478.32
9 and any other applicable federal law or regulation regulating the
10 possession, transportation, shipment or receipt of a firearm by an
11 alien; and

12 (D) If the applicant is otherwise ineligible for licensure due
13 to a criminal conviction but the conviction has been expunged, set
14 aside or vacated or the person has been pardoned or otherwise had
15 firearm rights restored, a copy of the relevant pardon, expungement
16 or other order restoring firearm rights, unless the applicant is a
17 renewal applicant who previously provided the required documentation
18 under this paragraph in connection with a prior application under
19 this section made on or after the effective date of the amendments
20 to this section enacted during the 2011 Regular Session of the
21 Legislature;

22 (16) (A) Two passport-regulation color photographs of the
23 applicant taken within thirty days of the date of the application,

1 if the applicant applies by mail; or

2 (B) A digital photograph of the applicant taken by the sheriff
3 at the time of application, if the applicant applies in person; and

4 (17) If the applicant is applying for a Class 1 license, does
5 not hold a current, valid Class 1 license under this section and
6 does not possess a Class 1 license that, including any extension
7 pursuant to subdivision (2), subsection (g) of this section, expired
8 within six months prior to the date of a renewal application, a full
9 set of the applicant's fingerprints, which shall be administered by
10 electronic fingerprint imaging by any West Virginia law-enforcement
11 agency or any private contractor designated by the West Virginia
12 Sheriff's Bureau or by fingerprint card by any law-enforcement
13 agency in the United States or any private contractor designated by
14 the West Virginia Sheriff's Bureau.

15 (b) (1) The sheriff to whom an application is made under this
16 section shall conduct an investigation ~~including a nationwide~~
17 ~~criminal background check, in order to verify that~~ to determine
18 whether the information required in subdivisions (1), (2), (3), (5),
19 ~~(6), (8), and (9),~~ statements made by the applicant in the
20 application relative to the criteria specified in subsection (a) of
21 this section ~~is~~ are, in all material respects, true and correct, and
22 whether the applicant is qualified for licensure under this section.

23 (2) The sheriff shall, as part of the investigation required by

1 subdivision (1) of this subsection:

2 (A) Conduct a state and national criminal history records
3 check, domestic violence protective order check, immigration records
4 check and mental health records check of each applicant to determine
5 whether the applicant is qualified for licensure under this section;
6 and

7 (B) Investigate and make a reasonable effort to verify that
8 each applicant has met the applicable requirements of subsection (d)
9 of this section for demonstrating competence with a handgun based
10 upon the class of license sought by the applicant. As part of any
11 investigation of a Class 1, 2 or 4 applicant required by this
12 paragraph, the sheriff shall attempt to verify that the instructor
13 of any course of instruction subject to the documentation
14 requirements of paragraph (D), subdivision (4), subsection (d) of
15 this section, complied with those requirements.

16 (3) The sheriff shall, as part of the background checks
17 required by paragraph (A), subdivision (2) of this subsection,
18 conduct on each applicant:

19 (A) A state criminal history records check through the State
20 Police Criminal Identification Bureau established pursuant to
21 section twenty-four, article two, chapter fifteen of this code;

22 (B) A state mental health records check through the central
23 state mental health registry established pursuant to article seven-a

1 of this chapter;

2 (C) A query of the domestic violence database established
3 pursuant to section twenty-one, article one, chapter fifty-one of
4 this code;

5 (D) A national criminal history records check by obtaining
6 reports on each applicant from:

7 (i) The National Crime Information Center; and

8 (ii) The Interstate Identification Index maintained by the
9 Federal Bureau of Investigation;

10 (E) If the applicant is an alien, a federal Immigration Alien
11 Query. If the applicant is an alien who has not been lawfully
12 admitted for permanent residence, in addition to the Immigration
13 Alien Query, the sheriff shall, if any doubt exists relating to
14 whether the alien may lawfully purchase a firearm under federal law,
15 consult with the United States Department of Homeland Security,
16 United States Department of Justice, United States Department of
17 State or other federal agency to confirm whether, under federal law,
18 the alien may lawfully purchase or possess a firearm in the United
19 States;

20 (F) A query of the National Instant Criminal Background Check
21 System established pursuant to Section 103 of the Brady Handgun
22 Violence Protection Act, Public Law 103-159, §103, 107 Stat. 1536
23 (1993), reprinted in 18 U.S.C. §922 notes, to determine whether the

1 applicant is prohibited from possessing or transporting firearms by
2 federal law, including without limitation 18 U.S.C. §922(g) or (n),
3 or section seven of this article;

4 (G) If the applicant is an applicant for a Class 1 license who
5 is required to submit fingerprints pursuant to subdivision (17),
6 subsection (a) of this section, fingerprint-based state and national
7 criminal and mental health background checks, including a
8 fingerprint-based national criminal background check report from the
9 Federal Bureau of Investigation; and

10 (H) Any other records checks determined by the West Virginia
11 Sheriffs' Bureau or, if the West Virginia Sheriffs' Bureau has made
12 no designation pursuant to this paragraph or a change in federal law
13 has rendered the most recent designation inadequate, the Attorney
14 General, necessary to preserve the designation of licenses issued
15 under this section on or after the effective date of the amendments
16 to this section enacted during the 2011 Regular Session of the
17 Legislature, other than licenses extended pursuant to subdivision
18 (2), subsection (g) of this section, as a qualifying alternative
19 under 18 U.S.C. §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and other
20 applicable federal laws governing background checks on purchasers of
21 firearms from licensed dealers, as they may be amended from time to
22 time, and to maximize the eligibility of each class of license for
23 reciprocal recognition by the greatest number of other states.

1 (4) The background check requirements of this subsection, other
2 than fingerprinting of Class 1 applicants, are equal for all
3 applicants, regardless of whether the applicant is applying as a
4 renewal or nonrenewal applicant.

5 (5) The Attorney General shall petition the United States
6 Bureau of Alcohol, Tobacco, Firearms and Explosives or its successor
7 to list licenses issued under this section on or after the effective
8 date of the amendments to this section enacted during the 2011
9 Regular Session of the Legislature, other than licenses extended
10 pursuant to subdivision (2), subsection (g) of this section, as a
11 qualifying alternative pursuant to 18 U.S.C. §922(t)(3)(A) and 27
12 C.F.R. §478.102(d)(1) and seek to maintain this listing.

13 (c) (1) There is hereby created in the State Treasury a special
14 revenue revolving fund account known as the State Police Concealed
15 Weapons License Background Check Administration Fund, which shall be
16 an interest-bearing account. This fund shall consist of twenty-five
17 percent of each license fee collected by the sheriffs pursuant to
18 subsection (a) of this section and subsection (b), section five of
19 this article, any funds appropriated into the fund by the
20 Legislature and any interest accrued to the fund. The balance
21 remaining in this fund at the end of each fiscal year shall remain
22 in the fund and shall not revert to the state General Revenue Fund.
23 The sheriff shall forward twenty-five percent of each license fee

1 the sheriff collects pursuant to subsection (a) of this section and
2 subsection (b), section five of this article, excluding any
3 fingerprinting fees for Class 1 applicants under subdivision (10),
4 subsection (n) of this section, to the State Treasurer, not later
5 than the tenth day of the month following the month of collection,
6 and indicate that the remittance is for deposit into the State
7 Police Concealed Weapons License Background Check Administration
8 Fund. The State Treasurer shall deposit all remittances received
9 from sheriffs pursuant to under this subdivision into the State
10 Police Concealed Weapons License Background Check Administration
11 Fund. The State Police Concealed Weapons License Background Check
12 Administration Fund shall be expended from collections rather than
13 appropriations by the Legislature on order of the superintendent
14 solely for the purpose of defraying the costs incurred by the State
15 Police in the performance of state criminal and mental health
16 background checks, as provided in subsection (b) of this section, on
17 applicants for licenses under this section or section five of this
18 article. Sixty dollars of the application fee and any fees for
19 replacement of lost or stolen licenses received by the sheriff shall
20 be deposited by

21 (2) The sheriff shall deposit the remainder of each license fee
22 the sheriff collects pursuant to subsection (a) of this section and
23 subsection (b), section five of this article, after making the

1 required remittances under subdivision (1) of this subsection, and
 2 the whole amount of all other fees the sheriff collects in relation
 3 to licenses to carry concealed weapons, into a Concealed Weapons
 4 License Administration Fund. ~~Such~~ The sheriff shall administer the
 5 Concealed Weapons License Administration Fund, which shall be
 6 ~~administered by the sheriff and shall take the form of an interest~~
 7 ~~bearing~~ interest-bearing account with any interest earned to be
 8 compounded to the fund. ~~Any funds deposited in this concealed weapon~~
 9 ~~license administration~~ Each county's Concealed Weapons License
 10 Administration Fund shall be a perpetual, revolving fund are to that
 11 ~~be expended by the sheriff~~ may expend only to pay for the costs
 12 incurred by the sheriff associated with ~~issuing concealed weapons~~
 13 ~~licenses~~ administering this section and section five of this
 14 article. Any surplus in the fund on hand at the end of each fiscal
 15 year ~~may be expended for other law-enforcement purposes or operating~~
 16 ~~needs of the sheriff's office, as the sheriff may consider~~
 17 ~~appropriate~~ shall remain in the fund, shall not revert to the
 18 General Fund of any county or county sheriff and shall be used only
 19 to pay future costs payable from the fund as provided by this
 20 section.

21 (d) (1) All persons applying for a license ~~must complete a~~
 22 ~~training course in handling and firing~~ to carry concealed weapons
 23 shall demonstrate competence with a handgun ~~The successful~~

1 ~~completion of any of the following courses fulfills this training~~
2 ~~requirement as prescribed by this subsection based upon the class of~~
3 ~~license the applicant seeks. An applicant for a Class 3 or 5~~
4 ~~license shall demonstrate basic competence with a handgun under~~
5 ~~subdivision (2) of this subsection. An applicant for a Class 1, 2 or~~
6 ~~4 license shall demonstrate basic competence with a handgun under~~
7 ~~subdivision (2) of this subsection and demonstrate competence in~~
8 ~~handling and firing a handgun as prescribed by subdivision (4) of~~
9 ~~this subsection.~~

10 (2) A person may fulfill the requirement of demonstrating basic
11 competence with a handgun by any one of the following:

12 ~~(1)~~ (A) Completion of any official National Rifle Association
13 handgun safety or training course;

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

20 ~~(3)~~ (C) Completion of any handgun training or safety course or
21 class conducted by a handgun instructor certified ~~as such~~ by any
22 branch of the Armed Forces of the United States, the military forces
23 of this state, any federal, state or local law-enforcement agency,

1 the state in which the course or class was conducted or by the
2 National Rifle Association;

3 ~~(4)~~ (D) Completion of any handgun training or safety course or
4 class conducted by any branch of the Armed Forces of the United
5 States or the military reserve or National Guard forces of this
6 state;

7 (E) Evidence of qualification prior to March 8, 1996, under the
8 minimum standards for demonstrating competence with a handgun in
9 effect at the time of qualification, prescribed by the Department of
10 Natural Resources pursuant to the former enactment of subdivision
11 (8), subsection (a) of this section, as it existed at any time
12 between July 7, 1989, and March 8, 1996, the former enactment of
13 subdivision (5), subsection (b), section two of this article, as it
14 existed between June 6, 1988, and July 6, 1989, or the former
15 enactment of subsection (e), section two of this article, as it
16 existed between June 6, 1975, and June 5, 1988;

17 (F) Completion of any law-enforcement handgun safety or
18 training course or class offered for security guards, investigators,
19 special deputies or any division or subdivision of law-enforcement
20 or security enforcement;

21 (G) Experience in organized handgun shooting competition;

22 (H) Proof of current service in or an honorable discharge or a
23 general discharge under honorable conditions from any branch of the

1 Armed Forces of the United States or the military forces of this
2 state;

3 (I) Evidence the applicant currently holds or was previously
4 issued any license pursuant to this section or any former enactment
5 of section two of this article as it existed at any time between
6 June 6, 1975, and July 6, 1989;

7 (J) Evidence the applicant currently holds or was previously
8 issued a qualified out-of-state license or permit to carry concealed
9 weapons, by a state listed by the West Virginia Sheriffs' Bureau
10 pursuant to this paragraph as having requirements for demonstrating
11 competence with a handgun that are substantially similar to the
12 requirements of this subsection for the class of license being
13 sought, unless the license was a temporary or emergency license not
14 subject to the issuing state's demonstration of competence
15 requirement and the applicant was not subsequently issued a regular
16 license subject to the applicable demonstration of competence
17 requirement. The Attorney General shall research the laws,
18 administrative rules or regulations, policies and practices of the
19 licensing agencies of other states and make preliminary
20 recommendations to the West Virginia Sheriffs' Bureau regarding each
21 state's qualifications under this paragraph. Not less than once
22 annually, the West Virginia Sheriff's Bureau shall, taking into
23 consideration the research and recommendations of the Attorney

1 General, determine which states have requirements for demonstrating
2 competence with a handgun as a prerequisite for the issuance of a
3 qualified out-of-state license or permit to carry concealed weapons
4 that are substantially similar to the requirements of this
5 subdivision for each class of license and publish a list of
6 qualifying states for each class of license. The Attorney General
7 shall publish each list in the State Register, distribute copies of
8 each list to the superintendent and each sheriff and make each list
9 available to the public on the Internet and in printed form upon
10 request;

11 (K) Evidence the applicant is an honorably retired
12 law-enforcement officer exempt from payment of licensing fees
13 pursuant to subdivision (5), subsection (n) of this section;

14 (L) Completion of any law-enforcement agency handgun training
15 course and qualifying to carry a handgun in the course of normal
16 law-enforcement duties;

17 (M) Completion of any handgun safety or training course or
18 class approved by the West Virginia Sheriffs' Bureau; or

19 (N) Completion of any handgun safety or training course or
20 class that the sheriff considers adequate.

21 (3) Evidence of qualification under subdivision (2) of this
22 subsection may be documented by:

23 (A) A photocopy of a certificate of completion of any of the

1 courses or classes ~~or~~ specified in subdivision (2) of this
2 subsection;

3 (B) An affidavit from the instructor, school, club,
4 organization or group that conducted or taught ~~said a~~ a course or
5 class specified in subdivision (2) of this subsection, attesting to
6 the successful completion of the course or class by the applicant;
7 ~~or a~~

8 (C) An original or a copy of any document indicating
9 participation in any firearms shooting competition;

10 (D) An original or a copy of a United States Department of
11 Defense Form 214 (DD-214) indicating an honorable discharge or
12 general discharge under honorable conditions, a certificate of
13 completion of basic training or any other document demonstrating
14 proof of the applicant's current status in the Armed Forces of the
15 United States or an honorable discharge or a general discharge under
16 honorable conditions, as prescribed by paragraph (H), subdivision
17 (2) of this subsection;

18 (E) An original or a full-color copy of any license described
19 in paragraph (I) or (J), subdivision (2) of this subsection;

20 (F) A copy of any document which shows successful completion of
21 the a course or class ~~shall constitute~~ described in subdivision (2)
22 of this subsection; or

23 (G) Any other reasonable, competent and credible evidence of

1 qualification under subdivision (2) of this ~~section~~ subsection.

2 (4) (A) An applicant for a Class 1, 2 or 4 license shall
3 demonstrate competence in handling and live firing a handgun by
4 including with any application for a Class 1, 2 or 4 license:

5 (i) A copy of a current or expired Class 1, 2 or 4 license
6 under this section;

7 (ii) Documentation of having been previously issued a Class 1,
8 2 or 4 license under this section;

9 (iii) An original or photocopy of a notarized affidavit by a
10 certified handgun instructor eligible to offer any course or class
11 described in paragraph (A), (B), (C), (D), (F), (L), (M) or (N),
12 subdivision (2) of this subsection, on a form prescribed by the
13 Attorney General, attesting that the applicant successfully
14 completed the live fire shooting exercises and passed the live fire
15 shooting proficiency test specified in paragraph (B) of this
16 subdivision; or

17 (iv) Any other evidence of demonstrated competence in handling
18 and live firing a handgun prescribed by the West Virginia Sheriffs'
19 Bureau. Before the West Virginia Sheriffs' Bureau may authorize any
20 alternative forms of demonstrated competence in handling and live
21 firing a handgun under this subparagraph, it shall, in consultation
22 with the Attorney General and any individuals or organizations in
23 regular communication with the Attorney General about concealed

1 weapons license issues, consult the Attorney General or other agency
2 responsible for administering the concealed weapons license
3 reciprocity laws of states in which reciprocal recognition of
4 licenses issued under this section is conditioned on the nature of
5 this state's requirements for demonstrating competence in handling
6 and firing a handgun. The West Virginia Sheriffs' Bureau may
7 authorize any alternative forms of demonstrated competence in
8 handling and live firing a handgun under this subparagraph only if
9 the West Virginia Sheriffs' Bureau, in consultation with the
10 Attorney General, determines that the proposed alternative will not
11 impair the reciprocal recognition of any Class 1, 2 or 4 license
12 under this section in any other state. This subparagraph shall be
13 narrowly construed in light of the Legislature's intent expressed in
14 subdivision (47), section one of this article.

15 (B) A certified handgun instructor eligible to offer any course
16 or class described in paragraph (A), (B), (C), (D), (F), (L), (M) or
17 (N), subdivision (2) of this subsection, may issue an affidavit, on
18 a form prescribed by the Attorney General, certifying that a person
19 who has met the requirements of subdivision (2) of this subsection
20 for demonstrating basic competence with a handgun has:

21 (i) Spent at least two hours on a handgun shooting range within
22 this state;

23 (ii) In the course of the shooting proficiency test described

1 in subparagraph (iii) of this paragraph and preparatory shooting
2 exercises held at the shooting range during the same day as the
3 testing, shot at least one hundred rounds of live, factory-loaded
4 ammunition of a caliber not less than .380 from a semiautomatic
5 pistol at one or more B-27 silhouette targets or equivalent targets;
6 and

7 (iii) In the course of a shooting proficiency test administered
8 by the instructor while the applicant was in the actual physical
9 presence of and under the direct personal supervision of the
10 instructor, successfully fired twenty rounds of live, factory-loaded
11 ammunition of a caliber not less than .380 from a semiautomatic
12 pistol, from a distance of not less than twenty-one feet, at a B-27
13 silhouette target or an equivalent target and hit the silhouette
14 portion of the target with at least 15 of the 20 rounds of
15 ammunition. An applicant who fails to hit the silhouette portion of
16 the target with at least fifteen of the twenty rounds of ammunition
17 fired during a test may retake the test an unlimited number of times
18 until the applicant hits the silhouette portion of the target with
19 at least fifteen of the twenty rounds of ammunition expended in a
20 single test.

21 (C) During each session of live fire shooting exercises and
22 testing under paragraph (B) of this subdivision, an instructor may
23 not have more than five students per range officer engaged in live

1 firing exercises.

2 (D) Any instructor who attests to the successful completion of
3 a live fire shooting exercise and proficiency test pursuant to
4 paragraph (B) of this subdivision shall maintain records certifying
5 that, in his or her actual physical presence and under his or her
6 direct personal supervision, he or she observed the student safely
7 handle a handgun and complete the live fire shooting exercises and
8 pass the live fire shooting proficiency test prescribed in paragraph
9 (B) of this subdivision.

10 (5) A sheriff may not require an applicant to demonstrate
11 competence with a handgun other than as provided in subdivisions (2)
12 through (4) of this subsection. Any demonstration of competence
13 under subdivision (2) or (4) of this subsection does not expire.

14 (6) All courses of instruction under subdivision (2) of this
15 subsection and live fire shooting exercises and testing under
16 subdivision (4) of this subsection shall reasonably accommodate any
17 physical disability of any trainee who is mentally and physically
18 capable of safely handling and firing a handgun with at least one
19 hand.

20 (7) The Attorney General shall compile and make available to
21 the public on the Attorney General's website searchable databases of
22 firearm training schools or instructors who regularly offer to the
23 public handgun safety or training courses that fulfill the

1 requirements of subdivision (2) or (4) of this subsection.
2 Participation in these databases shall be voluntary and without
3 charge. These databases shall be geographically indexed by county
4 in which qualifying courses are offered and shall permit
5 participating programs and instructors to list their names,
6 addresses, telephone numbers, e-mail addresses, websites and
7 locations where instruction is offered. Before listing any program
8 or instructor, the Attorney General shall verify the certification
9 and eligibility of the program or instructor to offer instruction
10 that fulfills the requirements of subdivision (2) or (4) of this
11 subsection.

12 (e) ~~All concealed weapons license applications must be~~
13 ~~notarized by~~ An applicant for a license to carry concealed weapons
14 shall, before filing the application with the sheriff, appear before
15 a notary public duly licensed under article four, chapter
16 ~~twenty-nine of this code~~ commissioned pursuant to the laws of this
17 state or, if the applicant is a nonresident who applies by mail, the
18 state from which the nonresident applicant submits the application,
19 and subscribe to an acknowledgement of the application and an oath
20 verifying the truthfulness of the applicant's statements in the
21 application. Falsification of any portion of the application
22 constitutes false swearing and is punishable under the provisions of
23 section two, article five ~~chapter sixty-one of this code~~ chapter.

1 ~~(f) If the information in the application is found to be true~~
2 ~~and correct,~~

3 (f)(1) The sheriff shall date and time-stamp each complete
4 application received and issue to the applicant a receipt for the
5 application on a form prescribed by the Attorney General,
6 immediately in person if the applicant submitted the application in
7 person or by first-class mail to the applicant's mailing address
8 stated in the application if the applicant submitted the application
9 by mail, which shall contain the signature of the issuing sheriff or
10 a facsimile thereof affixed by any person authorized to act on the
11 sheriff's behalf pursuant to section five, article two, chapter two
12 of this code, the seal of the issuing sheriff, the date and time the
13 sheriff received the application and a statement of the time limits
14 for the sheriff to act on the application and the date on which the
15 applicant will become entitled to a temporary license under
16 subdivision (6) of this subsection in the absence of a final
17 decision by the sheriff on granting or denying a license.

18 (2) Upon receiving a complete application and issuing a receipt
19 as provided by subdivision (1) of this subsection, the sheriff
20 shall, except as otherwise authorized by the succeeding sentence of
21 this subdivision or required by subdivision (6) of this subsection,
22 commence the background investigation described in subdivision (1),
23 subsection (c) of this section, including an initiation of all

1 background checks required by subdivisions (2) and (3), subsection
2 (c) of this section, not later than the next business day following
3 the date of receipt stamped on the completed application and
4 diligently pursue that investigation in good faith until its
5 completion and the sheriff's decision on granting or denying a
6 license. The sheriff may delay pursuit of the investigation and
7 background checks for not more than twenty-one days during the
8 proclamation of a state of emergency pursuant to section six,
9 article five, chapter fifteen of this code, if the sheriff
10 determines that the enemy attack or natural or man-made disaster
11 cited in the proclamation of the state of emergency is or may
12 reasonably be anticipated to require the temporary suspension of
13 prompt background check processing otherwise required by this
14 subdivision to reasonably and temporarily reallocate resources of
15 the sheriff's office to respond to the declared emergency or
16 disaster. However, a delay in the prompt and diligent pursuit of
17 background checks authorized by the preceding sentence does not
18 alter the time limits specified by subdivision (4) of this
19 subsection for acting upon the application or the sheriff's duties
20 under subdivision (6) of this subsection.

21 (3) The sheriff shall issue a license unless, based upon the
22 results of the investigation and background checks required by
23 subsection (b) of this section, the sheriff finds that the

1 applicant made a materially false statement in the application, is
2 prohibited by federal law or section seven of this article from
3 possessing or transporting firearms or carrying a concealed weapon
4 in a public place or is not qualified for licensure under the
5 criteria specified in this section. The sheriff shall deny a license
6 if the sheriff finds that the applicant made a materially false
7 statement in the application, is prohibited by federal law or
8 section seven of this article from possessing or transporting
9 firearms or carrying a concealed weapon in a public place or fails
10 to qualify under the licensing criteria listed in subsection (a) of
11 this section.

12 (4) The sheriff shall either issue ~~reissue~~ or deny the a
13 license, as provided in this subsection:

14 (A) Except as otherwise provided by paragraph (B) of this
15 subdivision, on the earlier of (i) ~~within~~ 45 days after the date
16 stamped on the application is ~~filed if all required background~~
17 ~~checks authorized by this section are completed~~ as the date on which
18 the sheriff received the completed application pursuant to
19 subdivision (1) of this subsection or (ii) completion of the
20 investigation and background checks required by subsection (b) of
21 this section; or

22 (B) If the applicant was issued a temporary license or
23 temporary renewal license pursuant to subdivision (6) of this

1 subsection, on the expiration date of the temporary license or
2 temporary renewal license, or, if the expiration date of the
3 temporary license or temporary renewal license is a Saturday,
4 Sunday, legal holiday or designated day off, the last preceding
5 business day before the expiration date of the temporary license or
6 temporary renewal license, which, if granted, shall be the date of
7 issue printed on the license and the date from which the license's
8 expiration date shall be calculated pursuant to subdivision (2),
9 subsection (g) of this section.

10 (5) Except as provided by subdivision (6) of this subsection,
11 the sheriff may suspend the time limitations prescribed by
12 subdivision (4) of this subsection until receipt of the final
13 disposition or proof of restoration of civil and firearm rights if
14 the sheriff receives criminal history information with no final
15 disposition of any criminal charge for which a conviction would
16 disqualify the applicant.

17 (6) Unless the sheriff has previously issued a temporary
18 license or temporary renewal license pursuant to this subdivision in
19 connection with the application, the sheriff shall certify on the
20 application that applicable time limit specified in paragraph (A),
21 subdivision (4) of this subsection has expired, that the sheriff has
22 performed the background checks specified in paragraphs (E) through
23 (G), subdivision (3), subsection (b) of this section to determine

1 whether the applicant is prohibited by federal law or section seven
2 of this article from possessing or transporting firearms or carrying
3 a concealed weapon in a public place and initiated the remainder of
4 the background investigation required by subsection (b) of this
5 section and that the information available to the sheriff does not
6 indicate that the applicant is prohibited by federal law or section
7 seven of this article from possessing or transporting firearms or
8 carrying a concealed weapon in a public place, and issue the
9 applicant a temporary license if, for any reason, the sheriff has
10 not issued or denied a regular license as provided in subdivision
11 (3) of this subsection after the expiration of the applicable time
12 limit specified in paragraph (A), subdivision (4) of this
13 subsection. The sheriff may issue a temporary license prior to the
14 expiration of the applicable time limit specified in paragraph (A),
15 subdivision (4) of this subsection, if all the conditions for
16 issuing a temporary license, other than the expiration of the
17 applicable time limit, have been fulfilled. Upon receiving an
18 application from a licensee who is applying for renewal of a license
19 issued under this section prior to the current license's expiration
20 date or is an emergency licensee under section five of this article
21 who is applying for a regular license under this section prior to
22 the emergency license's expiration date, the sheriff shall
23 immediately perform the background checks specified in paragraphs

1 (E) through (G), subdivision (3), subsection (b) of this section to
2 determine whether the applicant is prohibited by federal law or
3 section seven of this article from possessing or transporting
4 firearms or carrying a concealed weapon in a public place and, if
5 the information available to the sheriff does not show that the
6 applicant is prohibited by federal law or section seven of this
7 article from possessing or transporting firearms or carrying a
8 concealed weapon in a public place, immediately issue the licensee
9 a temporary renewal license. A temporary license or temporary
10 renewal license issued pursuant to this subdivision shall not
11 contain the licensee's photograph, shall be clearly marked as a
12 temporary or temporary renewal license and is valid for all intents
13 and purposes throughout this state when presented with a valid
14 government-issued photo identification pursuant to subdivision (2),
15 subsection (g), section three of this article, until the expiration
16 date provided by subdivision (3), subsection (g) of this section,
17 unless it is sooner suspended, revoked or voluntarily surrendered.
18 The sheriff shall immediately notify the superintendent by
19 electronic or facsimile communication of the issuance of a temporary
20 or temporary renewal license pursuant to this subdivision and send
21 the superintendent a certified copy of the application indicating
22 the issuance of a temporary or temporary renewal license by mail
23 within seven days, and the superintendent shall cause the concealed

1 weapons license database maintained pursuant to subdivision (2),
2 subsection (l) of this section to be updated accordingly. The
3 sheriff shall fulfill the requirements of this subdivision
4 regardless of whether the applicant prompts the sheriff to do so.
5 Failure of the sheriff to notify the applicant of the denial of the
6 application in accordance with subsection (j) of this section by the
7 expiration date of the temporary license or temporary renewal
8 license, constitutes issuance of a license by default and the
9 sheriff shall immediately fulfill the requirements of this section
10 as in any other case in which the sheriff issues a license.

11 (7) If the sheriff finds an applicant to be qualified for
12 licensure except for adequate evidence of demonstrated competence
13 with a handgun as required by subsection (d) of this section for the
14 class of license sought, the sheriff shall provisionally deny the
15 license and notify the applicant as required by this section in the
16 case of any other denial. If an applicant whose application is
17 provisionally denied for inadequate evidence of demonstrated
18 competence with a handgun required by subsection (d) of this
19 section, presents to the sheriff satisfactory evidence of
20 demonstrated competence with a handgun as required by subsection (d)
21 of this section for the class of license sought, the sheriff shall
22 reopen and reconsider the application and act upon the application
23 within seven days of receipt of the applicant's new evidence of

1 demonstrated competence with a handgun. If an applicant for a Class
2 1, 2 or 4 license fulfills the basic demonstration of competence
3 with a handgun under subdivision (2), subsection (d) of this
4 section, but did not present adequate evidence of competence in
5 handling and firing a handgun pursuant to subdivision (4),
6 subsection (d) of this section, and otherwise fulfills the
7 requirements for a Class 3 or 5 license, the sheriff shall issue a
8 Class 3 license if the applicant sought a Class 1 or 2 license or a
9 Class 5 license if the applicant sought a Class 4 license and
10 provisionally deny the Class 1, 2 or 4 license sought and the
11 licensee may seek a reconsideration of or appeal the sheriff's
12 decision on granting the higher class of license and maintain the
13 lower class of license granted until qualifying for the higher class
14 of license originally sought or succeeding in a reconsideration or
15 appeal of the original decision on denying the license originally
16 sought and granting a lower license classification.

17 ~~(g) Before any approved license shall be issued or become~~
18 ~~effective, the applicant shall pay to the sheriff a fee in the~~
19 ~~amount of fifteen dollars which the sheriff shall forward to the~~
20 ~~superintendent of the West Virginia state police within thirty days~~
21 ~~of receipt. Any such license shall be valid for five years~~
22 ~~throughout the state~~ All licenses issued under this section are
23 state licenses to carry concealed weapons that shall, unless sooner

1 suspended or revoked as provided in this section or voluntarily
2 surrendered, be valid throughout this state until the expiration
3 date determined as follows:

4 (1) Except as otherwise provided by subdivisions (2) and (4) of
5 this subsection:

6 (A) All Class 1, 2 and 3 licenses other than temporary licenses
7 and temporary renewal licenses issued pursuant to subdivision (6),
8 subsection (f) of this section, issued on or after the effective
9 date of the amendments to this section enacted during the 2011
10 Regular Session of the Legislature, shall expire on the licensee's
11 first birthday occurring more than four years but not more than five
12 years from the date of issue or, if the licensee is a renewal
13 applicant whose prior license's expiration date was on the
14 licensee's birthday, the licensee's first birthday following the
15 expiration date of the prior license on which the licensee's age
16 becomes evenly divisible by five.

17 (B) All Class 4 and 5 licenses, other than temporary licenses
18 and temporary renewal licenses issued pursuant to subdivision (6),
19 subsection (f) of this section, issued on or after the effective
20 date of the amendments to this section enacted during the 2011
21 Regular Session of the Legislature, shall expire on the licensee's
22 twenty-second birthday.

23 (2) Except as otherwise provided by subdivision (4) of this

1 subsection, the license, other than a temporary or temporary renewal
2 license issued pursuant to subdivision (6), subsection (f) of this
3 section, of any service member that expires during an active-duty
4 military deployment away from the licensee's place of residence or
5 permanent duty station, shall be extended for one hundred eighty
6 days following the end date of the deployment. In order to establish
7 proof of continued validity of a license extended by this
8 subdivision, the licensee shall carry and display in the same manner
9 as required of the license by this article, a copy of the licensee's
10 deployment orders or other documentation from the licensee's
11 commanding officer that orders the licensee to travel away from his
12 place of residence or permanent duty station and indicates the start
13 and end dates of the deployment.

14 (3) Except as otherwise provided by subdivision (4) of this
15 subsection, a temporary license issued pursuant to subdivision (6),
16 subsection (f) of this section, shall expire one hundred eighty days
17 from the date of issue. A temporary renewal license issued pursuant
18 to subdivision (6), subsection (f) of this section, shall expire one
19 hundred eighty days after the expiration date of the licensee's
20 current license under this section or the expiration date of the
21 emergency license issued pursuant to section five of this article
22 when the emergency licensee applies for a regular license under this
23 section prior to the emergency license's expiration date.

1 (4) Any license issued to an alien who has not been lawfully
2 admitted for permanent residence shall expire on the earlier of the
3 expiration date otherwise applicable under this subsection or the
4 last day the applicant or licensee has demonstrated to the sheriff
5 he or she is legally authorized to be in the United States.

6 ~~(h) All persons holding a current and valid concealed weapons~~
7 ~~license as of the sixteenth day of December, one thousand nine~~
8 ~~hundred ninety five, shall continue to hold a valid concealed~~
9 ~~weapons license until his or her license expires or is revoked as~~
10 ~~provided in this article: *Provided*, That all reapplication fees~~
11 ~~shall be waived for applications received by the first day of~~
12 ~~January, one thousand nine hundred ninety seven, for any person~~
13 ~~holding a current and valid concealed weapons license as of the~~
14 ~~sixteenth day of December, one thousand nine hundred ninety five,~~
15 ~~which contains use restrictions placed upon the license as a~~
16 ~~condition of issuance by the issuing circuit court. Any licenses~~
17 ~~reissued pursuant to this subsection will be issued for the time~~
18 ~~period of the original license.~~

19 ~~(i)~~ (h) (1) Each license shall be no larger than three and
20 three-eighths inches wide by two and one-eighth inches long and
21 shall be made of a hard, laminated material suitable for carrying in
22 a wallet, similar to a driver's license.

23 (2) The face of each license shall contain:

- 1 (A) The licensee's:
- 2 (i) Full name;
- 3 (ii) Date of birth;
- 4 (iii) Sex;
- 5 (iv) Race;
- 6 (v) Height;
- 7 (vi) Weight;
- 8 (vii) Natural hair color;
- 9 (viii) Natural eye color; and
- 10 (ix) Residence address of the licensee, and a space upon which
- 11 ~~the signature of the licensee shall be signed with pen and ink. The~~
- 12 ~~issuing sheriff shall sign and attach his or her seal to all license~~
- 13 ~~cards. The sheriff shall provide to each new licensee a duplicate~~
- 14 ~~license card, in size similar to other state identification cards~~
- 15 ~~and licenses, suitable for carrying in a wallet, and such license~~
- 16 ~~card is deemed a license for the purposes of this section. or an~~
- 17 alternate address determined pursuant to subsection (s) of this
- 18 section;
- 19 (x) Signature; and
- 20 (xi) Full-face color photograph, unless the license is a
- 21 temporary or temporary renewal license issued pursuant to
- 22 subdivision (6), subsection (f) of this section;
- 23 (B) The license's dates of issue and expiration;

1 (C) The unique license number assigned pursuant to subdivision
2 (5) of this subsection;

3 (D) Whether the license is duplicate or replacement license;

4 (E) The class of the license;

5 (F) The signature of the issuing sheriff or a facsimile thereof
6 affixed by any person authorized to act on the sheriff's behalf
7 pursuant to section five, article two, chapter two of this code;

8 (G) The seal of the issuing sheriff; and

9 (H) If the license does not entitle the licensee to an
10 exemption under 18 U.S.C. §922(t)(3)(A) within this state, the
11 phrase "NOT NICS EXEMPT" in red, all-capital letters in not less
12 than 12-point type.

13 (3) The reverse of each license shall contain:

14 (A) The telephone number of the concealed weapons license
15 verification service established pursuant to subdivision (2),
16 subsection (1) of this section and a statement that any
17 law-enforcement officer or other employee or agent of any criminal
18 justice agency within the United States or licensed firearm dealer
19 or any employee or agent thereof may use the concealed weapons
20 license verification service to instantaneously validate the license
21 twenty-four hours a day, seven days a week; and

22 (B) The name, county, office address and nonemergency daytime
23 office telephone number of the issuing sheriff.

1 (4) Each license application shall solicit the applicant for a
2 designation, in writing, of whether the applicant desires to claim
3 the license in person at the sheriff's office or receive delivery of
4 the license by mail. The sheriff shall deliver the license to the
5 licensee by mail to the mailing address specified in the application
6 unless the licensee elected to claim the license in person at the
7 sheriff's office. The sheriff shall contact the licensee by
8 telephone and e-mail at the daytime telephone number and e-mail
9 address, if any, listed in the application or, if the licensee
10 cannot be contacted by telephone or e-mail after two business days
11 or did not provide a daytime telephone number or e-mail address in
12 the application, by letter sent by first-class mail to the
13 licensee's mailing address listed in the application, and advise the
14 licensee that the sheriff has issued the license and specify the
15 place and hours when the licensee may claim the license in person,
16 if the licensee elected to claim the license in person at the
17 sheriff's office.

18 (5) The Superintendent shall assign to each valid license in
19 effect on the effective date of the amendments to this section
20 enacted during the 2011 Regular Session of the Legislature, a unique
21 license number. Before issuing any license on or after the
22 effective date of the amendments to this section enacted during the
23 2011 Regular Session of the Legislature, other than a renewal or

1 replacement license for which a unique license number has been
2 previously assigned pursuant to this subdivision, the sheriff shall
3 obtain from the superintendent a unique license number for the
4 licensee. The superintendent shall, in consultations with the West
5 Virginia Sheriffs' Bureau, develop a unique license number
6 assignment system that permits sheriffs to instantaneously obtain a
7 unique license number for the purpose of indexing all licenses
8 issued throughout the state to enable law-enforcement verification
9 of licenses, preventing duplicate licensing files for an individual
10 applicant or licensee, facilitating the transfer of a license to
11 another county when a resident licensee moves to another county or
12 when a nonresident licensee becomes a resident of this state and a
13 county other than the county in which the license was issued and
14 ensuring efficient administration of the licensing program. The
15 superintendent shall design the license numbering system to number
16 licenses serially and not base any license number on the licensee's
17 Social Security number, date of birth, Zip code or other number that
18 otherwise correlates with any personally-identifying information of
19 the licensee.

20 (6) For the purposes of implementing the 5-class licensing
21 system created by the amendments to this section enacted during the
22 2011 Regular Session of the Legislature, any current, valid license
23 issued under any prior enactment of this section that is in effect

1 on the effective date of the amendments to this section enacted
2 during the 2011 Regular Session of the Legislature, shall become a
3 Class 3 license if the licensee is at least twenty-one years of age
4 or a Class 5 license if the licensee is less than twenty-one years
5 of age.

6 ~~(j)~~ (i) (1) The Attorney General shall, in consultation with the
7 superintendent of and the West Virginia state police shall Sheriffs'
8 Bureau, prepare uniform applications for licenses and license cards
9 showing that such a license has been granted and shall do any other
10 act required to be done to protect the state and see to the
11 enforcement of this section.

12 (2) The Attorney General shall design each application form to
13 include a detailed checklist for each required part of the
14 background checks specified in subdivisions (2) and (3), subsection
15 (b) of this section. The sheriff shall, before issuing any license,
16 certify in writing on the approved application that the sheriff
17 performed all background checks required by this section and that
18 the results of the background checks did not show that the applicant
19 was disqualified from licensure and record on the application the
20 unique approval number issued by the National Instant Criminal
21 Background Check System as part of the background check required by
22 paragraph (F), subdivision (3), subsection (b) of this section.

23 (3) The Attorney General shall design each application or other

1 form promulgated pursuant to this section to comply with Section 7
2 of the Privacy Act of 1974, Public Law 93-579, §7, 88 Stat. 1896,
3 1909 (1974), reprinted in 5 U.S.C. §552a notes.

4 (4) The Attorney General shall design license applications and
5 other forms promulgated pursuant to this section to comply with any
6 applicable requirements of 42 C.F.R. §§2.31 to 2.35, with respect to
7 consent to disclosure of alcohol or drug abuse patient records.

8 (5) The Attorney General shall prepare and distribute a form
9 for affidavit under subparagraph (i), paragraph (A), subdivision
10 (9), subsection (a) of this section and instructions for the
11 affidavit form that fulfill the requirements of subparagraph (i),
12 paragraph (A), subdivision (9), subsection (a) of this section,
13 nonexclusive of any other form of affidavit that fulfills the
14 requirements of subparagraph (i), paragraph (A), subdivision (9),
15 subsection (a) of this section.

16 (6) The Attorney General shall design forms of license cards
17 that (A) differentiate between (i) Class 1, 2 and 3 licenses and
18 (ii) Class 4 and 5 licenses and (B) differentiate between regular
19 licenses and temporary, temporary renewal and emergency licenses.
20 All temporary, temporary renewal and emergency licenses shall
21 contain the words "valid without photo-secondary photo ID required"
22 in the location of the licensee's photograph.

23 (7) All sheriffs shall procure and maintain the means of

1 digitally photographing all applicants or licensees who apply for a
2 license or replacement license in person, taking by electronic
3 fingerprint imaging the fingerprints of Class 1 applicants who apply
4 in person and providing the required digital photography and
5 fingerprinting services at no additional charge to each applicant.

6 (8) The West Virginia Sheriffs' Bureau and the Commissioner of
7 Motor Vehicles shall annually enter into a statewide contract for
8 the production of license cards by the Division of Motor Vehicles on
9 behalf of sheriffs electing to participate under the contract. The
10 contract shall provide that the Commissioner of Motor Vehicles shall
11 produce the license cards for licenses issued under this section by
12 any sheriff electing to use the services of the Division of Motor
13 Vehicles under the contract shall pay the division a uniform fee for
14 each license card produced, which shall reflect only the actual
15 marginal cost of each license card produced without inclusion of any
16 overhead or fixed costs the Division of Motor Vehicles incurs
17 regardless of whether it produces license cards for sheriffs, agreed
18 upon by the West Virginia Sheriffs' Bureau and the Commissioner of
19 Motor Vehicles and the sheriff shall pay the required license card
20 production fee from the concealed weapons license administration
21 fund and that any sheriff may elect to begin or cease participation
22 under the contract at any time. A sheriff may not have license
23 cards produced by the Division of Motor Vehicles except pursuant to

1 the current statewide contract adopted pursuant to this subdivision.

2 (9) Each sheriff shall use only the current, uniform forms
3 prescribed by the Attorney General for the purposes of administering
4 this section and section five of this article. If the Attorney
5 General promulgates a new application form, license card or other
6 form used for the purposes of this section or section five of this
7 article, each sheriff shall immediately destroy all old versions of
8 those forms possessed by his or her office upon receiving a copy of
9 the applicable new form from the Attorney General.

10 (10) The uniform application form, forms for affidavits and
11 other forms for which this section requires an oath, affirmation, or
12 notarization shall conclude with the form for a written oath
13 specified in subsection (a), section one hundred two, article five,
14 chapter twenty-nine-c of this code and an adequate space for a
15 notary public's stamp or seal.

16 ~~(k) In the event~~ (j) (1) If the sheriff denies an application is
17 denied or suspends or revokes a license, the sheriff shall prepare
18 the documents specified in subdivision (2) of this subsection and
19 provide the applicant or licensee, by personal service or certified
20 mail, return receipt requested, written notice of the denial,
21 suspension or revocation and the supporting documentation required
22 by subdivision (2) of this subsection.

23 (2) A sheriff who denies, suspends or revokes any license

1 shall:

2 (A) State in writing:

3 (i) An enumeration of each specific subdivision of subsection
4 (a) of this section and, if applicable, subsection (a) or (c),
5 section seven of this article, or 18 U.S.C. §922(g) or (n), under
6 which the sheriff finds the applicant or licensee disqualified;

7 (ii) All specific ~~reasons for~~ and articulable facts upon which
8 the sheriff based the denial, ~~shall be stated by the sheriff denying~~
9 the application ~~suspension or revocation,~~ including all sources of
10 information upon which the sheriff based his findings of fact; and

11 (iii) A brief statement of law and fact explaining to the
12 applicant or licensee the sheriff's reasons for the denial,
13 suspension or revocation, based upon the legal authority cited by
14 the sheriff pursuant to subparagraph (i) of this paragraph and the
15 facts identified by the sheriff pursuant to subparagraph (ii) of
16 this paragraph;

17 (B) Provide the applicant or licensee:

18 (i) A copy of the documents prepared by the sheriff pursuant to
19 paragraph (A) of this subdivision;

20 (ii) Photocopies of all writings, photographs, records or other
21 documentary evidence upon which the sheriff based the findings of
22 fact described in subparagraph (ii), paragraph (A) of this
23 subdivision;

1 (iii) A written notice of the procedure for requesting
2 reconsideration of the denial, suspension or revocation and, if the
3 applicant or licensee elects, submitting additional documentation
4 relating to the reasons for the denial, suspension or revocation for
5 the sheriff to consider as part of the applicant's or licensee's
6 request for reconsideration;

7 (iv) A written notice of the procedure for appealing the
8 denial, suspension or revocation directly to the circuit court
9 without requesting reconsideration by the sheriff;

10 (v) A written notice of the applicant's rights under
11 subdivision (7), subsection (f) of this section, if the denial is a
12 provisional denial based upon inadequate evidence of demonstrated
13 competence with a handgun as required by subsection (d) of this
14 section; and

15 (vi) A written notice of the right of the applicant or licensee
16 to seek review by the circuit court if the applicant or licensee
17 elects to seek reconsideration by the sheriff of the denial,
18 suspension or revocation and the sheriff affirms the initial denial,
19 suspension or revocation; and

20 (C) Maintain copies of the documents required by this
21 subdivision in the application or license file for not less than two
22 years.

23 (3) Any applicant whom the sheriff denies a license or licensee

1 whose license is suspended or revoked may file, within thirty days
2 of the denial, suspension or revocation, a petition for
3 reconsideration, which may include arguments for reversal of the
4 initial denial, suspension or revocation, with or without additional
5 documentation relating to the reasons for the denial, suspension or
6 revocation. The sheriff shall reconsider the denial, suspension or
7 revocation if the applicant or licensee requests reconsideration as
8 provided in this subdivision. The sheriff shall, within twenty-one
9 days of receiving a request for reconsideration, inform the
10 applicant or licensee of the sheriff's decision after
11 reconsideration. If the sheriff affirms the initial denial,
12 suspension or revocation after reconsideration, the sheriff shall
13 issue the applicant or licensee a notice of the sheriff's action in
14 the same form and substance as the initial notice of denial,
15 suspension or revocation, specifically address any continued
16 deficiencies in light of any arguments or additional documentation
17 submitted by the applicant or licensee and provide a notice of the
18 right of the applicant or licensee to petition the circuit court for
19 review of the sheriff's decision.

20 (4) Any person denied a license or whose license is suspended
21 or revoked may file, in the circuit court of the county in which the
22 application was made or the license was suspended or revoked,
23 without regard to whether the person has petitioned the sheriff for

1 reconsideration under subdivision (3) of this subsection, a petition
2 seeking review of the denial, suspension or revocation. ~~Such~~ The
3 petitioner shall file the petition shall be filed for review within
4 ~~thirty~~ sixty days of the later of: (i) The date of the original
5 denial, suspension or revocation; or (ii) the date of the
6 affirmation of the denial, suspension or revocation upon
7 reconsideration if the person requested reconsideration following
8 the initial notice of denial, suspension or revocation pursuant to
9 subdivision (3) of this subsection. The petition shall name the
10 sheriff who denied, suspended or revoked the license as the
11 respondent. The court shall, except when otherwise requested by the
12 petitioner, assign the petition a high priority on its civil docket
13 and hear the petition on an expedited basis. The court shall ~~then~~
14 determine whether the ~~applicant~~ petitioner is entitled to the
15 issuance or reinstatement of a license under the criteria ~~set forth~~
16 specified in this section. ~~The applicant may be represented by~~
17 ~~counsel, but in no case shall the court be required to appoint~~
18 ~~counsel for an applicant. The final order of the court shall include~~
19 ~~the court's findings of fact and conclusions of law. If the final~~
20 ~~order upholds the denial, the applicant may file an appeal in~~
21 ~~accordance with the Rules of Appellate Procedure of the Supreme~~
22 ~~Court of Appeals.~~ The court shall review de novo all matters within
23 the scope of its review, but shall presume the petitioner to meet

1 all specific qualifications for licensure not identified by the
2 sheriff pursuant to subparagraph (i), paragraph (A), subdivision (2)
3 of this subsection, as the basis for the denial of the application
4 or suspension or revocation of the license, and shall limit its
5 scope of review to whether the petitioner was disqualified from
6 licensure for the reasons stated by the sheriff pursuant to
7 subparagraph (i), paragraph (A), subdivision (2) of this subsection.
8 The court shall order the sheriff to issue or reinstate a license
9 and grant the petitioner any other relief to which he or she may be
10 entitled, unless the sheriff proves by clear and convincing evidence
11 that the petitioner is not qualified for licensure under the
12 criteria specified in subsection (a) of this section.

13 (5) Notwithstanding any provision of this code to the contrary,
14 a court may not charge a filing fee or other court costs at the time
15 any person files any petition for review of a denial, suspension or
16 revocation of a license to carry concealed weapons pursuant to
17 subdivision (4) of this subsection. The court shall assess all court
18 costs on the losing party at the conclusion of the proceedings as
19 part of its final judgment.

20 (6) All judicial proceedings under this subsection shall be
21 closed and the record sealed unless the petitioner requests, in
22 writing, that the proceedings and record be opened. A petitioner
23 who elects open proceedings pursuant to this subdivision may, at any

1 time, in writing, subsequently revoke the election.

2 (7) A licensee whose license is suspended or revoked shall
3 comply with subdivision (8), subsection (q) of this section before
4 he or she may petition the sheriff for reconsideration pursuant to
5 subdivision (3) of this subsection or file a petition for review
6 with the circuit court pursuant to subdivision (4) of this
7 subsection, and a failure to comply with subdivision (8), subsection
8 (q) of this section is jurisdictional.

9 ~~(i)~~ (k) (1) In the event A licensee may notify the issuing
10 sheriff and obtain a replacement license as provided by subdivision
11 (2) of this subsection if the license is lost, stolen or destroyed,
12 ~~the person to whom the license was issued may obtain a duplicate or~~
13 ~~substitute license for a fee of five dollars by filing a notarized~~
14 ~~statement with the sheriff indicating that the license has been lost~~
15 ~~or destroyed~~ the licensee's residence address changes or the
16 licensee changes his or her name.

17 (2) A licensee described in subdivision (1) of this subsection
18 who elects to obtain a replacement license shall:

19 (A) File with the issuing sheriff or, if the licensee becomes
20 a resident of a county in this state other than the county in which
21 the license was issued, the sheriff of the licensee's new county of
22 residence, an affidavit declaring, as appropriate, that:

23 (i) The license has been lost, stolen or destroyed;

1 (ii) The licensee has changed his or her legal name and
2 attaches a certified copy of a marriage license or court decree or
3 other evidence of the name change; or

4 (iii) The licensee's residence address has changed. The
5 licensee shall, unless otherwise provided by subsection (s) of this
6 section, list the licensee's new residence address and mailing
7 address, if different. If the licensee has become a resident of a
8 county in this state other than the county in which the license was
9 issued, the licensee shall specify the county in which the license
10 was issued;

11 (B) Pay the sheriff the replacement license fee specified in
12 subdivision (2), subsection (n) of this section; and

13 (C) Unless the license for which a replacement is sought is a
14 temporary, temporary renewal or emergency license:

15 (i) Submit two passport-regulation color photographs of the
16 licensee taken within thirty days of the date of the application for
17 a replacement license, if the licensee files the documents specified
18 in this subdivision and applies for the replacement license by mail;
19 or

20 (ii) Have the sheriff take a digital photograph of the licensee
21 at the time the licensee files the application for a replacement
22 license, if the licensee files the documents specified in this
23 subdivision and applies for the replacement license in person.

1 (3) The sheriff shall, upon receiving the items specified in
2 subdivision (2) of this subsection:

3 (A) Issue the licensee a replacement license that contains the
4 information required by subsection (h) of this section, including,
5 if applicable, the licensee's new name or address; and

6 (B) Notify the superintendent of any change of the licensee's
7 name or address if the licensee obtained the replacement license as
8 the result of a change of the licensee's name or residence address.

9 (4) The sheriff may not require a licensee who applies for a
10 replacement license pursuant to this subsection to surrender the
11 current license until after the licensee takes actual physical
12 possession of the replacement license. A licensee who obtains a
13 replacement license pursuant to this subsection shall, after
14 receiving actual physical possession of a replacement license,
15 surrender the old license to the sheriff that issued the replacement
16 license unless the licensee declared the replaced license lost,
17 stolen or destroyed pursuant to subparagraph (i), paragraph (A),
18 subdivision (2) of this subsection.

19 (5) Any licensee may, at any time, without charge or payment of
20 any fee, obtain a replacement license card if:

21 (A) The licensee is an existing licensee as of the effective
22 date of the amendments to this section enacted during the 2011
23 Regular Session of the Legislature, has not changed his or her name

1 or address and desires a new license card for the purpose of having
2 a license card that shows the licensee's new class of license under
3 the 5-class licensing system created as part of the amendments to
4 this section enacted during the 2011 Regular Session of the
5 Legislature, or which does not contain the licensee's Social
6 Security number or an indication that the license is applicable only
7 to pistols and revolvers; or

8 (B) The licensee has not changed his or her place of residence
9 but the licensee's residence has been assigned a new street address
10 by the licensee's county or municipality of residence.

11 (6) When a licensee becomes a resident of a county other than
12 the county in which the license was issued and applies to the
13 sheriff of his or her new county of residence for a replacement
14 license pursuant to this subsection, the sheriff of the licensee's
15 new county of residence shall notify the issuing sheriff of record
16 within five business days. Within five business days of receipt of
17 a notice from the sheriff of another county that the licensee has
18 moved to that county and applied for a replacement license, the
19 issuing sheriff of record shall transfer the licensee's license file
20 to the sheriff of the licensee's new county of residence and the
21 sheriff of the licensee's new county of residence shall become the
22 issuing sheriff of record.

23 ~~(m)~~ (1) (1) The sheriff shall, immediately after the issuing a

1 license ~~is granted as aforesaid~~ to carry concealed weapons, furnish
2 the superintendent ~~of the West Virginia state police~~ a certified
3 copy of the approved application. ~~It shall be the duty of~~ Upon a
4 written request from the Attorney General, the superintendent or the
5 prosecuting attorney of that county for a list of all licenses
6 issued in the county, the sheriff ~~to~~ shall furnish to the
7 ~~superintendent of the West Virginia state police at any time so~~
8 ~~requested~~ requesting official a certified list of the names, birth
9 dates, license class, addresses and telephone numbers, e-mail
10 addresses and other personally-identifying information on file of
11 ~~all such licenses issued~~ licensees in the county within ten business
12 days of receipt of the written request.

13 (2) The superintendent ~~of the West Virginia state police~~ shall
14 maintain ~~a~~ an automated registry of all ~~persons who have been issued~~
15 ~~concealed weapons licenses~~ licensees under this section and section
16 five of this article and other pertinent information, which shall be
17 available online, upon request, at all times to all law-enforcement
18 and criminal justice agencies throughout the United States. The
19 superintendent may respond only to inquiries limited to verifying an
20 individual license or determining whether a specific, named
21 individual is a licensee. A law-enforcement or criminal justice
22 agency may not conduct random inquiries on whether a specific, named
23 individual is a licensee unless the person is subject to a lawful

1 criminal investigation, arrest, detention or an investigatory stop
2 and the requesting agency has reasonable suspicion to believe the
3 person is carrying a concealed weapon or is otherwise engaging in an
4 act whose legality depends on whether the person is licensed under
5 this section or section five of this article. The superintendent
6 shall maintain and operate a concealed weapons license verification
7 service, which shall be operational twenty-four hours a day, seven
8 days a week, through a dedicated telephone number and the national
9 law-enforcement telecommunication system, for the purpose of
10 responding to law-enforcement inquiries from any law-enforcement
11 agency within the United States or licensed firearm dealer within
12 this state concerning the validity of an individual license issued
13 under this section or section five of this article or determining
14 whether a specific, named individual is a licensee pursuant to this
15 section or section five of this article.

16 (3) The sheriff shall immediately notify the superintendent, by
17 electronic means, including e-mail or facsimile transmission, if the
18 sheriff suspends or revokes a license, denies a renewal application
19 for which a license has been extended pursuant to subdivision (2),
20 subsection (g) of this section or receives a voluntarily-surrendered
21 license, that the license is no longer valid, and the superintendent
22 shall cause the concealed weapons license database to be updated
23 accordingly.

1 ~~(n) All licensees must carry with them a state issued photo~~
2 ~~identification card with the concealed weapons license whenever the~~
3 ~~licensee is carrying a concealed weapon. Any licensee who fails to~~
4 ~~have in his or her possession a state issued photo identification~~
5 ~~card and a current concealed weapons license while carrying a~~
6 ~~concealed weapon shall be guilty of a misdemeanor and, upon~~
7 ~~conviction thereof, shall be fined not less than fifty or more than~~
8 ~~two hundred dollars for each offense.~~

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

13 ~~(p) A person who is~~ (m) All persons engaged in the receipt,
14 review, ~~or in the issuance,~~ suspension, ~~or revocation or~~
15 reinstatement of a concealed weapon any license does not incur any
16 civil liability to carry concealed weapons under this section or
17 section five of this article shall be immune from liability in a
18 civil action as the result of the lawful performance of his or her
19 duties under this article or, unless the person committed willful
20 misconduct or gross negligence, for the acts or omissions of any
21 licensee, including misconduct with a deadly weapon committed by any
22 licensee.

23 (n) (1) Each applicant shall pay to the sheriff, at the time of

1 application, a nonrefundable license fee of \$60, which shall,
2 whenever the license, if granted, will be issued for a period of
3 other than five years pursuant to subdivision (1) or (4), subsection
4 (g) of this section or was extended pursuant to subdivision (2),
5 subsection (g) of this section, be prorated at a rate of \$1 per
6 month for which the license sought is to be issued and by which the
7 license was extended pursuant to subdivision (2), subsection (g) of
8 this section, exclusive of the remaining period of validity of a
9 current license for which a license fee was previously paid in the
10 case of renewal applications, unless the applicant is exempt from
11 payment of the fee pursuant to subdivision (5) of this subsection.
12 In determining the amount of time for which a license would be
13 issued, the license shall be presumed issued on the expiration date
14 of a license for which a renewal application is filed prior to its
15 date of expiration or, in any other case, the deadline for action on
16 the application specified in subdivision (4), subsection (f) of this
17 section, regardless of whether a license is issued sooner.

18 (2) A licensee who applies for a replacement license pursuant
19 to subsection (k) of this section, shall, unless the licensee is
20 exempt from payment of the fee pursuant to subdivision (5) of this
21 subsection or subdivision (5), subsection (k) of this section, pay
22 the sheriff a replacement license fee of \$5 if the licensee applies
23 for a replacement license before January 1, 2012, or, if the

1 licensee applies for a replacement license after December 31, 2011,
2 pay the sheriff a replacement license fee of \$5 if the licensee
3 applies for a replacement license within thirty days of the loss,
4 theft or destruction of the license or change of the licensee's name
5 or address or \$10 if the licensee applies for a replacement license
6 more than thirty days after the loss, theft or destruction of the
7 license or change of the licensee's name or address.

8 (3) Except as otherwise provided in subdivision (9) of this
9 subsection, notwithstanding any other provision of this code to the
10 contrary, the fees prescribed in subdivisions (1) and (2) of this
11 subsection cover all services performed by any public agency in
12 connection with the application and the issuance of a license, other
13 than a training course described in subsection (d) of this section,
14 including without limitation the taking of the applicant's
15 photograph and, if applicable, fingerprints, by the sheriff and all
16 background checks required by subsection (b) of this section, or
17 issuing a replacement license pursuant to subsection (k) of this
18 section. The required remittance under subdivision (1), subsection
19 (c) of this section is the only fee a sheriff shall be required to
20 pay for the services of the State Police in the performance of the
21 state background checks required by subsection (b) of this section.
22 Notwithstanding any provision of this code to the contrary, any
23 other fee required or authorized outside this section or section

1 five of this article shall be inapplicable to applicants for
2 licenses under this section and section five of this article.

3 (4) If the Attorney General, Superintendent or prosecuting
4 attorney requests from the sheriff a list of licenses issued in the
5 county pursuant to subdivision (1), subsection (1) of this section,
6 the sheriff shall charge the requesting official a fee equal to the
7 actual cost incurred by the sheriff in fulfilling the request.

8 ~~(q) Notwithstanding the provisions of subsection (a) of this~~
9 ~~section, with respect to application by (5) A former law-enforcement~~
10 ~~officer honorably retired from agencies any agency governed by~~
11 ~~article fourteen, chapter seven of this code; article fourteen,~~
12 ~~chapter eight of this code; article two, chapter fifteen of this~~
13 ~~code; and or article seven, chapter twenty of this code, an~~
14 ~~honorably retired officer is exempt from payment of fees and costs~~
15 ~~as otherwise required by this section, and the application of the~~
16 ~~honorably retired officer shall be granted without proof or inquiry~~
17 ~~by the sheriff as to those requirements set forth in subdivision~~
18 ~~(9), subsection (a) of this section, if the officer meets the~~
19 ~~remainder of the requirements of this section and has the approval~~
20 ~~of the appropriate chief law-enforcement officer other than the~~
21 Class 1 license application fingerprinting fee under subdivision
22 (10) of this subsection.

23 (6) Each sheriff shall accept, as payment for any fee an

1 applicant or licensee is required to pay the sheriff under this
2 section:

3 (A) Cash, personal checks drawn on a personal account of the
4 applicant or licensee on which are printed the name and residence or
5 other mailing address of the applicant or licensee, cashier's
6 checks, certified checks, money orders or any method the sheriff
7 accepts in person from an individual for payment of taxes collected
8 by the sheriff, for fees paid in person;

9 (B) Personal checks drawn on a personal account of the
10 applicant or licensee on which are printed the name and residence or
11 other mailing address of the applicant or licensee, cashier's
12 checks, certified checks, money orders or any method the sheriff
13 accepts by mail from an individual for payment of taxes collected by
14 the sheriff, for fees paid by mail.

15 (7) Each sheriff may, in his or her discretion, accept methods
16 of payment other than those required by subdivision (6) of this
17 subsection, for the payment of any fee any applicant or licensee is
18 required to pay the sheriff under this section.

19 (8) The sheriff may not apply any surcharge or discount to any
20 fee paid by an applicant or licensee based on the method of payment.

21 (9) The sheriff may charge a fee for any dishonored check,
22 draft or order not to exceed the amount authorized by section
23 thirty-nine-e, article three of this chapter.

1 (10) An applicant for a Class 1 license who is required to
2 submit fingerprints pursuant to subdivision (17), subsection (a) of
3 this section shall, in addition to any other fees required by this
4 section, pay the sheriff a nonrefundable fee equal to the fee
5 charged by the Federal Bureau of Investigation for its fingerprint
6 processing and background check services.

7 (o)(1) Each sheriff shall accept applications, notices of
8 change of name or address and other filings under this section in
9 person and by mail. Each sheriff shall accept filings under this
10 section and perform services required under this section during all
11 normal business hours, including all hours when the sheriff's tax
12 office is open to the public.

13 (2) Each sheriff shall maintain on file with the Attorney
14 General a current physical street address where the sheriff accepts
15 filings under this section in person, the days and hours of
16 operation of that office and the mailing address the sheriff uses to
17 accept filings by mail. The Attorney General shall make available to
18 the public a list of this information, free of charge, on the
19 Internet and in print.

20 (3) The sheriff shall cause all mail the sheriff receives at
21 the listed mailing address designated by the sheriff pursuant to
22 subdivision (2) of this subsection to be checked, opened and
23 processed each business day. Applications submitted by first-class

1 mail shall be presumed, subject to rebuttal by clear and convincing
2 evidence, to be filed with the sheriff not later than the third day,
3 excluding Sundays and legal holidays, after the postmark date on the
4 envelope in which the application was mailed. If an applicant
5 submits an application by registered or certified mail or by any
6 other means through which the United States Postal Service provides
7 official confirmation of the delivery date, the sheriff shall be
8 estopped from denying receipt of the application on the delivery
9 date confirmed by the United States Postal Service.

10 ~~(r) Except as restricted or prohibited by the provisions of~~
11 ~~this article or as otherwise prohibited by law, the issuance of a~~
12 ~~concealed weapon permit issued in accordance with the provisions of~~
13 ~~this section shall authorize the holder of the permit to carry a~~
14 ~~concealed pistol or revolver on the lands or waters of this state.~~

15 (p) (1) Notwithstanding any provision of this code, the Code of
16 State Rules, the common law of this state or any other law of this
17 state to the contrary:

18 (A) This section sets forth the complete and exclusive criteria
19 and procedures for the issuance of licenses to carry concealed
20 weapons and establishes their nature and scope.

21 (B) The Legislature does not delegate to the Attorney General,
22 the superintendent or any sheriff, public agency or other person or
23 body acting under color of law or governmental authority, the

1 authority to regulate or restrict the issuing of licenses provided
2 in this section beyond the provisions contained in this section.

3 (C) A sheriff, law-enforcement officer, public agency or other
4 person or body acting under color of law or governmental authority
5 may not change, modify, or supplement the licensing criteria or
6 procedures prescribed by the Legislature in this section, limit the
7 exercise of a license to carry concealed weapons or require an
8 applicant or licensee to provide any documentation or information
9 not specifically authorized by this section or solicited by the
10 uniform application form prescribed by the Attorney General.

11 (D) A public or private employer or contracting entity may not
12 condition employment or contracting on the fact that a current or
13 prospective employee or contractor is not an applicant or licensee
14 under this section or section five of this article or authorized by
15 subsection (d), section three of this article to carry a concealed
16 weapon without a license.

17 (E) Except as otherwise provided in subparagraph (iv),
18 paragraph (A), subdivision (4), subsection (d) of this section, this
19 section shall be liberally construed to effect the right of an
20 individual to bear arms for self-defense.

21 (F) This section is supplemental and additional to existing
22 rights to bear arms, and nothing in this section may be construed to
23 impair or diminish those rights.

1 (G) The entire field of regulation of the carrying of concealed
2 weapons or open or concealed carrying of concealable weapons, by any
3 licensee under this section or section five of this article or any
4 person who is authorized by subsection (d), section three of this
5 article, to carry a concealed weapon without a license, is fully
6 occupied and preempted by the Legislature.

7 (H) Any person who is a licensee under this section or section
8 five of this article, or authorized by subsection (d), section three
9 of this article, to carry a concealed weapon without a license, has
10 the absolute right to carry concealed weapons or handguns and other
11 concealable weapons, either openly or concealed, anywhere, at any
12 time, throughout this state, without restriction by any person or
13 entity, regardless of whether the person or entity is a public
14 agency or private actor or whether it is acting in a police,
15 proprietary, employment or contracting capacity, except where
16 prohibited or restricted by:

17 (i) Section eight, article five of this chapter;

18 (ii) Sections eleven-b, eleven-c, eleven-d or fourteen of this
19 article;

20 (iii) Subdivisions (5) through (10), subsection (d), section
21 sixteen of this article; or

22 (iv) Any federal law or regulation.

23 (I) In addition to any other remedies provided by law and in

1 addition to any other persons who may have standing to sue, any
2 licensee under this section or section five of this article or any
3 person authorized by subsection (d), section three of this article,
4 to carry concealed weapons without a license, may bring a civil
5 action to enforce this subsection against any public agency that
6 adopts or enforces any ordinance, rule or policy, or takes any
7 administrative action or engages in any other official act that
8 violates this subsection or any private contracting entity,
9 employer, higher education institution or property owner who
10 violates paragraph (A), (B), (C), (D), (G) or (H) of this
11 subdivision, and obtain declaratory and injunctive relief, actual
12 and consequential damages attributable to any violation of paragraph
13 (A), (B), (C), (D), (G) or (H) of this subdivision, attorney's fees
14 pursuant to section twenty of this article, liquidated damages of
15 three times the attorney's fees awarded pursuant to section twenty
16 of this article and any other relief to which the plaintiff may be
17 entitled under any other law of this state. The court shall, except
18 when otherwise requested by the plaintiff, assign the case a high
19 priority on its civil docket and hear the case on an expedited
20 basis.

21 (J) Any person who willfully violates the rights of any
22 licensee under this section or section five of this article or any
23 person authorized by subsection (d), section three of this article,

1 to carry concealed weapons without a license, under paragraph (A),
2 (B), (C), (D), (G) or (H) of this subdivision is guilty of a felony
3 and, upon conviction thereof, shall be imprisoned in a state
4 correctional facility for not less than one year nor more than five
5 years, fined not more than \$50,000, or both fined and imprisoned.
6 Any person who otherwise violates the rights of any licensee under
7 this section or section five of this article or any person
8 authorized by subsection (d), section three of this article, to
9 carry concealed weapons without a license, under paragraph (A), (B),
10 (C), (D), (G) or (H) of this subdivision is guilty of a misdemeanor
11 and, upon conviction thereof, shall be confined in jail for not more
12 than one year, fined not more than \$10,000, or both fined and
13 confined. In all cases, any public officer who is convicted of
14 violating the rights of any licensee under this section or section
15 five of this article or any person authorized by subsection (d),
16 section three of this article, to carry concealed weapons without a
17 license, under paragraph (A), (B), (C), (D), (G) or (H) of this
18 subdivision shall forfeit his or her office pursuant to section
19 nine, article six, chapter six of this code. Except as required by
20 the provisions of the state Constitution or the United States
21 Constitution, public funds may not be used to defend the unlawful
22 conduct of any person charged with a violation of paragraph (A),
23 (B), (C), (D), (G) or (H) of this subdivision, except where such

1 funds are obligated or paid after the final dismissal of charges
2 against such person or acquittal at trial, or where public funds are
3 expended to provide the services of the office of public defender or
4 court-appointed counsel as otherwise provided by law.

5 (K) In addition to any other remedies available by law for a
6 violation of paragraph (A), (B), (C), (D), (G) or (H) of this
7 subdivision, any violation of the rights of any licensee under this
8 section or section five of this article or any person authorized by
9 subsection (d), section three of this article, to carry concealed
10 weapons without a license, under paragraph (A), (B), (C), (D), (G)
11 or (H) of this subdivision is, for the purposes of article six,
12 chapter six of this code, per se official misconduct by every public
13 officer who engages in conduct that violates paragraph the rights of
14 any licensee under this section or section five of this article or
15 any person authorized by subsection (d), section three of this
16 article, to carry concealed weapons without a license, under
17 paragraph (A), (B), (C), (D), (G) or (H) of this subdivision.

18 (L) When a licensee under this section or section five of this
19 article or person authorized by subsection (d), section three of
20 this article to carry concealed weapons without a license is accused
21 of committing any misdemeanor under section three, eleven-a,
22 eleven-b, eleven-c or fourteen of this article, a citation in lieu
23 of arrest pursuant to section five-a, article one, chapter sixty-two

1 of this code or a summons issued pursuant to Rule 4 of the West
2 Virginia Rules of Criminal Procedure for Magistrate Courts shall be
3 the sole modes of commencing a criminal prosecution for the alleged
4 offense and the accused may not be arrested unless he or she demands
5 to be taken immediately before a magistrate, refuses to sign a
6 citation or accept service of a summons, refuses to cease and desist
7 from any alleged violations of this article or the arresting officer
8 reasonably believes the accused is likely to fail to appear to
9 answer the charge. If a licensee under this section or section five
10 of this article or person authorized by subsection (d), section
11 three of this article to carry concealed weapons without a license
12 is arrested for committing any misdemeanor under section three,
13 eleven-a, eleven-b, eleven-c or fourteen of this article, there
14 shall be a strong presumption in favor of releasing the defendant on
15 his or her own recognizance.

16 (M) When a licensee under this section or section five of this
17 article or person authorized by subsection (d), section three of
18 this article to carry concealed weapons without a license is charged
19 with any misdemeanor under section eleven-a, eleven-b, eleven-c or
20 fourteen of this article, the defendant may move for a continuance
21 of the proceedings for a period to be determined by the court of not
22 more than one hundred eighty days. During the pendency of any
23 continuance under this paragraph, all records of the case in

1 possession of the court, prosecuting attorney and any West Virginia
2 law-enforcement agency shall be placed under seal, shall be
3 confidential, are not public records and may be copied or inspected
4 only by the defendant or the defendant's attorney of record, or upon
5 order of the court with good cause shown and notice to the defendant
6 and an opportunity to respond. The sole condition for a continuance
7 pursuant to this paragraph shall be that the defendant not, during
8 the period of the continuance, violate this article or commit any
9 crime for which a conviction would result in the defendant's
10 disqualification from licensure under this section. Upon the
11 expiration of the continuance, the court shall dismiss the charges
12 with prejudice and order all records of the charges to be expunged
13 unless the court finds that, during the continuance, the defendant
14 committed another violation of this article or any crime for which
15 a conviction would result in the defendant's disqualification from
16 licensure under this section. If the defendant fails to qualify for
17 dismissal of the charges and expungement pursuant to this paragraph,
18 the court may proceed to an adjudication of the pending charges. A
19 motion for a continuance under this paragraph may not be construed
20 as an admission or be used as evidence.

21 (N) When a licensee under this section or section five of this
22 article or person authorized by subsection (d), section three of
23 this article to carry concealed weapons without a license is

1 convicted of committing any misdemeanor under section three,
2 eleven-a, eleven-b, eleven-c or fourteen of this article and appeals
3 the conviction, there shall be a strong presumption in favor of
4 granting the defendant postconviction bail and continuing the
5 defendant's pretrial bail or personal recognizance pending the
6 disposition of all appeals.

7 (2) (A) Subject to any other requirements of federal law, the
8 Constitution of this state and this code, a sheriff may exercise his
9 or her sound discretion in:

10 (i) Overruling a presumption of inebriation described in
11 subdivision (3) of this subsection;

12 (ii) Accepting alternative proof of vision under subparagraph
13 (iii), paragraph (A), subdivision (9), subsection (a) of this
14 section;

15 (iii) Accepting a demonstration of basic competence with a
16 handgun not enumerated in paragraphs (A) through (M), subdivision
17 (2), subsection (d) of this section, that the sheriff is authorized
18 to accept pursuant to paragraph (N), subdivision (2), subsection (d)
19 of this section;

20 (iv) Temporarily suspending for not more than twenty-one days
21 the diligent processing requirement of subdivision (2), subsection
22 (f) of this section during a proclaimed state of emergency, as
23 provided by that subdivision;

1 (v) Authorizing additional acceptable means of payment of fees
2 required under this section pursuant to subdivision (7), subsection
3 (n) of this section;

4 (vi) Establishing and modifying a worthless check fee pursuant
5 to subdivision (9), subsection (n) of this section; and

6 (vii) Determining whether an applicant or licensee is entitled
7 to have an alternate address printed on his or her license pursuant
8 to paragraph (D), subdivision (1), subsection (s) of this section.

9 (B) All duties of a sheriff under this section not specified in
10 paragraph (A) of this subdivision and all duties of the
11 superintendent under this section are wholly ministerial duties with
12 regard to whose exercise the Legislature accords no discretion.

13 (3) For the purposes of subdivision (7), subsection (a) of this
14 section, a person shall be presumed, subject to rebuttal, to be an
15 inebriate if, within the immediate preceding three years, the person
16 has been convicted of two or more intoxication-related offenses.

17 (q) (1) The sheriff shall suspend or revoke a license to carry
18 concealed weapons if the licensee becomes unable to meet the initial
19 licensure criteria specified in this section. When the sheriff
20 suspends or revokes a license, the sheriff shall comply with the
21 provisions of subsection (j) of this section and subdivision (3),
22 subsection (l) of this section and, within two business days after
23 the suspension or revocation, notify the licensee in writing, by

1 either personal service or certified mail, return receipt requested,
2 of the suspension or revocation, the licensee's duties under
3 subdivision (8) of this subsection and the criminal penalty for
4 violating subdivision (8) of this subsection. The sheriff shall
5 effect personal service of any notice of suspension or revocation if
6 the licensee refuses service of the notice by certified mail. If the
7 licensee fails to comply with the provisions of subdivision (8) of
8 this subsection, the sheriff shall take appropriate actions to
9 enforce subdivision (8) of this subsection, including, if
10 appropriate, petitioning the magistrate court for a warrant search
11 for and seize the license card and, if the sheriff has probable
12 cause to believe the licensee has violated subdivision (8) of this
13 subsection, file a criminal complaint and obtain a summons or arrest
14 warrant charging the licensee with violating subdivision (8) of this
15 subsection. Nothing contained in the foregoing sentence may be
16 construed to limit or restrict a search of any other place the
17 sheriff may lawfully search, or obtain a search warrant to search,
18 for the license card. The affidavits for any search warrant or
19 criminal complaint shall include the date, time, and manner of
20 service of the notice of suspension or revocation of the license,
21 sufficient in form to clearly indicate the expiration of the
22 licensee's time to comply with subdivision (8) of this subsection.

23 (2) The sheriff shall suspend a license if any fee paid under

1 this section is dishonored or returned and the licensee fails to pay
2 the fee plus any dishonored payment fees within the time provided by
3 section thirty-nine-a, article three of this chapter. The notice
4 specified in section thirty-nine-a, article three of this chapter
5 shall include a notice that the license may be suspended
6 indefinitely if the licensee does not pay the full arrearage. A
7 suspension for a dishonored fee payment does not affect any civil or
8 criminal remedies otherwise authorized by law. The sheriff shall
9 suspend a license if the sheriff finds that the licensee did not
10 properly demonstrate competence with a handgun as required by
11 subsection (d) of this section for the applicable class of license:
12 Provided, That if the sheriff finds a Class 1, 2 or 4 licensee
13 failed to demonstrate competence in handling and firing a handgun
14 pursuant to subdivision (4), subsection (d) of this section, but met
15 the requirement of demonstrating basic competence with a handgun
16 prescribed by subdivision (2), subsection (d) of this section, the
17 sheriff shall suspend the licensee's Class 1, 2 or 4 license
18 classification and issue the licensee a Class 3 or 5 license and the
19 licensee may seek a reconsideration of or appeal the sheriff's
20 decision on suspending the higher class of license and maintain the
21 lower class of license until qualifying for the higher class of
22 license originally issued or succeeding in a reconsideration or
23 appeal of the original decision on suspending the higher license

1 classification. The sheriff shall suspend a license if the licensee
2 has become disqualified from continued licensure by reason of any
3 indictment, court order described in subdivision (8), subsection
4 (a), section seven of this article or 18 U.S.C. §922(g) (8) or other
5 temporary disqualification. The sheriff shall revoke a license if
6 the licensee otherwise becomes disqualified from continued
7 licensure.

8 (3) The sheriff shall reinstate a license suspended for a
9 dishonored fee payment shall remain suspended if the licensee pays
10 the arrearage and applicable dishonored check fee in full. The
11 sheriff shall reinstate a license suspended for the licensee's
12 failure to demonstrate competence with a handgun as required by
13 subsection (d) of this section, if the licensee presents
14 satisfactory evidence of qualification under subsection (d) of this
15 section. A license suspended for any other reason shall remain
16 suspended until the licensee becomes eligible for licensure under
17 this section. If a suspended license is reinstated, the licensee
18 shall, unless the suspension occurred solely by reason of an
19 indictment against which the licensee prevailed, be subject to the
20 applicable fee for a replacement license. If a license is revoked
21 and the licensee subsequently becomes eligible for licensure or a
22 suspended license expires prior to its reinstatement, the licensee
23 shall apply for a new license as a first-time applicant.

1 (4) The superintendent shall electronically cross-reference the
2 concealed weapons license database maintained pursuant to
3 subdivision (2), subsection (1) of this section with relevant
4 criminal justice, immigration and mental health record databases and
5 shall automatically alert an issuing sheriff to any indication
6 derived from these cross-references that a licensee may have become
7 disqualified from continuing licensure. The superintendent shall,
8 not less than once monthly, conduct a background check by means of
9 electronic data transfer on each licensee under this section and
10 section five of this article through the State Police Criminal
11 Identification Bureau, the National Crime Information Center, the
12 Interstate Identification Index and the National Instant Criminal
13 Background Check System, to verify continuing eligibility. The
14 superintendent or sheriff may also conduct additional background
15 checks on a licensee at any time during the period that a license is
16 in effect to verify continuing eligibility.

17 (5) The clerk of any court in this state in which a person
18 becomes prohibited by 18 U.S.C. §922(g)(4) or subdivision (4),
19 subsection (a), section seven of this article from possessing
20 forearms by reason of having been adjudicated as a mental defective
21 or involuntarily committed to a mental institution, shall determine
22 whether the person is a licensee under this section or section five
23 of this article. If the clerk of the court determines that the

1 person is a licensee under this section or section five of this
2 article, the clerk shall notify the issuing sheriff of the person's
3 identity, address and other personally-identifying information known
4 to the court and not otherwise prohibited by law from being
5 transmitted for this purpose and the nature of the conduct,
6 adjudication or commitment that resulted in the notification. The
7 clerk shall also notify the sheriff of any event removing firearm
8 disabilities under 18 U.S.C. §922(g)(4) or subdivision (4),
9 subsection (a), section seven of this article.

10 (6) Whenever a person is indicted for or otherwise charged with
11 an offense that would, upon conviction, prohibit the person from
12 possessing a firearm or carrying a concealed weapon or otherwise
13 disqualify the person from licensure under this section, the
14 prosecuting attorney shall ascertain whether the person is a
15 licensee under this section or section five of this article. If the
16 person is a licensee under this section or section five of this
17 article, the prosecuting attorney shall notify the issuing sheriff
18 that the licensee has been charged with a disqualifying offense. The
19 prosecuting attorney shall also notify the sheriff of the final
20 disposition of the case.

21 (7) Upon receiving a notification from any court, prosecutor or
22 law-enforcement agency of this state, the United States or another
23 state, that a licensee is disqualified from licensure, the issuing

1 sheriff shall perform an independent investigation to determine
2 whether the licensee is the same person to which the potentially
3 disqualifying information pertains and whether the licensee has
4 actually become disqualified from continuing licensure.

5 (8) A licensee shall surrender the license to the issuing
6 sheriff or file with the issuing sheriff an affidavit, under penalty
7 of false swearing under section two, article five of this chapter,
8 declaring that the license has been lost, stolen or destroyed and
9 that the licensee is unable to surrender the license to the sheriff
10 for that reason, unless a court of competent jurisdiction enjoins
11 the application of this subdivision to the affected licensee for
12 good cause shown, within two business days of receiving notice of
13 the suspension or revocation or if the licensee becomes ineligible
14 for continued licensure regardless of whether the sheriff suspends
15 or revoked the license. Any person who knowingly and willfully
16 fails to surrender a license or file the alternative affidavit with
17 the sheriff as required by this subdivision is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined not more
19 than \$1,000, confined in jail for not more than six months, or both
20 fined and confined. Venue for any prosecution of a violation of
21 this subdivision shall be the county in which the license was issued
22 or, if the licensee had transferred the license to another county,
23 the county of the current issuing sheriff of record.

1 (9) The Attorney General, or the prosecuting attorney of the
2 county of the issuing sheriff of record, upon his or her own
3 initiative may, or upon complaint of any law-enforcement officer,
4 prosecutor, justice, judge or magistrate shall, if he or she finds
5 reasonable grounds to suspect a licensee was licensed or is
6 currently licensed in violation of this section, investigate any
7 licensee and issuing sheriff to determine whether the licensee was
8 licensed or is currently licensed in violation of this section.
9 Whenever the Attorney General or applicable prosecuting attorney
10 finds probable cause to believe that a licensee was licensed or is
11 currently licensed in violation of this section, he or she may bring
12 a civil action in the name of the state in the circuit court of the
13 issuing county of record against the licensee and issuing sheriff of
14 record to seek the enforcement of the applicable suspension or
15 revocation and license surrender requirements of this subsection.
16 The burden of proof is on the plaintiff to prove by clear and
17 convincing evidence that the licensee is disqualified from licensure
18 in the same manner required of the sheriff by subdivision (4),
19 subsection (4) of this section, to sustain a denial, suspension or
20 revocation of a license upon appeal to the circuit court.

21 (r) (1) Before January 1, 2012, the sheriff may, and, after
22 December 31, 2011, the sheriff shall, at least sixty days and not
23 more than ninety days prior to the expiration of each license other

1 than a temporary license issued pursuant to subdivision (6),
2 subsection (f) of this section or a license extended pursuant to
3 subdivision (2), subsection (g) of this section for which the
4 sheriff issued a renewal notice pursuant to this subdivision prior
5 to the license's original expiration date, mail to the licensee at
6 the last mailing address of the licensee known to the sheriff a
7 notice of expiration and renewal procedures. The sheriff shall
8 include in this notice an application for renewal and a statement of
9 the physical street address and hours for applying for renewal in
10 person, the mailing address for applying for renewal by mail, the
11 telephone number of the sheriff's office, the date on which the
12 renewed license will expire if issued, as computed pursuant to
13 subsection (g) of this section, the calculated renewal fee as
14 computed pursuant to subsections (g) and (n) of this section and the
15 methods of payment accepted by the sheriff for the payment of the
16 fee. The sheriff shall include only the name and address of the
17 licensee and the appropriate return mail address on outside of the
18 envelope containing the license renewal notice. The sheriff may not
19 print on the outside of the envelope any other information relating
20 to the licensee nor any indicia that the contents of the envelope
21 pertain to a license to carry concealed weapons.

22 (2) Except as otherwise provided by subsection (y) of this
23 section, a licensee may apply for renewal of a license at any time

1 beginning one year prior to the expiration date of the licensee's
2 current license.

3 (3) If a licensee desires to upgrade the class of his or her
4 license before the renewal period specified in subdivision (2) of
5 this subsection, the licensee shall file with the sheriff of the
6 county in which he or she resides if the licensee is a resident of
7 this state, or the issuing sheriff of record if the licensee is a
8 nonresident:

9 (A) An application for a modified license on a form prescribed
10 by the Attorney General;

11 (B) The replacement license fee prescribed by subdivision (2),
12 subsection (n) of this section;

13 (C) A photocopy of the licensee's current license;

14 (D) If the licensee is currently a Class 3 licensee seeking an
15 upgrade to a Class 1 or 2 license or a Class 5 licensee seeking an
16 upgrade to a Class 1, 2 or 4 license, the required certification of
17 live fire shooting proficiency under subdivision (2), subsection (d)
18 of this section; and

19 (E) If the licensee is seeking an upgrade to a Class 1 license,
20 fingerprints under subdivision (17), subsection (a) of this section
21 and, in addition to the replacement license fee prescribed by
22 subdivision (2), subsection (n) of this section, the Federal Bureau
23 of Investigation fingerprinting fee under subdivision (10)

1 subsection (n) of this section.

2 (4) A Class 5 licensee who has attained the age of twenty-one
3 years shall apply for renewal as a Class 3 licensee unless he or she
4 has met the requirements for a Class 1 or 2 license and seeks to
5 renew as a Class 1 or 2 licensee. A Class 4 licensee who has
6 attained the age of twenty-one years shall apply for renewal as a
7 Class 2 licensee unless he or she has met the requirements for a
8 Class 1 license and seeks to renew as a Class 1 licensee.

9 (5) The sheriff may not require an applicant for renewal or
10 modification of a license under this section to surrender a current,
11 unexpired license or a license extended pursuant to subdivision (2),
12 subsection (g) of this section until after the licensee takes actual
13 physical possession of the new license card. A licensee who obtains
14 a renewal or modified license pursuant to this subsection shall,
15 unless the licensee declared the former license lost, stolen or
16 destroyed pursuant to subparagraph (i), paragraph (A), subdivision
17 (2), subsection (k) of this section, and after receiving actual
18 physical possession of the renewal or modified license, surrender
19 the former license to the issuing sheriff unless the licensee
20 previously surrendered the former license.

21 (s)(1) The sheriff may print on the face of a license an
22 address other than the licensee's residence address if:

23 (A) The licensee is enrolled in a state address confidentiality

1 program;

2 (B) The licensee's address is entitled to be suppressed under
3 a state or federal law or suppressed by a court order;

4 (C) The sheriff determines that the licensee has no fixed or
5 post office recognized designated address of principal residence and
6 must instead utilize another address; or

7 (D) At the discretion of the sheriff, the licensee's address
8 should be suppressed to provide security for classes of licensees
9 such as law-enforcement officers, prosecutors, protected witnesses,
10 members of the state and federal judicial systems and their spouses.

11 (2) A person described in paragraph (A) or (B), subdivision (1)
12 of this subsection may use an alternate address designated by the
13 address confidentiality program or by the court or other federal or
14 state government agency for the purposes of this section, if the
15 agency designating the alternate address provides to the sheriff
16 verification of the state in which the applicant or licensee resides
17 and, if the applicant or licensee resides in this state, the county
18 in which the applicant or licensee resides.

19 (t) (1) The Superintendent shall, not later than the twentieth
20 day of each regular session of the Legislature, submit to the
21 Governor, the Attorney General and the Legislative Librarian a
22 statistical report for the prior calendar year that contains:

23 (A) The number of license applications and licenses issued,

1 suspended, revoked and denied, further categorized by the age, sex,
2 county and ZIP code of the applicant or licensee and license class,
3 since the previous submission, subdivided by month, and in total;

4 (B) The number of licenses currently valid as of the last day
5 of the prior calendar year, categorized by county, ZIP code and
6 license class;

7 (C) The specific reasons for each suspension, revocation and
8 denial and the number of reversed, canceled or corrected actions;

9 (D) The numbers of arrests, convictions and types of offenses,
10 other than minor traffic violations or offenses not punishable by
11 incarceration, committed during the prior calendar year by
12 individuals licensed to carry concealed weapons under this section
13 and section five of this article, subdivided by county, ZIP code and
14 license class, including data as to the number of crimes committed
15 by individuals who used in furtherance of the crime a deadly weapon
16 that was lawfully concealed solely by virtue of any such license;

17 (E) To the extent known or determinable, data on the
18 justifiable use of firearms or concealed weapons in self-defense or
19 the defense of other persons by licensees under this section and
20 section five of this article;

21 (F) The numbers of arrests, convictions and types of offenses,
22 other than minor traffic violations or offenses not punishable by
23 incarceration, committed in this state during the prior calendar

1 year by qualified out-of-state licensees, subdivided by state,
2 including data as to the number of crimes committed by individuals
3 who used in furtherance of the crime a deadly weapon that was
4 lawfully concealed solely by virtue of a reciprocal state's license;

5 (G) To the extent known or determinable, data on the
6 justifiable use of firearms or concealed weapons in self-defense or
7 the defense of other persons within this state by qualified
8 out-of-state licensees;

9 (H) The mean and median amount of time and the longest and
10 shortest amount of time used by the Federal Bureau of Investigation
11 to process the fingerprints of applicants for Class 1 licenses and
12 return a complete national criminal background check report to the
13 requesting sheriff;

14 (I) The actual cost incurred by the State Police per license
15 issued during the prior calendar year, for background check
16 performed on each applicant as part of the background checks
17 required by subsection (b) of this section;

18 (J) Receipts, disbursements and any surplus or deficit incurred
19 by the State Police Concealed Weapons License Background Check
20 Administration Fund for the fiscal year that ended during the prior
21 calendar year;

22 (K) The actual cost incurred by each county in the fiscal year
23 that ended during the prior calendar year;

1 (i) Per license issued or renewed;
2 (ii) Per duplicate or replacement license card issued; and
3 (iii) Paying court costs, attorney's fees and other reasonable
4 expenses of litigation pursuant to section twenty of this article,
5 for applicants or licensees who prevailed in appeals of denials,
6 suspensions or revocations of licenses or obtained mandamus relief
7 to compel the sheriff to act as required by this section or section
8 five of this article; and

9 (L) Each county's concealed weapons license administration fund
10 balance at the end of the fiscal year that ended during the prior
11 calendar year.

12 (2) Each sheriff shall, upon written request from the
13 superintendent, furnish to the superintendent all information
14 available to the sheriff necessary in the compilation of the annual
15 reports required by subdivision (1) of this subsection.

16 (3) The Attorney General shall make the superintendent's annual
17 reports under subdivision (1) of this subsection available to the
18 public on the Internet free of charge and in print at a cost not to
19 exceed the actual marginal cost of publication of each printed copy.

20 (u) (1) (A) The Attorney General shall, not earlier than ninety
21 days nor later than one hundred twenty days after adjournment sine
22 die of each regular session of the Legislature, in the month of
23 December of each year and at any other times the Attorney General

1 may determine, notify the Attorney General and concealed weapon
2 licensing authority, if any, of every other state, in writing, of
3 the provisions of subdivision (1), subsection (d), section three of
4 this article and make written inquiry of whether the other state
5 will extend full faith and credit to licenses issued pursuant to
6 this section and section five of this article and, if so, which
7 classes of licenses and any applicable restrictions based upon an
8 individual licensee's age or residence.

9 (B) The Attorney General shall:

10 (i) Negotiate and execute reciprocity agreements on behalf of
11 this state with states that require a reciprocity agreement to
12 accord full faith and credit to licenses issued pursuant to this
13 section;

14 (ii) Seek to establish, by reciprocity agreement or otherwise,
15 the extension of full faith and credit to all classes of licenses
16 issued pursuant to this section by all states whose laws permit the
17 same, without a requirement for any additional license,
18 qualification or payment of any fee by a West Virginia licensee; and

19 (iii) Maintain efforts to obtain a reciprocity agreement for
20 all classes of licenses under this section and section five of this
21 article from any state that may generally honor licenses issued by
22 this state but affords greater recognition, including exemptions
23 from obtaining an additional license if regularly employed,

1 attending a higher education institution or conducting a business in
2 that state, to all classes of licenses issued by states that have
3 executed reciprocity agreements with that state.

4 (C) Notwithstanding paragraph (A) of this subdivision, the
5 Attorney General is not required to recontact another state while a
6 reciprocity agreement with that state is in force or the state
7 extends full faith and credit to all classes of licenses issued
8 pursuant to this section in the absence of a reciprocity agreement,
9 including when the reciprocity agreement or other extension of full
10 faith and credit is:

11 (i) Limited only to handguns or a similar firearm
12 classification;

13 (ii) Subject to:

14 (I) A restriction or prohibition on residents of the other
15 state using this state's license in that state; or

16 (II) A residency restriction limiting recognition only to
17 licenses held by residents of this state; or

18 (iii) Subject to a combination of the limitations described in
19 subparagraphs (i) and (ii) of this paragraph.

20 (D) The Legislature acknowledges that the majority of
21 license-issuing states issue licenses only for the carrying of
22 concealed handguns and not the carrying of other types of concealed
23 weapons. A licensee of this state is subject to the laws of the

1 state in which the licensee may carry a concealed weapon, including
2 limitations on the types or classes of weapons that may be carried,
3 or where such weapons may be carried, when the licensee is in the
4 other state.

5 (2) For the purposes of participation in reciprocity with other
6 states, the official government-issued identification card issued to
7 a law-enforcement officer or prosecutor who is described in
8 subdivision (2) or (3), subsection (d), section three of this
9 article but who is not a qualified law-enforcement officer under 18
10 U.S.C. §926B and a letter of authorization for a retired or
11 medically discharged member of the State Police to carry concealed
12 weapons issued by the superintendent pursuant to subsection (b),
13 section twenty-five, article two, chapter fifteen of this code,
14 shall be considered a license to carry concealed weapons issued by
15 this state.

16 (3) The Attorney General shall make available to the public:

17 (A) A list and map of those states that have entered into
18 reciprocity agreements with this state or granted full faith and
19 credit to licenses issued under this section without a reciprocity
20 agreement, subdivided by classes of licenses honored in each state;
21 and

22 (B) A list of any restrictions known to the Attorney General,
23 by state, with regard to those matters described in subparagraphs

1 (i) through (iii), paragraph (C), subdivision (1) of this
2 subsection.

3 (v) (1) The Attorney General shall, not later than the twentieth
4 day of each regular session of the Legislature, submit to the
5 Governor and the Legislative Librarian reports:

6 (A) Enumerating:

7 (i) The information specified in subdivision (3), subsection
8 (u) of this section;

9 (ii) The states that issue licenses similar to the license
10 described in this section that have declined to enter into
11 reciprocity agreements with this state and do not otherwise honor
12 licenses issued by this state, the reasons, if any, conveyed to the
13 Attorney General by each state for its respective position and
14 whether each such state has a reciprocity agreement with any other
15 state or otherwise recognizes licenses issued by any other state;

16 (iii) Specific recommendations for amending this section that
17 would result in additional states honoring each class of licenses
18 issued pursuant to this section; and

19 (iv) A public policy analysis, including any reasonable policy
20 arguments for and against the recommendations described in
21 subparagraph (iii) of this paragraph, and the Attorney General's
22 ultimate policy recommendation, concerning the recommendations
23 described in subparagraph (iii) of this paragraph; and

1 (B) Informing the Legislature of:

2 (i) The status of licenses issued pursuant to this section,
3 other than licenses extended pursuant to subdivision (2), subsection
4 (g) of this section, as a qualifying alternative under 18 U.S.C.
5 §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and any other applicable
6 federal law, to a new National Instant Criminal Background Check
7 System check on the licensee at the time of a firearm purchase or
8 other transfer through a licensed firearms dealer within this state;
9 and

10 (ii) If licenses issued pursuant to this section on and after
11 the effective date of the amendments to this section enacted during
12 the 2011 Regular Session of the Legislature, other than licenses
13 extended pursuant to subdivision (2), subsection (g) of this
14 section, have not been listed by the Bureau of Alcohol, Tobacco,
15 Firearms and Explosives as a qualifying alternative:

16 (I) Specific recommendations for amending this section that
17 would result in licenses issued pursuant to this section, other than
18 licenses extended pursuant to subdivision (2), subsection (g) of
19 this section, being listed as a qualifying alternative; and

20 (II) A public policy analysis, including any reasonable policy
21 arguments for and against the recommendations described in clause
22 (I) of this subparagraph, and the Attorney General's ultimate policy
23 recommendation, concerning the recommendations described in clause

1 (I) of this subparagraph.

2 (2) The Attorney General shall make the reports required by
3 subdivision (1) of this subsection available to the public on the
4 Internet free of charge and in print at a cost not to exceed the
5 actual marginal cost of publication of each printed copy.

6 (w)(1) Beginning July 1, 2011, the Attorney General shall
7 annually compile, publish and distribute to the public, free of
8 charge, on the Internet and in print, a compendium of West Virginia
9 weapons, self-defense and use of force laws. The Attorney General
10 shall ensure that all information presented in each year's edition
11 reflects legislation enacted during the regular session of the
12 Legislature held in the current year and reported decisions of the
13 Supreme Court of Appeals rendered through the adjournment sine die
14 of the January term of the Supreme Court of Appeals held in the
15 current year. The Attorney General shall distribute to all sheriffs
16 sufficient quantities of the current compendium of West Virginia
17 weapons and self-defense laws to supply a copy to each person who
18 obtains an application for a license under this section or section
19 five of this article.

20 (2) The compendium of West Virginia weapons and self-defense
21 laws described in subdivision (1) of this subsection shall include:

22 (A) This article in its entirety;

23 (B) Citations and short summaries of all reported decisions of

1 the Supreme Court of Appeals arising from this article;

2 (C) Other provisions of this code relating to the possession,
3 carrying or use of deadly weapons or the use of force;

4 (D) Reported decisions of the Supreme Court of Appeals relating
5 to the possession, carrying or use of deadly weapons or the use of
6 physical force or deadly force in self-defense or the defense of
7 others;

8 (E) The statutory and common law of this state concerning
9 citizen's arrests and the use of force in connection therewith;

10 (F) Beginning with the second annual edition published in the
11 year 2012, significant changes since the preceding edition;

12 (G) Beginning with the third annual edition published in the
13 year 2013, each edition's significant changes from the prior edition
14 for the last five years, subdivided by year; and

15 (H) Other information the Attorney General is required to
16 collect and publicly distribute pursuant to this section other than
17 the reports specified in subsection (u) of this section.

18 (x) Any applicant or licensee may redact his or her Social
19 Security account number from any document he or she submits to the
20 sheriff in connection with any application or license under this
21 section or section five of this article and the redaction shall not
22 affect the validity of the document. Upon request of any applicant
23 or licensee under this section or section five of this article, the

1 sheriff shall redact the Social Security account number of the
2 applicant or licensee from any documents in the sheriff's possession
3 or control furnished by the applicant or licensee in connection with
4 any application or license under this section or section five of
5 this article. Within five business days after receiving a request
6 for redaction of the Social Security number of any applicant or
7 licensee, the sheriff shall transmit a copy of that request to the
8 superintendent. Within five business days after receiving a copy of
9 a request for redaction from the sheriff, the superintendent shall
10 redact the Social Security number from any records the
11 superintendent maintains regarding any applicant or licensee in
12 connection with any application or license under this section or
13 section five of this article. Each application form and
14 instructions shall clearly inform applicants and licensees of their
15 rights under this subsection.

16 (y) Notwithstanding any provisions of this section or the
17 enactment of this section in effect immediately preceding the
18 effective date of the amendments to this section enacted during the
19 2011 Regular Session of the Legislature, to the contrary:

20 (1) Every sheriff shall, on the effective date of the
21 amendments to this section enacted during the 2011 Regular Session
22 of the Legislature, cease processing applications for licenses made
23 to the sheriff prior to such date pursuant to this section as it

1 existed prior to such date, consider the application withdrawn and,
2 within three business days, notify each applicant by certified mail,
3 return receipt requested, that the application has been determined
4 withdrawn by operation of law, that the license sought has been
5 neither issued nor denied and that the applicant may apply pursuant
6 to the enactment of this section effective upon the effective date
7 of the amendments to this section enacted during the 2011 Regular
8 Session of the Legislature and refund in full the application fee
9 paid by each applicant whose application is determined withdrawn by
10 this subdivision;

11 (2) All persons holding a current, valid license issued
12 pursuant to a prior enactment of this section as of the effective
13 date of the amendments to this section enacted during the 2011
14 Regular Session of the Legislature, shall continue to hold a valid
15 license to carry concealed weapons until the license expires, is
16 suspended or revoked pursuant to subsection (q) of this section or
17 subdivision (4) of this subsection, extended pursuant to subdivision
18 (2), subsection (g) of this section, modified pursuant to
19 subdivision (3), subsection (r) of this section, or voluntarily
20 surrendered, or the licensee obtains a reissued license pursuant to
21 subdivision (3) of this subsection. Any license in effect as of the
22 effective date of the amendments to this section enacted during the
23 2011 Regular Session of the Legislature shall continue in effect as

1 a Class 3 license if the licensee is at least twenty-one years of
2 age or a Class 5 license if the licensee is less than twenty-one
3 years of age. However, the limitation of licenses issued prior to
4 the effective date of the amendments to this section enacted during
5 the 2011 Regular Session of the Legislature to pistols and revolvers
6 is repealed and existing licensees are immediately relieved of such
7 limitation;

8 (3) Any licensee under this section who holds a current, valid
9 license under this section as of the effective date of the
10 amendments to this section enacted during the 2011 Regular Session
11 of the Legislature may apply to the appropriate sheriff for a
12 reissued license. The licensee shall file the application otherwise
13 required by this section and shall pay the sheriff the duplicate or
14 replacement license fee prescribed by subdivision (2), subsection
15 (n) of this section. The sheriff shall follow the same procedure as
16 provided by this section for renewing a license. The sheriff shall,
17 within forty-five days after the date of application for a reissued
18 license under this subdivision, issue the licensee a reissued
19 license or deny a reissued license and suspend or revoke the
20 licensee's current license as required by subsection (q) of this
21 section if the licensee is not eligible for licensure under this
22 section. A reissued license pursuant to this subdivision shall
23 expire on the same date as the licensee's current license, but

1 shall entitle the licensee to all rights, benefits, privileges, and
2 immunities to which a licensee who is licensed under this section on
3 or after the effective date of the amendments to this section
4 enacted during the 2011 Regular Session of the Legislature is
5 entitled, including, but not limited to, the exemption described in
6 18 U.S.C. §922(t)(3)(A) and 27 C.F.R. §478.102(d)(1) and the benefit
7 of any reciprocity agreements or other arrangements which may be
8 limited to licenses issued on or after the effective date of the
9 amendments to this section enacted during the 2011 Regular Session
10 of the Legislature; and

11 (4) The eligibility criteria for a license to carry concealed
12 weapons specified in subdivisions (3) through (8), subsection (a) of
13 this section, shall be applied retroactively to all current licenses
14 in effect as of the effective date of the amendments to this section
15 enacted during the 2011 Regular Session of the Legislature. The
16 Superintendent and each sheriff shall fulfill the requirements of
17 subsection (q) of this section with respect to any existing licensee
18 who does not meet the current requirements of subdivisions (3)
19 through (8), subsection (a) of this section, as amended by the
20 amendments to this section enacted during the 2011 Regular Session
21 of the Legislature.

22 (z) (1) Notwithstanding any provision of this code or other law
23 of this state to the contrary, except as otherwise provided in this

1 subsection, the names, addresses and other personally-identifying
2 information of all applicants and licensees under this section and
3 section five of this article and all applications, licenses or
4 reports regarding any individual applicant or licensee under this
5 section or section five of this article or which contains any
6 personally-identifying information about any individual applicant or
7 licensee under this section or section five of this article, unless
8 such information has been redacted, shall be confidential, are not
9 public records and may be copied or inspected only:

10 (A) By the person to whom the record pertains;

11 (B) By the duly qualified conservator or guardian of a person
12 to whom the record pertains;

13 (C) By the duly qualified personal representative of a deceased
14 person to whom the record pertains or, if a personal representative
15 has not qualified, the next of kin of a deceased person to whom the
16 record pertains;

17 (D) By an attorney, attorney-in-fact or other agent or
18 representative acting pursuant to a written power of attorney or
19 other written authorization signed by the person to whom the record
20 pertains;

21 (E) By a duly authorized representative of a law-enforcement
22 agency for any official purpose or any other agency or
23 instrumentality of federal, state or local government seeking the

1 record in the ordinary course of performing its official duties for
2 an official purpose;

3 (F) By any licensed firearm dealer within this state from which
4 a licensee proposes purchasing a firearm, for the purpose of
5 verifying the validity of the license; or

6 (G) (i) Pursuant to an order of any court based upon a finding
7 of the court that the information is sufficiently necessary to a
8 proceeding before the court to substantially outweigh the importance
9 of maintaining the confidentiality of records established by this
10 subsection.

11 (ii) Before any court may grant access to any records pursuant
12 to this paragraph, the court shall order the party seeking access to
13 those records to give each affected applicant or licensee notice of
14 the proceedings, the request for confidential records under this
15 paragraph and the opportunity of affected applicants and licensees
16 to confidentially intervene and object to the request by:

17 (I) Publishing a Class III-O legal advertisement in accordance
18 with the provisions of article three, chapter fifty-nine of this
19 code, whose publication area shall be every county in which any
20 applicant or licensee affected by the request is known to reside.
21 For this purpose, the custodian of records shall provide the court
22 and the party seeking access to those records a list, in writing,
23 verified under oath, of all counties in which the custodian of

1 records has information indicating that applicants or licensees
2 affected by the request reside; and

3 (II) Directing the sheriff or other applicable custodian of
4 records to print and mail by first-class mail to each affected
5 applicant or licensee, the costs for which the moving party shall
6 prepay in full to the sheriff or other applicable custodian of
7 records, and perform this notification in a manner not inconsistent
8 with the confidentiality provisions of this subsection.

9 (iii) Any affected applicant or licensee may, either in person
10 or by counsel, enter a confidential appearance before the court to
11 object to the request for disclosure and present evidence and
12 arguments against the proposed disclosure. The court shall take
13 appropriate measures to protect the confidentiality of individuals
14 entering appearances and objections to disclosures pursuant to this
15 subparagraph.

16 (2) Any person who knowingly misrepresents his or her identity
17 to obtain any information whose disclosure is restricted by
18 subdivision (1) of this subsection, knowingly makes a false
19 statement to obtain any information whose disclosure is restricted
20 by subdivision (1) of this subsection, knowingly and willfully
21 misrepresents his or her authority to obtain any information whose
22 disclosure is restricted by subdivision (1) of this subsection or
23 knowingly and willfully discloses any information whose disclosure

1 is restricted by subdivision (1) of this subsection in violation of
2 subdivision (1) of this subsection, is guilty of a felony and, upon
3 conviction thereof, shall be imprisoned in a state correction
4 facility for not less than one year nor more than ten years, fined
5 not more than \$10,000, or both fined and imprisoned.

6 (3) This subsection does not prohibit disclosure or publication
7 of statistical summaries, abstracts or other records containing
8 information in an aggregate or statistical form that does not
9 disclose any personally-identifying information protected from
10 public disclosure under this subsection.

11 (4) (A) The Superintendent shall furnish to any nonprofit
12 firearm-related or hunting-related educational or issue-advocacy
13 organization exempt from federal income taxation under §501(c) of
14 the Internal Revenue Code that has not obtained records pursuant to
15 this subdivision within the immediate preceding six months, a
16 current list of the names, mailing addresses, telephone numbers,
17 e-mail addresses and county of residence if a resident of this
18 state, of all licensees under this section or section five of this
19 article, in a commonly-used electronic database format acceptable to
20 the requesting organization.

21 (B) The superintendent shall furnish to the state executive
22 committee of any political party, as defined in section eight,
23 article one, chapter three of this code, that has not obtained

1 records pursuant to this subdivision within the immediate preceding
2 six months, a current list of the names, birthdates, mailing
3 addresses, telephone numbers, e-mail addresses and county of
4 residence of all licensees under this section or section five of
5 this article who reside in this state, in a commonly-used electronic
6 database format acceptable to the requesting committee.

7 (C) A personally-identifying information other than the
8 information described in paragraph (A) or (B) of this subdivision,
9 as applicable, may not be disclosed pursuant to this subdivision.

10 (D) The Superintendent shall create and maintain an electronic
11 database of all information described in paragraphs (A) and (B) of
12 this subdivision for the purpose of promptly responding to requests
13 for such information. The superintendent may charge any entity
14 requesting information pursuant to paragraphs (A) or (B) of this
15 subdivision, a reasonable fee, not to exceed the actual marginal
16 cost incurred in fulfilling the request, which may not include any
17 portion of overhead or other fixed costs incurred in creating or
18 maintaining the database required by this paragraph.

19 (E) Before any personally-identifying information of any
20 licensee under this section or section five of this article may
21 disclosed pursuant to this subdivision, the person obtaining the
22 information shall complete and verify under oath a notarized request
23 form prescribed by the Attorney General, which shall be a public

1 record, and file the request form at the headquarters of the State
2 Police in person or by certified mail, return receipt requested.
3 The superintendent shall maintain a record of requests fulfilled
4 under this subdivision for at least five years and not more than
5 seven years. The superintendent shall, upon request of any current
6 or former licensee under this section or section five of this
7 article, notify the current or former licensee of all organizations
8 to which the person's personally-identifying information have been
9 disclosed pursuant to this subdivision during the period for which
10 the superintendent maintains those records and provide a copy of all
11 requests for disclosure made to the superintendent pursuant to this
12 subdivision.

13 **§61-7-5. Emergency licenses to carry concealed weapons.**

14 (a) A sheriff, upon the application of a bona fide resident of
15 this state and the county in which the application is made, has not,
16 except as otherwise provided by subsection (f) of this section, been
17 issued an emergency license to carry concealed weapons under this
18 section within the five-year period immediately preceding the date
19 of the application for an emergency license and who is eligible for
20 licensure under section four of this article except for the
21 requirements of subdivisions (10) and (11), subsection (a) of that
22 section:

23 (1) Shall issue an emergency license to carry concealed weapons

1 to the applicant if the applicant presents evidence of imminent
2 danger; or

3 (2) May issue an emergency license to carry concealed weapons
4 to the applicant if the applicant shows good cause for emergency
5 licensure other than presentment of evidence of imminent danger. Any
6 application under this subdivision shall include a statement from
7 the applicant of the applicant's stated cause for requiring an
8 emergency license, in writing, verified under oath.

9 (b) The sheriff shall, prior to issuing an emergency license to
10 carry concealed weapons, conduct a preliminary background check on
11 the applicant based on available resources for an instant background
12 check to determine the applicant's eligibility for licensure and
13 shall determine whether the applicant has been issued an emergency
14 license to carry concealed weapons under this section within the
15 immediate preceding five years. This preliminary background check
16 shall include the background checks listed in paragraphs (E) through
17 (G), subdivision (3), subsection (b), section four of this article.
18 The sheriff shall make a written statement of the sheriff's findings
19 regarding the sufficiency of the statement of need made by an
20 applicant for an emergency license under subdivision (2), subsection
21 (a) of this section before issuing or denying an emergency license
22 sought under subdivision (2), subsection (a) of this section. An
23 emergency licensee shall, before the sheriff issues an approved

1 emergency license, pay to the sheriff a license fee of \$30, which
2 shall be credited against any fees due if the emergency licensee
3 applies for a license under section four of this article prior to
4 the expiration date of the emergency license.

5 (c) (1) A sheriff shall, upon issuing an emergency license to
6 carry concealed weapons, furnish the emergency licensee with a copy
7 of the current compendium of West Virginia weapons and self-defense
8 laws described in subsection (w), section four of this article if
9 the sheriff did not furnish a copy of it to the emergency licensee
10 during the emergency license application process and immediately
11 transmit to the superintendent a copy of the approved application,
12 a copy of the applicant's evidence of imminent danger submitted in
13 support of the application under subdivision (1), subsection (a) of
14 this section or the applicant's statement of need submitted in
15 support of the application under subdivision (2), subsection (a) of
16 this section and the sheriff's written statement on the sufficiency
17 of the statement of need.

18 (2) A sheriff that issues an emergency license to carry
19 concealed weapons under this section shall retain, for the entire
20 period during which the emergency license to carry concealed weapons
21 is in effect, the evidence of imminent danger or the evidence of
22 other good cause for an emergency license that the emergency license
23 to carry concealed weapons submitted to the issuing sheriff and that

1 was the basis for the license, or a copy of that evidence, as
2 appropriate. Upon the expiration of an emergency license, the
3 sheriff and Superintendent shall destroy all copies of the evidence
4 of imminent danger or the evidence of other good cause for an
5 emergency license that the emergency license to carry concealed
6 weapons submitted to the issuing sheriff and that was the basis for
7 the license, that are in the possession of the sheriff or
8 Superintendent or any agent of the sheriff or Superintendent.

9 (3) The sheriff and Superintendent shall retain for five years
10 the application for an emergency license for the purpose of
11 verifying whether an applicant for an emergency license has been
12 previously issued an emergency license within the immediate past
13 five years, as required by subsection (a) of this section.

14 (d) Upon receiving the information described in subsection (c)
15 of this section, the sheriff shall immediately commence all
16 background checks of the emergency licensee that would be performed
17 upon the emergency licensee's application for a license under
18 section four of this article.

19 (e) If an emergency licensee is found to be disqualified after
20 the emergency license is issued, the issuing sheriff shall revoke
21 the license as provided in section four of this article for licenses
22 issued under that section.

23 (f) An emergency license issued under this section shall expire

1 one hundred eighty days from the date of issue, unless sooner
2 surrendered, suspended, revoked or cancelled, or a regular license
3 is issued. Not earlier than thirty days prior to, nor later than
4 thirty days after, the expiration date of an emergency license under
5 this section that has not been previously renewed, the sheriff shall
6 renew the license for one additional period of one hundred eighty
7 days if the licensee shows good cause, in writing, verified under
8 oath, for why the licensee has been unable to fulfill the
9 requirements of subdivision (10), subsection (a), section four of
10 this article and apply for a regular license under section four of
11 this article.

12 (g) An emergency license may not contain the licensee's
13 photograph. An applicant for an emergency license shall not be
14 required to submit photographs as part of the application for an
15 emergency license. For the purposes of the license classification
16 system under section four of this article, an emergency license
17 issued to a licensee who is at least twenty-one years of age is a
18 Class 3-E license and an emergency license issued to a licensee who
19 is at least 18 years of age but less than twenty-one years of age is
20 a Class 5-E license.

21 (h) Every court of this state shall, upon issuing any domestic
22 violence protective order or other court order enjoining threats or
23 violence against the petitioner or a family or household member of

1 the petitioner, unless the petitioner is known to be disqualified
2 from licensure, offer the petitioner information on obtaining both
3 an emergency license to carry concealed weapons under this section
4 and a regular license to carry concealed weapons under section four
5 of this article.

6 (i) Every West Virginia law-enforcement agency shall, upon
7 taking a police report alleging a person has been the victim of any
8 felony crime of violence, felony sexual offense, misdemeanor crime
9 of violence, stalking or threats of harm to the safety of a person
10 or a family or household member of the person, unless the person is
11 known to be disqualified from licensure, offer the person
12 information on obtaining both an emergency license to carry
13 concealed weapons under this section and a regular license to carry
14 concealed weapons under section four of this article.

15 (j) In this section, "evidence of imminent danger" means:

16 (1) A written, notarized statement by an applicant for an
17 emergency license to carry concealed weapons, signed and sworn
18 before a notary public, made under penalty of false swearing under
19 section two, article five of this chapter, that states that the
20 applicant has reasonable cause to fear a criminal attack upon the
21 applicant or a family or household member of the applicant, such as
22 would justify a prudent person in going armed; or

23 (2) A written document prepared by a governmental entity or

1 public official describing the facts that give the applicant seeking
 2 an emergency license to carry concealed weapons reasonable cause to
 3 fear a criminal attack upon the applicant or a family or household
 4 member of applicant, such as would justify a prudent person in going
 5 armed. Written documents of this nature include, but are not
 6 limited to, any protective order, as that term is defined in section
 7 two hundred nine, article twenty-seven, chapter forty-eight of this
 8 code, any protective order issued outside this state that is granted
 9 full faith and credit in this state pursuant to section three
 10 hundred ten, article twenty-seven, chapter forty-eight of this code,
 11 or other court order, any court report and any report filed with or
 12 made by a law-enforcement officer or prosecutor. For the purposes of
 13 this subdivision, in addition to the definition specified in section
 14 two of this article, "prosecutor" includes any officer, employee or
 15 agent of this state, the United States or another state, or any
 16 political subdivision thereof, who has the power to prosecute
 17 criminal actions.

18 **§61-7-7. Persons prohibited from possessing firearms or ammunition**
 19 **or carrying concealed weapons; classifications; relief**
 20 **from disabilities; offenses; penalties.**

21 (a) Except as otherwise provided in subsection (b) of this
 22 section, no person shall may possess a firearm as such is defined in
 23 section two of this article who or ammunition or, except in the

1 person's residence, temporary place of abode, fixed place of
2 business or other real property owned, leased or lawfully possessed
3 by the person, carry a concealed weapon on his or her person, if the
4 person:

5 (1) Has been convicted in any court within the United States of
6 a crime punishable by imprisonment for a term exceeding one year;

7 (2) Is ~~habitually addicted to alcohol~~ a fugitive from justice;

8 (3) Is an unlawful user of or ~~habitually~~ addicted to any
9 controlled substance;

10 (4) Has been adjudicated as a mental defective or ~~who~~ has been
11 involuntarily committed to a mental institution; ~~pursuant to the~~
12 ~~provisions of chapter twenty seven of this code: Provided, That~~
13 ~~once an individual has been adjudicated as a mental defective or~~
14 ~~involuntarily committed to a mental institution, he or she shall be~~
15 ~~duly notified that they are to immediately surrender any firearms in~~
16 ~~their ownership or possession: Provided, however, That the mental~~
17 ~~hygiene commissioner or circuit judge shall first make a~~
18 ~~determination of the appropriate public or private individual or~~
19 ~~entity to act as conservator for the surrendered property~~

20 (5) Is an alien illegally or unlawfully in the United States;

21 (6) Has been discharged from the Armed Forces under
22 dishonorable conditions;

23 (7) Having been a citizen of the United States, has renounced

1 his or her citizenship;

2 ~~(7)~~ (8) Is subject to a ~~domestic violence protective court~~ order
3 that:

4 (A) Was issued after a hearing of which ~~such person~~ the
5 respondent received actual notice and at which ~~such person~~ the
6 respondent had an opportunity to participate;

7 (B) Restrains ~~such person~~ the respondent from harassing,
8 stalking or threatening an intimate partner of ~~such person~~ the
9 respondent or child of ~~such~~ the intimate partner or ~~person~~
10 respondent, or engaging in other conduct that would place an
11 intimate partner in reasonable fear of bodily injury to the partner
12 or child; and

13 (C) (i) Includes a finding that ~~such person~~ the respondent
14 represents a credible threat to the physical safety of ~~such~~ the
15 intimate partner or child; or

16 (ii) By its terms explicitly prohibits the use, attempted use
17 or threatened use of physical force against ~~such~~ the intimate
18 partner or child that would reasonably be expected to cause bodily
19 injury; or

20 ~~(8) Has been convicted of a misdemeanor offense of assault or~~
21 ~~battery either under the provisions of section twenty-eight, article~~
22 ~~two of this chapter or the provisions of subsection (b) or (c),~~
23 ~~section nine of said article in which the victim was a current or~~

~~1 former spouse, current or former sexual or intimate partner, person
2 with whom the defendant has a child in common, person with whom the
3 defendant cohabits or has cohabited, a parent or guardian, the
4 defendant's child or ward or a member of the defendant's household
5 at the time of the offense or has~~

6 (9) Is currently prohibited under 18 U.S.C. §922(g)(9) from
7 possessing, transporting, shipping or receiving firearms by virtue
8 of having been convicted in any court within the United States of
9 ~~any jurisdiction of a comparable~~ misdemeanor crime of domestic
10 violence as defined in 18 U.S.C. §921(a)(33).

11 (b) Subsection (a) of this section does not apply to:

12 (1) Any person who has been granted relief from disability
13 pursuant to subsection (e) of this section or any prior enactment of
14 this section;

15 (2) Any person who is exempt from 18 U.S.C. §922(g) pursuant to
16 18 U.S.C. §925(a), to the extent the exemption under 18 U.S.C.
17 §925(a) pertains to causes for which the person would otherwise be
18 under disability under subsection (a) of this section;

19 (3) Any person who has received relief from disabilities
20 pursuant to 18 U.S.C. §925(b), to the extent the relief granted
21 pertains to causes for which the person would otherwise be under
22 disability under subsection (a) of this section;

23 (4) With respect to any event causing a disability under

1 subsection (a) of this section that occurred in another state, any
2 person who has received relief from disabilities under the laws of
3 the state in which the disabling event occurred, to the extent the
4 relief granted effected the removal of federal firearm disabilities
5 otherwise applicable pursuant to 18 U.S.C. §922(g) and the laws of
6 the state in which relief was granted;

7 (5) With respect to a disability under subdivision (4),
8 subsection (a) of this section, any person who has received relief
9 from disability under the former section five, article seven-a of
10 this chapter, as it existed between June 8, 2008, and its repeal and
11 consolidation with subsection (e) this section, as enacted
12 concurrent with the amendments to this section enacted during the
13 2011 Regular Session of the Legislature, or any other program or
14 procedure that, under Section 105 of the NICS Improvement Amendments
15 Act of 2007, Public Law 110-180, 121 Stat. 2559, 2569-70, removes
16 federal firearm disabilities otherwise applicable pursuant to 18
17 U.S.C. §922(d)(4) or (g)(4); or

18 (6) Any person who has received any combination of the forms of
19 relief described in subdivisions (1) through (5) of this subsection
20 if, as a combined result of all applicable grants of relief the
21 person has received, the person is not subject to any federal
22 firearms disability otherwise applicable under 18 U.S.C. §922(g).

23 (c)(1) Except as otherwise provided in this subsection, no

1 person may knowingly carry a concealed weapon on his or her person
2 while he or she is in any public place if he or she:

3 (A) Has, within the immediate preceding three years, been
4 convicted in any court within the United States of any misdemeanor
5 drug offense, any misdemeanor crime of violence, any misdemeanor
6 under section nine hundred three, article twenty-seven, chapter
7 forty-eight of this code or any offense under federal law or the
8 laws of another state or political subdivision thereof that, if
9 committed within this state, would constitute an offense under
10 section nine hundred three, article twenty-seven, chapter
11 forty-eight of this code;

12 (B) Has, within the immediate preceding three years, received
13 a conditional discharge pursuant to section four hundred seven,
14 article four, chapter sixty-a of this code or the substantially
15 similar law of the United States or any other state for, any
16 misdemeanor drug offense;

17 (C) Has entered into a pretrial diversion agreement for, or had
18 adjudication of guilt withheld or imposition of sentence suspended
19 on, any crime for which a conviction would disqualify the person
20 under this subdivision or subsection (a) of this section from
21 possessing firearms or carrying a concealed weapon in a public
22 place, unless the record has been sealed or expunged or three years
23 have elapsed since probation or any other conditions set by the

1 court have been fulfilled;

2 (D) Is less than thirty years of age and has been adjudicated
3 delinquent as a juvenile in any court within the United States for
4 any act that, if the person had been tried and convicted of
5 committing as an adult, would disqualify the person under paragraph
6 (A) or (E) of this subdivision or subsection (a) of this section
7 from possessing firearms or carrying a concealed weapon in a public
8 place;

9 (E) Has been convicted in any court within the United States of
10 committing any misdemeanor drug offense, any misdemeanor crime of
11 violence, any misdemeanor under section nine hundred three, article
12 twenty-seven, chapter forty-eight of this code, or any offense under
13 federal law or the laws of another state or political subdivision
14 thereof that, if committed within this state, would constitute an
15 offense under section nine hundred three, article twenty-seven,
16 chapter forty-eight of this code, committed subsequent to the entry
17 of any conviction, conditional discharge or pretrial diversion
18 agreement in any court within the United States for any crime
19 punishable by imprisonment by a term exceeding one year, any
20 misdemeanor drug offense, any misdemeanor crime of violence, any
21 misdemeanor under section nine hundred three, article twenty-seven,
22 chapter forty-eight of this code, or any offense under federal law
23 or the laws of another state or political subdivision thereof that,

1 if committed within this state, would constitute an offense under
2 section nine hundred three, article twenty-seven, chapter
3 forty-eight of this code, unless at least ten years have elapsed
4 since the date of conviction and at least five years have elapsed
5 since the completion of any sentence, probation, parole, other
6 supervision and payment in full of all fines, court costs and
7 restitution, whichever last occurs;

8 (F) Is an inebriate as defined in section four, article one,
9 chapter twenty-seven of this code;

10 (G) Is receiving social security disability benefits by reason
11 of alcohol dependence, drug dependence, mental disability or
12 blindness;

13 (H) Presently suffers a mental illness, as defined in section
14 two, article one, chapter twenty-seven of this code, to the extent
15 the person is likely to cause serious harm, as defined in section
16 twelve, article one, chapter twenty-seven of this code;

17 (I) Presently suffers an intellectual disability, as defined in
18 section three, article one, chapter twenty-seven of this code, to
19 the extent the person is likely to cause serious harm, as defined in
20 section twelve, article one, chapter twenty-seven of this code; or

21 (J) Has received treatment in any mental health facility, as
22 defined in section nine, article one, chapter twenty-seven of this
23 code, or any similar institution in any other state, for any mental

1 illness, as defined in section two, article one, chapter
2 twenty-seven of this code, or addiction, as defined in section
3 eleven, article one, chapter twenty-seven of this code, unless a
4 licensed psychiatrist, as defined in section ten, article one,
5 chapter twenty-seven of this code, has issued a certificate
6 attesting that the person has not suffered mental illness or
7 addiction for at least five years immediately preceding the issuance
8 of the certificate.

9 (2) Subdivision (1) of this subsection does not apply to:

10 (A) Any person who is authorized by subsection (c) or (e),
11 section three of this article or subdivision (2), (5), (6), (7) or
12 (9), subsection (d), section three of this article, to carry a
13 concealed weapon;

14 (B) Any person who is at, in or on a gun show, premises of a
15 licensed firearm dealer, hunting or target shooting facility or the
16 woods, fields or waters of this state where the person is present
17 lawfully for the purpose of hunting or target shooting or other
18 lawful activity involving firearms; or

19 (C) Any person who has been granted relief from disability
20 under subsection (e) of this section.

21 (3) It is an affirmative defense to an offense under this
22 subsection that:

23 (A) The defendant was not prohibited from possessing firearms

1 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, and not
2 prohibited by subsection (a) of this section from possessing
3 firearms; and

4 (B) (i) The defendant carried the weapon for defensive purposes
5 while the defendant was engaged in or was going to or from the
6 defendant's lawful business or occupation, which business or
7 occupation was of a character or was necessarily carried on in a
8 manner or at a time or place as to render the defendant particularly
9 susceptible to criminal attack, such as would justify a prudent
10 person in going armed; or

11 (ii) The defendant carried the weapon for defensive purposes
12 while the actor was engaged in a lawful activity and had reasonable
13 cause to fear a criminal attack upon the defendant or any person
14 accompanying the defendant, such as would justify a prudent person
15 in going armed.

16 (4) In this subsection, "public place" means any property
17 owned, leased or controlled by a public agency or private property
18 that is regularly and frequently open to or made available for use
19 by the public in sufficient numbers to give clear notice of the
20 property's current dedication to public use, but does not include a
21 person's dwelling house or premises, the place of business owned or
22 managed by the person, or land possessed by the person; a gun show,
23 premises of a licensed firearm dealer or hunting or target shooting

1 facility, or the woods, fields or waters of this state where the
2 person is present lawfully for the purpose of hunting or target
3 shooting or other lawful activity involving firearms.

4 (d) (1) (A) Any person who:

5 (i) Knowingly and willfully possesses a firearm or carries a
6 concealed weapon in violation of subdivision (1), subsection (a) of
7 this section, when the prohibition on possessing firearms is based
8 in whole or in part upon a conviction for any aggravated felony;

9 (ii) Knowingly possesses a firearm or ammunition or carries a
10 concealed weapon in violation of subdivision (5), subsection (a) of
11 this section;

12 (iii) Carries on or about his or her person a firearm or
13 concealed weapon that the person knowingly and willfully possesses
14 in violation of subsection (a) or (c) of this section while the
15 person commits any aggravated felony; or

16 (iv) Knowingly possesses a firearm or carries a concealed
17 weapon in violation of subsection (a) or (c) of this section after
18 having been previously convicted of possessing a firearm or carrying
19 a concealed weapon in violation of this section, 18 U.S.C. §922(g)
20 or any substantially similar law of any other state, unless at least
21 ten years have elapsed since the date of conviction and at least
22 five years have elapsed since the completion of any sentence,
23 probation, parole, other supervision and payment in full of all

1 fines, court costs and restitution, whichever last occurs, is guilty
2 of a felony and, upon conviction thereof, shall be fined not more
3 than \$100,000, imprisoned in a state correctional facility for not
4 less than one year nor more than ten years, or both fined and
5 imprisoned.

6 (B) The prosecuting attorney shall, in all cases in which a
7 defendant is convicted of a felony punishable under paragraph (A) of
8 this subdivision and has been previously convicted of a felony for
9 which the defendant is eligible for any sentencing enhancement under
10 section eighteen, article eleven of this chapter, obtain and present
11 to the court record evidence of all prior felony convictions against
12 the defendant and seek the maximum recidivist sentencing enhancement
13 for which the defendant is eligible under section eighteen, article
14 eleven of this chapter. A prosecuting attorney shall not have
15 discretion to refuse or fail to act as required by this paragraph or
16 to negotiate or enter into any plea agreement to avoid any
17 recidivist sentencing enhancement required by this paragraph and
18 section eighteen, article eleven of this chapter. Nothing in this
19 paragraph may be construed to prohibit any sentencing order or plea
20 agreement that provides for any sentence for any offense under this
21 section to be served concurrent with any sentence of imprisonment in
22 a federal correctional facility for any offense under Title 18,
23 Chapter 44 of the United States Code (18 U.S.C. §§921 through 931),

1 arising from the same transaction or occurrence.

2 (2) Except as otherwise provided by subdivision (1) of this
3 subsection, any person who knowingly possesses a firearm or carries
4 a concealed weapon in violation of subdivisions (1) or (9),
5 subsection (a) of this section, where the prohibition on possessing
6 firearms or carrying a concealed weapon is based upon one or more
7 misdemeanor convictions from which at least five years have elapsed
8 since the date of conviction, completion of sentence or probation or
9 payment in full of all fines, court costs and court-ordered
10 restitution, whichever last occurs, or who possesses ammunition in
11 violation of subsection (a) of this section, is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not more
13 than \$500, confined in jail for not more than thirty days, or both
14 fined and confined.

15 (3) Except when subdivision (1) or (2) of this subsection is
16 applicable, any person who ~~violates this~~ knowingly possesses a
17 firearm or carries a concealed weapon in violation of subsection
18 ~~shall be~~ (a) or (c) of this section is guilty of a misdemeanor and,
19 upon conviction thereof, shall be fined not ~~less than one hundred~~
20 ~~dollars nor~~ more than ~~one thousand dollars or~~ \$2,500, confined in
21 ~~the county jail for not less than ninety days nor~~ more than one
22 year, or both fined and confined.

23 ~~(b) Notwithstanding the provisions of subsection (a) of this~~

1 ~~section, any person:~~

2 ~~(1) Who has been convicted in this state or any other~~
3 ~~jurisdiction of a felony crime of violence against the person of~~
4 ~~another or of a felony sexual offense; or~~

5 ~~(2) Who has been convicted in this state or any other~~
6 ~~jurisdiction of a felony controlled substance offense involving a~~
7 ~~Schedule I controlled substance other than marijuana, a Schedule II~~
8 ~~or a Schedule III controlled substance as such are defined in~~
9 ~~sections two hundred four, two hundred five and two hundred six,~~
10 ~~article two, chapter sixty-a of this code and who possesses a~~
11 ~~firearm as such is defined in section two of this article shall be~~
12 ~~guilty of a felony and, upon conviction thereof, shall be confined~~
13 ~~in a state correctional facility for not more than five years or~~
14 ~~fined not more than five thousand dollars, or both. The provisions~~
15 ~~of subsection (c) of this section shall not apply to persons~~
16 ~~convicted of offenses referred to in this subsection or to persons~~
17 ~~convicted of a violation of this subsection.~~

18 ~~(c)~~ (e) (1) Any person resident of this state who is prohibited
19 from possessing a firearm firearms and ammunition or carrying a
20 concealed weapon by the provisions of subsection (a) or (c) of this
21 section may petition the circuit court of the county in which he or
22 she resides to regain the ability to possess a firearm and for
23 relief from disabilities. Any nonresident who is prohibited from

1 possessing firearms and ammunition or carrying a concealed weapon by
2 subsection (a) or (c) of this section may petition the circuit court
3 of any county for relief from disabilities. However, any
4 nonresident who is prohibited from possessing firearms and
5 ammunition or carrying a concealed weapon by subsection (a) or (c)
6 of this section by virtue of any conviction, commitment,
7 adjudication, domestic violence protective order or other act that
8 occurred within this state may petition only the circuit court of
9 Kanawha County or a county in which any disabling event under
10 subsection (a) or (c) of this section occurred for relief from
11 disabilities. The petitioner shall, at the time of filing the
12 petition, pay the clerk of the circuit court a filing fee equal to
13 the filing fee for instituting a civil action pursuant to
14 subdivision (1), subsection (a), section eleven, article one,
15 chapter fifty-nine of this code. The petition shall be verified
16 under oath and include the following information:

17 (A) The petitioner's current name and all other legal names or
18 aliases by which petitioner has been known at any time;

19 (B) All of the petitioner's residence addresses from the date
20 of onset of a disability under this section to the date of the
21 petition;

22 (C) The petitioner's date and place of birth;

23 (D) If the petitioner is under any disability under

1 subdivisions (1) or (9), subsection (a) of this section or paragraph
2 (A), (B), (C), (D) or (E), subdivision (1), subsection (c) of this
3 section:

4 (i) The petitioner's date of arrest, the court of jurisdiction
5 and criminal complaint, indictment, summons or case number;

6 (ii) The statute or statutes and offense or offenses for which
7 the petitioner was charged and for which the petitioner was
8 convicted, placed on pretrial diversion, granted a conditional
9 discharge or adjudicated delinquent as a juvenile;

10 (iii) The names of the victim or victims, if any;

11 (iv) Whether there is a current order, or has ever been, a
12 prior order for restitution, a domestic violence protective order or
13 other restraining order prohibiting the petitioner from contacting
14 the victims. If such an order is currently in effect, the petitioner
15 shall attach a copy of the order to the petition;

16 (v) The court's disposition of the matter and punishment
17 imposed, if any; and

18 (vi) The steps the petitioner has taken since the time of the
19 offenses toward personal rehabilitation, including treatment, work
20 or other personal history that demonstrates rehabilitation;

21 (E) If the petitioner is under any disability under subdivision
22 (4), subsection (a) of this section, the name of the court or other
23 tribunal of jurisdiction, the case or file number and the current

1 status of the matter;

2 (F) Whether the petitioner has ever been granted similar relief
3 by any court in this state or any court, tribunal or other agency of
4 any other state or the United States;

5 (G) Whether the petitioner has previously filed any petitions
6 for relief from disabilities under this section or any prior
7 enactment thereof and, if so, a listing of all petitions, courts in
8 which they were filed, case numbers and their dispositions;

9 (H) A memorandum of law concerning whether the petitioner is
10 currently prohibited by federal law from possessing firearms and
11 what effect, if any, the court granting the petition would have on
12 the petitioner's eligibility under federal law to possess firearms;
13 and

14 (I) Any supporting documents, affidavits or other information
15 supporting the petition.

16 (2) The State of West Virginia shall be named as the respondent
17 to any petition under this subsection. The petitioner shall serve
18 a copy of the petition and any supporting documentation pursuant to
19 the West Virginia Rules of Civil Procedure and the West Virginia
20 Trial Court Rules upon the prosecuting attorney of the county in
21 which the petition is filed and the prosecuting attorney of any
22 county in which the petitioner was convicted, placed on pretrial
23 diversion, granted a conditional discharge or adjudicated delinquent

1 as a juvenile for any criminal offense creating a disability under
2 subdivisions (1) or (9), subsection (a) of this section or paragraph
3 (A), (B), (C), (D) or (E), subdivision (1), subsection (c) of this
4 section, or in which a court order described in subdivision (8),
5 subsection (a) of this section was issued, or the equivalent
6 official of the United States or any other state in which any such
7 conviction occurred or order issued. If the petition pertains to
8 any disability under subdivisions (1), (8) or (9), subsection (a) of
9 this section or paragraph (A), (C), (D) or (E), subdivision (1),
10 subsection (c) of this section, the prosecuting attorney shall serve
11 by first class mail a copy of the petition, accompanying
12 documentation and any proposed order to any identified victims and
13 the prosecuting attorney shall take reasonable steps to locate any
14 identifiable victims, including but not limited to searches of
15 driver's license, voter registration and tax databases to which the
16 prosecuting attorney may have access for official purposes. If
17 there are no identifiable victims or the prosecuting attorney cannot
18 locate and serve an identifiable victim, the prosecuting attorney
19 shall notify the court and the petitioner, and shall have no further
20 duty with respect to the location and service of any victim.

21 (3) The court may require the petitioner to appear before the
22 sheriff of the county in which the petition was filed and submit to
23 fingerprinting for the purpose of a state and national criminal and

1 mental health background check and pay the sheriff the costs of
2 fingerprinting and the background check. Where possible,
3 fingerprinting shall be performed using electronic fingerprint
4 imaging to reduce the time and expense required to process the
5 fingerprints. The sheriff shall provide the results of any
6 court-ordered background check to the court, the petitioner and each
7 party the petitioner was required to serve a copy of the petition.

8 (4) Upon receipt of a petition under this subsection, the
9 prosecuting attorney, the victim or victims of the offense to which
10 the petition pertains and any other interested person or agency that
11 desires to oppose granting relief shall, within thirty days after
12 receipt of the petition or ten days after receipt of a copy of the
13 results of any fingerprint-based background checks conducted
14 pursuant to subdivision (3) of this subsection, whichever last
15 occurs, file a notice of opposition with the court with supporting
16 documentation and sworn statements setting forth the reasons for
17 opposing the petition. The opponent shall serve a copy of any
18 notice of opposition with supporting documentation and sworn
19 statements upon the petitioner in accordance with the West Virginia
20 Rules of Civil Procedure and the West Virginia Trial Court Rules.
21 The prosecuting attorney may, or, if ordered by the court, shall,
22 present a memorandum of law concerning the state's position on
23 whether the petitioner is currently prohibited by federal law from

1 possessing firearms and what effect, if any, the court granting the
2 petition would have on the petitioner's eligibility under federal
3 law to possess firearms. The petitioner shall be granted at least
4 ten business days after service of any notice of opposition to the
5 petition or any memorandum of law to file a reply.

6 (5) Not earlier than fourteen days nor more than thirty days
7 after the expiration of the time period for a party to enter a
8 notice of opposition to the petition and, if applicable, for the
9 petitioner to file a reply with the court, the court shall:

10 (A) Summarily deny the petition if the court determines that
11 the petition is insufficient or, based upon supporting documentation
12 and sworn statements filed in opposition to the petition, the court
13 determines that the petitioner, as a matter of law, is not entitled
14 to relief;

15 (B) Summarily grant the petition if the court does not
16 summarily deny the petition pursuant to paragraph (A) of this
17 subdivision, the petitioner does not request a hearing on the
18 petition, no opposition to the petition has been filed with the
19 court and the court does not desire, upon its own motion, to set the
20 matter for hearing; or

21 (C) In any other case, set the matter for hearing.

22 (6) If the court sets the matter for hearing, the clerk of the
23 court shall notify the petitioner and all interested parties who

1 have filed a notice of opposition. The court, at the hearing, may
2 inquire into the background of the petitioner and shall have access
3 to any reports or records relating to the petitioner that are on
4 file with any law-enforcement authority and other agency which was
5 in any way involved with the events resulting in the petitioner's
6 disability under this section, including any record of arrest or
7 conviction or domestic violence or mental health proceedings in any
8 state or federal court. The court may hear testimony of witnesses
9 and any other matter the court deems proper and relevant to its
10 determination regarding the petition.

11 (7) The court shall grant relief if the court finds by clear
12 and convincing evidence that the person is competent and capable of
13 exercising the responsibility concomitant with the possession of a
14 firearm, the court may enter an order allowing the person to possess
15 a firearm if such possession would not violate any federal law.
16 Provided, That a person prohibited from possessing a firearm by the
17 provisions of subdivision (4), subsection (a) of this section may
18 petition to regain the ability to possess a firearm in accordance
19 with the provisions of section five, article seven-a of this chapter
20 circumstances regarding the disability and the petitioner's record
21 and reputation are such that the petitioner will not be likely to
22 act in a manner dangerous to public safety and that granting relief
23 would not be contrary to the public interest. However, the court

1 may deny the petition or limit the relief granted to exclude
2 firearms, as defined in 18 U.S.C. §921, and regulated under 18
3 U.S.C. §922(g), if it finds that the petitioner is currently
4 prohibited by federal law from possessing firearms and would remain
5 prohibited by federal law from possessing firearms notwithstanding
6 the granting of the petition and removal of disabilities under this
7 section.

8 (8) Any petitioner denied relief under this subsection or
9 granted less than the full relief sought may, from time to time,
10 upon notice to the prosecuting attorney and any parties that entered
11 objections to the petition or which may otherwise be designated by
12 the court, petition the court to reconsider its decision to deny
13 relief or grant limited relief, regardless of whether the petitioner
14 originally appealed the previous order denying relief or granting
15 limited relief or the resolution of that appeal. The court may, in
16 its discretion, in an order denying reconsideration under this
17 subdivision or granting less than full relief upon reconsideration,
18 specify that the petitioner may not seek another reconsideration of
19 the court's decision for a specified period of time, not to extend
20 beyond one year after the date on which the order is entered.

21 (9) Any order granting relief under this subsection does not
22 relieve the petitioner from any disability under subsection (a) or
23 (c) of this section that the petitioner did not completely and

1 accurately disclose to the court in the petition.

2 (10) The court may, at any time upon actual notice to the
3 petitioner and after a reasonable opportunity for the petitioner to
4 be heard, revoke its order granting relief under this subsection
5 upon good cause shown by clear and convincing evidence.

6 (11) The court shall, upon granting, denying or revoking
7 relief, enter in the record an order reflecting its ruling on the
8 petition with appropriate findings of fact and conclusions of law.
9 If the court denies the petition, grants limited relief or revokes
10 any previous grant of relief, it shall clearly indicate in its
11 findings of fact and conclusions of law specific findings and
12 conclusions regarding the petitioner's eligibility under federal law
13 to lawfully possess firearms and whether the petitioner's
14 eligibility under federal law to lawfully possess firearms would
15 have been affected had the court granted the petition or not revoked
16 the prior grant of relief, and shall clearly state whether the court
17 would have granted the petition in full or not revoked the prior
18 grant of relief had it reached a different conclusion on the
19 question of the petitioner's eligibility under federal law to
20 lawfully possess firearms. Upon entry of an order granting, denying
21 or revoking relief under this subsection, the clerk of the court
22 shall transmit certified copies of the order to the petitioner,
23 prosecuting attorney and all parties that entered notices of

1 opposition to the petition.

2 (12) In any appeal of a denial of relief or revocation of any
3 grant of relief, all matters appealed by the petitioner shall be
4 reviewed de novo.

5 (13) If the court grants relief from a disability under
6 subsection (a) or (c) of this section or revokes any grant of relief
7 from any disability under subsection (a) or (c) of this section, the
8 clerk of the court shall transmit a certified copy of the order to
9 the superintendent. If the order grants relief from a disability
10 under subsection (a) of this section or revokes any grant of relief
11 from any disability under subsection (a) of this section, the
12 superintendent shall transmit a certified copy of the order to the
13 Federal Bureau of Investigation or other federal entity operating
14 the National Instant Criminal Background Check System. If the order
15 grants relief from disabilities under subdivision (4), subsection
16 (a) of this section and 18 U.S.C. §922(g)(4), the superintendent
17 shall, immediately upon receipt of the certified copy of the order,
18 remove the petitioner's name and other pertinent information from
19 the central state mental health registry maintained pursuant to
20 article seven-a of this chapter.

21 (14) The Legislature declares that this subsection is the
22 process established by this state pursuant to Section 105 of the
23 NICS Improvement Amendments Act of 2007, Public Law 110-180, 121

1 Stat. 2559, 2569-70, to grant relief from any firearms disability
2 under subdivision (4), subsection (a) of this section or 18 U.S.C.
3 §922(d)(4) or (g)(4).

4 **§61-7-9. Firearms regulated by National Firearms Act; prohibited**
5 **acts; penalties.**

6 ~~It shall be unlawful for any~~ (a) A person to ~~may not knowingly~~
7 ~~carry, transport or have in his possession,~~ possess ~~any machine gun~~
8 ~~submachine gun, or any other fully automatic weapon~~ firearm that is
9 regulated by the National Firearms Act, 26 U.S.C. Chapter 53, as it
10 exists as of January 1, 2011, ~~unless he or she~~ the person ~~has fully~~
11 ~~complied with applicable federal statutes~~ the National Firearms Act,
12 as it exists as of January 1, 2011, and all applicable ~~rules and~~
13 ~~regulations of the secretary of the treasury of the United States~~
14 ~~relating to such firearms~~ promulgated pursuant to the National
15 Firearms Act, as they exist as of January 1, 2011.

16 (b) Every chief law-enforcement official and prosecuting
17 attorney is a chief law-enforcement officer in this state for
18 purposes of certification of the transfer and registration of any
19 firearm required to be certified pursuant to the National Firearms
20 Act.

21 (c) A chief law-enforcement official or prosecuting attorney
22 shall, except as otherwise provided by subsection (e) of this
23 section, whenever a resident of the political subdivision served by

1 the chief law-enforcement official or prosecuting attorney presents
2 to the chief law-enforcement official or prosecuting attorney an
3 application for certification of the transfer and registration of a
4 firearm subject to the National Firearms Act, provide the
5 certification; (i) within seven days of receipt of the federal
6 application and the request for certification if the applicant is
7 currently licensed to carry concealed weapons pursuant to section
8 four of this article (other than a temporary, temporary renewal or
9 emergency license) and presents a photocopy of the license to the
10 chief law-enforcement official with the federal application and
11 request for certification or (ii) within forty-five days of receipt
12 of the federal application and request for certification in any
13 other case. The failure of the chief law-enforcement official or
14 prosecuting attorney to notify the applicant in writing, by personal
15 service or certified mail, return receipt requested, of a denial of
16 certification within the applicable time period and the reasons for
17 the denial, constitutes granting the requested certification. A fee
18 may not be charged for providing a certification pursuant to this
19 subsection.

20 (d) (1) A chief law-enforcement official or prosecuting attorney
21 shall deny the certification described in subsection (c) of this
22 section if the applicant is prohibited by federal law or subsection
23 (a), section seven of this article from receiving the firearm.

1 (2) A chief law-enforcement official or prosecuting attorney
2 may deny the certification described in subsection (c) of this
3 section if the chief law-enforcement official or prosecuting
4 attorney has specific, credible, documented information proving that
5 the applicant intends to use the firearm for an unlawful purpose.

6 (3) A chief law-enforcement official or prosecuting attorney
7 may, in his or her discretion, deny the certification described in
8 subsection (c) of this section if the applicant is prohibited by
9 subsection (c), section seven of this article from carrying a
10 concealed weapon in a public place.

11 (e) (1) Any person denied a certification pursuant to
12 subsections (b) through (d) of this section may file in the circuit
13 court of the county in which the certification was requested a
14 petition seeking review of the denial. The petitioner shall file
15 the petition for review within sixty days of the denial.

16 (2) Unless the requested certification was denied pursuant to
17 subdivision (3), subsection (d) of this section, the court shall
18 review de novo all matters appealed by the petitioner, determine
19 whether the petitioner is entitled to receive the requested
20 certification and, unless the chief law-enforcement official or
21 prosecuting attorney who denied the certification proves by clear
22 and convincing evidence that the petitioner is disqualified by
23 subsection (d) of this section from receiving the certification,

1 order the chief law-enforcement official or prosecuting attorney to
2 issue the certification. The court shall view any information
3 described in paragraph (A), subdivision (2), subsection (d) of this
4 section, in the light most favorable to the petitioner.

5 (3) (A) If the chief law-enforcement official or prosecuting
6 attorney denied the requested certification pursuant to subdivision
7 (3), subsection (d) of this section, the court shall:

8 (i) Review de novo the petitioner's eligibility to lawfully
9 carry a concealed weapon in a public place under section seven of
10 this article and all facts relied upon by the chief law-enforcement
11 official or prosecuting attorney in denying the requested
12 certification; and

13 (ii) Order the chief law-enforcement official or prosecuting
14 attorney to issue the certification unless the chief law-enforcement
15 official or prosecuting attorney proves by clear and convincing
16 evidence that the petitioner is prohibited by section seven of this
17 article from carrying a concealed weapon in a public place and
18 proves by a preponderance of evidence that the denial of the
19 requested certification was not arbitrary, capricious or
20 characterized by abuse of discretion or clearly unwarranted exercise
21 of discretion.

22 (B) If the circuit court affirms a denial of a requested
23 certification, the circuit court's decision shall be reviewed de

1 novo on appeal.

2 (f) Every chief law-enforcement official and prosecuting
3 attorney who approves a certification as required by subsection (c)
4 of this section and all employees and agents of any chief
5 law-enforcement official or prosecuting attorney who participate in
6 the investigation of the applicant or the decision on granting the
7 certification, are immune from liability in any civil action
8 resulting from the lawful performance of their duties under
9 subsections (b) through (d) of this section.

10 (g) Any person who violates ~~the provision~~ subsection (a) of
11 this section shall be or willfully fails to certify the transfer and
12 registration of a firearm subject to the National Firearms Act, as
13 required by and within the time limits specified by subsection (c)
14 of this section, is guilty of a misdemeanor and, upon conviction
15 thereof, shall be fined not less than \$1,000 nor more than \$5,000,
16 or shall be confined in the county jail for not less than ninety
17 days, or more than one year, or both fined and confined. Any public
18 officer who is convicted of willfully failing to certify the
19 transfer and registration of a firearm subject to the National
20 Firearms Act, as required by and within the time limits specified by
21 subsection (c) of this section, shall forfeit his or her office
22 pursuant to section nine, article six, chapter six of this code.

23 (h) In addition to any other remedies available by law for a

1 violation of subsection (c) of this section, any violation of
2 subsection (c) of this section is, for the purposes of article six,
3 chapter six of this code, per se official misconduct or neglect of
4 duty by every person subject to the provisions of that article who
5 willfully fails to certify the transfer and registration of a
6 firearm subject to the National Firearms Act, as required by and
7 within the time limits specified by subsection (c) of this section.

8 (i) (1) Notwithstanding any provision of this code or other law
9 of this state to the contrary, except as otherwise provided in this
10 subsection, the names, addresses and other personally-identifying
11 information of persons who apply for or receive a certification of
12 the transfer and registration of any firearm required to be
13 certified pursuant to the National Firearms Act are confidential,
14 are not public records and may be copied or inspected only by:

15 (A) The person to whom the record pertains;

16 (B) The duly qualified conservator or guardian of a person to
17 whom the record pertains;

18 (C) The duly qualified personal representative of a deceased
19 person to whom the record pertains or, if a personal representative
20 has not qualified, the next of kin of a deceased person to whom the
21 record pertains;

22 (D) An attorney, attorney-in-fact or other agent or
23 representative acting pursuant to a written power of attorney or

1 other written authorization signed by the person to whom the record
2 pertains;

3 (E) A duly authorized representative of a law-enforcement
4 agency for any official purpose or any other agency or
5 instrumentality of federal, state or local government seeking the
6 record in the ordinary course of performing its official duties for
7 an official purpose; or

8 (F) (i) A person authorized by an order of any court, based upon
9 a finding of the court that the information is sufficiently
10 necessary to a proceeding before the court to substantially outweigh
11 the importance of maintaining the confidentiality established by
12 this subsection, to copy or inspect information protected by this
13 subsection.

14 (ii) Before any court may grant access to any records pursuant
15 to this paragraph, the court shall order the moving party to give
16 each affected person notice of the proceedings, the request for
17 confidential records under this paragraph and the opportunity of
18 affected persons to confidentially intervene and object to the
19 request by directing the applicable custodian of records to print
20 and mail by first-class mail to each affected person, the costs for
21 which the moving party shall prepay in full to the custodian of
22 records, and perform this notification in a manner not inconsistent
23 with the confidentiality provisions of this subsection.

1 (2) Any person who knowingly misrepresents his or her identity
2 to obtain any information whose disclosure is restricted by
3 subdivision (1) of this subsection, knowingly makes a false
4 statement to obtain any information whose disclosure is restricted
5 by subdivision (1) of this subsection, knowingly and willfully
6 misrepresents his or her authority to obtain any information whose
7 disclosure is restricted by subdivision (1) of this subsection or
8 knowingly and willfully discloses any information whose disclosure
9 is restricted by subdivision (1) of this subsection in violation of
10 subdivision (1) of this subsection, is guilty of a felony and, upon
11 conviction thereof, shall be imprisoned in a state correctional
12 facility for not less than one year nor more than ten years or fined
13 not more than \$10,000, or both fined and imprisoned.

14 (3) This subsection does not prohibit disclosure or publication
15 of statistical summaries, abstracts or other records containing
16 information in an aggregate or statistical form that does not
17 disclose any personally-identifying information protected from
18 public disclosure under this subsection.

19 (j) In this section, "chief law-enforcement official" means the
20 superintendent, the sheriff of any county or the chief of police of
21 any municipality.

22 **§61-7-10. Regulation of the sale or transfer of deadly weapons; sale**
23 **to prohibited persons; penalties; civil remedies.**

1 (a) A person may not publicly display and offer for rent or
2 sale, or, where the person is other than a natural person, knowingly
3 permit an employee thereof to publicly display and offer for rent or
4 sale, to any passersby on any street, road or alley, any deadly
5 weapon ~~machine gun, submachine gun or other fully automatic weapon,~~
6 ~~any rifle, shotgun or ammunition. for same~~

7 ~~(b) Any person who violates the provisions of subsections (a)~~
8 ~~or (c) of this section shall be guilty of a misdemeanor, and, upon~~
9 ~~conviction thereof, shall be fined not more than five thousand~~
10 ~~dollars or shall be confined in the county jail for not more than~~
11 ~~one year, or both fined and confined, except that where the person~~
12 ~~violating the provisions of said subsections is other than a natural~~
13 ~~person, such person shall be fined not more than ten thousand~~
14 ~~dollars.~~

15 (b) A licensed firearm dealer and its employees and agents may
16 not refuse to sell or otherwise transfer a firearm to any person
17 solely on the basis that the person purchased a firearm that was
18 later the subject of a law-enforcement trace request.

19 (c) A licensed firearm dealer and its employees and agents
20 shall, upon completion of a federal firearms transaction record,
21 Form 4473, by a purchaser or other prospective transferee of a
22 firearm subject to the provisions of 18 U.S.C. §922(t), inquire of
23 the purchaser or transferee whether he or she has a license to carry

1 concealed weapons issued pursuant to section four of this article
2 that is a qualifying alternative under 18 U.S.C. §922(t)(3)(A) to
3 the performance of a National Instant Criminal Background Check
4 System check pursuant to 18 U.S.C. §922(t) or other evidence of
5 exemption under 18 U.S.C. §922(t)(3) and verbally inform the person
6 that if he or she has such a license and presents it for inspection
7 as required by federal law, the person may complete the purchase or
8 transfer of the firearm without undergoing a National Instant
9 Criminal Background Check System check. If the person presents an
10 instrument purporting to be a West Virginia license to carry
11 concealed weapons that is a qualifying alternative under 18 U.S.C.
12 §922(t)(3)(A), the licensed dealer or its employee or agent may
13 contact the State Police Concealed Weapons License Verification
14 Service established pursuant to subdivision (2), subsection (1),
15 section four of this article, and verify the validity of the license
16 before completing the sale or transfer without a National Instant
17 Criminal Background Check System check pursuant to 18 U.S.C.
18 §922(t)(3)(A). If the purchaser or transferee presents acceptable
19 evidence of an exemption under 18 U.S.C. §922(t)(3) or applicable
20 federal regulations, the licensed dealer or its employee or agent
21 shall complete the sale or transfer of the firearm without
22 conducting a National Instant Criminal Background Check System check
23 as permitted by federal law.

1 (d) A licensed firearm dealer and its employees and agents
2 shall, upon initiating a sale or transfer of a firearm subject to
3 the provisions of 18 U.S.C. §922(t) in which the licensed firearm
4 dealer or its employee or agent has contacted the National Instant
5 Criminal Background Check System as described in 18 U.S.C.
6 §922(t)(1)(A) and is permitted by 18 U.S.C. §922(t)(1)(B)(ii) based
7 upon the failure of the National Instant Criminal Background Check
8 System to provide a response to the dealer's request within three
9 business days, promptly complete the transfer of the firearm as
10 permitted by federal law.

11 ~~(c) A~~ (e) A person may not knowingly and willfully sell, rent,
12 give or lend, or, where the person is other than a natural person,
13 knowingly and willfully permit an employee thereof to knowingly and
14 willfully sell, rent, give or lend, any ~~deadly weapon other than a~~
15 firearm or ammunition to a person prohibited from purchasing or
16 possessing a ~~deadly weapon other than a firearm~~ firearms or
17 ammunition by any provision of this article or by 18 U.S.C. §922(g)
18 or (n), as they exist as of January 1, 2011, or other applicable
19 federal law in effect as of January 1, 2011.

20 ~~(d) A person may not knowingly sell, rent, give or lend, or~~
21 ~~where the person is other than a natural person, knowingly permit an~~
22 ~~employee thereof to knowingly sell, rent give or lend a firearm or~~
23 ~~ammunition to a person prohibited by any provision of this article~~

1 ~~or the provisions of 18 U. S. C. §922.~~

2 ~~(e) Any person who violates any of the provisions of subsection~~
3 ~~(d) of this section is guilty of a felony, and, upon conviction~~
4 ~~thereof, shall be fined not more than \$100,000 imprisoned in a state~~
5 ~~correctional facility for a definite term of years of not less than~~
6 ~~three years nor more than ten years, or both fined and imprisoned,~~
7 ~~except that where the person committing an offense punishable under~~
8 ~~this subsection is other than a natural person, such person shall be~~
9 ~~finned not more than \$250,000.~~

10 (f) Any person who knowingly ~~solicits, persuades, encourages~~
11 ~~or entices a licensed dealer or private seller of firearms or~~
12 ~~ammunition and willfully solicits, persuades, encourages or entices~~
13 any person to transfer a firearm or ammunition under circumstances
14 which the person knows would violate any federal law in effect as of
15 January 1, 2011, or the laws of this state. ~~or the United States is~~
16 ~~guilty of a felony~~ Any person or who knowingly and willfully
17 procures another to engage in conduct prohibited by this subsection
18 shall be punished as a principal. This subsection does not apply to
19 a law-enforcement officer acting in his or her official capacity
20 within his or her jurisdiction or any person acting under the
21 direction, supervision and control of any such law-enforcement
22 officer as part of a lawful, bona fide law-enforcement investigation
23 designed to detect, apprehend and prosecute violations of federal

1 law or this article.

2 (g) Any person who violates ~~the provisions of this~~ subsection
3 (e) or (f) of this section is guilty of a felony and, upon
4 conviction thereof, shall be fined not more than ~~\$5,000~~ \$100,000, or
5 imprisoned in a state correctional facility for a definite term of
6 not less than ~~one year~~ three years nor more than ~~five~~ ten years, or
7 both fined and imprisoned. If the person committing an offense
8 punishable under this subsection is other than a natural person, the
9 person shall be fined not more than \$250,000.

10 (h) Except as otherwise provided in subsection (g) of this
11 section, any person who knowingly violates any provision of this
12 section is guilty of a misdemeanor and, upon conviction thereof,
13 shall be fined not more than \$10,000, or confined in jail for not
14 more than one year, or both fined and confined, except that where
15 the person is other than a natural person, the person shall be fined
16 not more than \$25,000.

17 (i) In addition to any other person with proper standing to
18 sue, the Attorney General and the prosecuting attorney of any county
19 in which a violation of this section is alleged to have occurred
20 have concurrent authority to bring a civil action in any county in
21 which this section is violated or in which a violation of this
22 section is threatened to enjoin violations of any provision of this
23 section and obtain any other appropriate remedies available by law.

1 **§61-7-11a. Possessing deadly weapons within school safety zones**
2 **prohibited; exceptions; penalties; reports by school**
3 **principals; suspension or revocation of driver's**
4 **license.**

5 ~~(a) The Legislature hereby finds that the safety and welfare of~~
6 ~~the citizens of this state are inextricably dependent upon~~
7 ~~assurances of safety for children attending, and the persons~~
8 ~~employed by, schools in this state and for those persons employed~~
9 ~~with the judicial department of this state. It is for the purpose of~~
10 ~~providing such assurances of safety, therefore, that subsections~~
11 ~~(b), (g) and (h) of this section are enacted as a reasonable~~
12 ~~regulation of the manner in which citizens may exercise those rights~~
13 ~~accorded to them pursuant to section twenty-two, article three of~~
14 ~~the Constitution of the State of West Virginia.~~

15 ~~(b) (1) It shall be unlawful for any person to possess any~~
16 ~~firearm or any other deadly weapon on any school bus, as defined in~~
17 ~~section one, article one, chapter seventeen-a of this code, or in or~~
18 ~~on any public or private primary or secondary education building,~~
19 ~~structure, facility or grounds thereof, including any vocational~~
20 ~~education building, structure, facility or grounds thereof where~~
21 ~~secondary vocational education programs are conducted or at any~~
22 ~~school-sponsored function.~~

1 ~~(2) This subsection shall not apply to:~~

2 ~~(A) A law enforcement officer acting in his or her official~~
3 ~~capacity;~~

4 ~~(B) A person specifically authorized by the Board of Education~~
5 ~~of the county or principal of the school where the property is~~
6 ~~located to conduct programs with valid educational purposes;~~

7 (a) Except as otherwise provided by subsection (b) of this
8 section, a person may not knowingly possess one or more deadly
9 weapons:

10 (1) Within a school safety zone; or

11 (2) Unless the person is a nonstudent adult, at curricular,
12 cocurricular, extracurricular or supplementary activity or any
13 school-sponsored function occurring outside a school safety zone.

14 (b) Subsection (a) of this section does not apply to:

15 (1) Any nonstudent adult who is licensed to carry concealed
16 weapons pursuant to section four or five of this article or
17 authorized by subsection (d), section three of this article, to
18 carry a concealed weapon without a license;

19 ~~(C) (2) A person who as otherwise permitted by the provisions~~
20 ~~of this article, possesses, an unloaded firearm carries, transports,~~
21 ~~or stores any deadly weapon in or on a motor vehicle ~~or leaves an~~~~
22 ~~unloaded firearm or deadly weapon in a locked motor vehicle other~~
23 ~~than a school bus that is transporting one or more primary or~~

1 secondary school students to or from school or school-related
2 activities;

3 ~~(D)~~ (3) Programs or raffles conducted with the approval of the
4 county board of education or school which include the display of
5 ~~unloaded~~ deadly weapons other than loaded firearms; or

6 (4) Any person who possesses a deadly weapon as a part of any
7 program sponsored or facilitated by either the school or any
8 organization authorized by the school to conduct its programs either
9 on or off the school premises;

10 (5) Any person who possesses a knife or blade which he or she,
11 uses customarily in his or her occupation, profession or trade;

12 ~~(E)~~ (6) The official mascot of West Virginia University,
13 commonly known as "The Mountaineer", when acting in his or her
14 official capacity;

15 (7) A person traversing school premises for the purpose of
16 gaining access to public or private lands open to hunting;

17 (8) Any person who possesses written authorization by the
18 county school superintendent in the case of a school under the
19 jurisdiction of a county board of education, or the principal or
20 other chief administrative officer of any other school, to carry the
21 weapon;

22 (9) The transitory possession or use of a deadly weapon during
23 an act committed in self-defense or in defense of another person or

1 any other act committed if legally justified or excused, provided
2 such possession or use lasts no longer than is reasonably necessary;
3 or

4 (10) Except with respect to a violation of subsection (a) of
5 this section that punishable under subdivision (2), subsection (e)
6 of this section, any nonstudent adult who possesses a deadly weapon
7 in or on any premises, or portion thereof, that is not in compliance
8 with subdivision (1), subsection (c) of this section.

9 (c) (1) Each principal or other chief administrator of a public
10 or private primary or secondary school shall display at all public
11 entrances to all school buildings, sports arenas, gymnasiums,
12 stadiums and cafeterias; at the corners of school property that make
13 a turn of thirty degrees or more and are not enclosed by fences,
14 walls or other complete barriers with gates or controlled entrances;
15 at the gate or controlled entrances of enclosed school properties;
16 at the entrance of any access road for any real property owned,
17 operated, leased or controlled by a primary or secondary school or
18 board of education to which subsection (a) of this section is
19 applicable; and at any other entrance to real property constituting
20 a school safety zone to which subsection (a) of this section is
21 applicable, signs conforming to the specifications of section
22 fifteen of this article, which shall include the following text:

23 "Unless specifically authorized by law, possession of a weapon

1 in a school safety zone in West Virginia is prohibited by law and
2 may be punishable as a felony. Nonstudent adults who are licensed
3 to carry concealed weapons or authorized by WV Code §61-7-3(d) to
4 carry a concealed weapon without a license are exempt from this
5 prohibition. Posted pursuant to WV Code §61-7-11a."

6 (2) Subsection (e), section fifteen of this article applies to
7 an alleged violation of subsection (a) of this section only when:

8 (A) The defendant is a nonstudent adult; and

9 (B) The alleged violation of subsection (a) of this section is
10 not punishable under subdivision (2), subsection (e) of this
11 section.

12 (d) For the purposes of subsections (a) through (c) of this
13 section, the term "nonstudent adult" means any person who is not:

14 (1) An unemancipated minor;

15 (2) A student of any primary or secondary school, public or
16 private, within or without this state; or

17 (3) (A) Less than twenty-one years of age; and

18 (B) Currently suspended or expelled from any primary or
19 secondary school.

20 (e) (1) Except as otherwise provided by subdivision (2) of this
21 subsection, any person who violates subsection (a) of this section
22 is guilty of a misdemeanor and, upon conviction thereof, shall be
23 fined not more than \$2,500 or confined in jail not more than one

1 year, or both fined and confined.

2 ~~(3)~~ (2) Any person ~~violating~~ who violates subsection (a) of
3 ~~this subsection shall be~~ section with the intent to use the deadly
4 weapon unlawfully or to threaten or endanger another person or cause
5 the deadly weapon to be used unlawfully or to threaten or endanger
6 another person, or actually attempts to use the deadly weapon
7 unlawfully or to threaten or endanger another person, is guilty of
8 a felony and, upon conviction thereof, shall be imprisoned in ~~the~~
9 ~~penitentiary of this state~~ a state correctional facility for a
10 definite term ~~of years~~ of not less than two years nor more than ten
11 years, or fined not more than ~~five thousand dollars~~ \$100,000, or
12 both fined and imprisoned. However, notwithstanding any provision of
13 this code to the contrary, if the defendant unlawfully discharged a
14 firearm during the commission of an offense punishable under this
15 subdivision, the defendant shall be sentenced to a mandatory minimum
16 term of imprisonment of five years to be served consecutively with
17 any other sentence and shall be ineligible for parole until he or
18 she has served at least five years.

19 ~~(c)~~ It shall be the duty of (f) The principal of ~~each~~ a school
20 subject to the authority of the State Board of Education ~~to~~ shall
21 report any violation of subsection ~~(b)~~ (a) of this section
22 ~~discovered by such principal~~ to the local office of the West
23 Virginia State Police and the State Superintendent of Schools within

1 seventy-two hours after ~~such~~ the principal discovers the violation.
 2 ~~occurs~~ The State Board of Education shall keep and maintain ~~such~~
 3 reports and may prescribe rules establishing policy and procedures
 4 for the making and delivery of ~~the same~~ those reports as required by
 5 this subsection. ~~In addition, it shall be the duty of the principal~~
 6 ~~of each school subject to the authority of the State Board of~~
 7 ~~Education to report any violation of subsection (b) of this section~~
 8 ~~discovered by such the principal to the appropriate local office of~~
 9 ~~the division of public safety within 72 hours after such violation~~
 10 ~~occurs.~~

11 ~~(d)~~ (g) In addition to the methods of disposition provided by
 12 article five, chapter forty-nine of this code, any court which
 13 adjudicates a ~~person~~ minor who is fourteen years of age or older as
 14 delinquent for a violation of subsection ~~(b)~~ (a) of this section
 15 may, in its discretion, order the ~~Division~~ Commissioner of Motor
 16 Vehicles to suspend any driver's license or instruction permit
 17 issued to ~~such person~~ the delinquent minor for ~~such~~ an appropriate
 18 period of time ~~as the court may deem appropriate, such suspension,~~
 19 ~~however,~~ not to extend beyond ~~such person's~~ the delinquent minor's
 20 nineteenth birthday, as specified by the court's order; or, where
 21 ~~such person~~ the delinquent minor has not been issued a driver's
 22 license or instruction permit by this state, order the ~~Division~~
 23 Commissioner of Motor Vehicles to deny ~~such person's~~ the delinquent

1 minor's application for the ~~same~~ driver's license or instruction
2 permit for ~~such~~ an appropriate period of time, as specified by the
3 court's order, ~~as the court may deem appropriate, such denial,~~
4 ~~however~~ not to extend beyond ~~such person's~~ the delinquent minor's
5 nineteenth birthday. Any suspension ordered by the court pursuant to
6 this subsection shall be effective upon the date of entry of ~~such~~
7 the order. Where the court orders the suspension of a driver's
8 license or instruction permit pursuant to this subsection, the court
9 shall confiscate any driver's license or instruction permit in the
10 ~~adjudicated person's~~ delinquent minor's possession and forward ~~the~~
11 ~~same~~ it to the Division of Motor Vehicles with a certified copy of
12 the court's order.

13 ~~(e)~~ (h) (1) If a person eighteen years of age or older is
14 convicted of ~~violating subsection (b) of~~ a felony under subdivision
15 (2), subsection (e) of this section and ~~if such person~~ does not act
16 to appeal ~~such~~ the conviction within the time periods described in
17 subdivision (2) of this subsection or fails to prevail in an appeal,
18 ~~such~~ the Commissioner of Motor Vehicles shall revoke the person's
19 driver's license or privilege to operate a motor vehicle in this
20 state ~~shall be revoked~~ in accordance with the provisions of this
21 ~~section~~ subsection.

22 (2) The clerk of the circuit court in which ~~the~~ a person is
23 convicted of a felony under subdivision (2), subsection (e) of this

1 section as described in subdivision (1) of this subsection shall
2 forward to the Commissioner of Motor Vehicles a ~~transcript~~ certified
3 abstract of the judgment of conviction ~~If the conviction is the~~
4 ~~judgment of a magistrate court, the magistrate court clerk shall~~
5 ~~forward such transcript when the person convicted has not requested~~
6 ~~an appeal within twenty days of the sentencing for such conviction.~~
7 ~~If the conviction is the judgment of a circuit court, the circuit~~
8 ~~clerk shall forward such transcript when if the person convicted has~~
9 defendant does not filed file a notice of intent to file a ~~petition~~
10 ~~for an appeal or writ of error~~ within thirty days after the judgment
11 was entered, if the defendant fails to file an appeal within the
12 time limits prescribed by the West Virginia Rules of Appellate
13 Procedure or if the conviction is affirmed on appeal.

14 (3) If, upon examination of the ~~transcript~~ certified abstract
15 of the judgment of conviction transmitted to the Commissioner of
16 Motor Vehicles pursuant to subdivision (2) of this subsection, the
17 Commissioner ~~shall determine~~ of Motor Vehicles determines that the
18 person was convicted as described in subdivision (1) of this
19 subsection, the Commissioner of Motor Vehicles shall make and enter
20 an order revoking ~~such~~ the person's license or privilege to operate
21 a motor vehicle in this state for the greater of: (i) a period of
22 one year or ~~in the event~~ (ii) if the person is a student enrolled in
23 a secondary school, for a period of one year or until the person's

1 twentieth birthday. ~~whichever is the greater period~~ The order shall
2 contain the reasons for the revocation and the revocation period.
3 The order of ~~suspension~~ revocation shall advise the person that
4 because of the receipt of the court's transcript, a presumption
5 exists that the person named in the order of ~~suspension~~ revocation
6 is the same person named in the ~~transcript~~ certified abstract of
7 judgment. The Commissioner of Motor Vehicles may grant an
8 administrative hearing which substantially complies with the
9 requirements of the provisions of section two, article five-a,
10 chapter seventeen-c of this code upon a preliminary showing that a
11 possibility exists that the person named in the notice of conviction
12 is not the same person whose license is being ~~suspended~~ revoked.
13 ~~Such request for~~ A person seeking a hearing pursuant to this
14 subdivision shall ~~be made~~ request the hearing within ten days after
15 receipt of a copy of the order of ~~suspension~~ revocation. The sole
16 purpose of this hearing shall be for the person requesting the
17 hearing to present evidence that ~~he or she~~ the person is not the
18 person named in the notice. ~~In the event~~ If the Commissioner of
19 Motor Vehicles grants an administrative hearing, the Commissioner of
20 Motor Vehicles shall stay the license ~~suspension~~ revocation pending
21 the Commissioner's order resulting from the hearing.

22 ~~(4) For the purposes of this subsection, a person is convicted~~
23 ~~when such person enters a plea of guilty or is found guilty by a~~

1 ~~court or jury.~~

2 ~~(f) (1) It shall be unlawful for~~

3 (i) Any parent(s), guardian(s) or custodian(s) of ~~a person less~~
4 ~~than eighteen years of age~~ an unemancipated minor who knows that
5 ~~said person~~ the unemancipated minor child or ward is in violation of
6 subsection ~~(b)~~ (a) of this section, or who has reasonable cause to
7 believe that ~~said person's violation of said~~ the unemancipated minor
8 child or ward will imminently violate subsection ~~is imminent~~ (a) of
9 this section, ~~to fail to~~ shall immediately report such knowledge or
10 belief to the appropriate school or law-enforcement officials.

11 ~~(2) Any person violating this~~ who knowingly and willfully
12 violates this subsection ~~shall be~~ is guilty of a misdemeanor and,
13 upon conviction thereof, shall be fined not more than \$1,000, or
14 shall be confined in jail for not more than one year, or both fined
15 and confined.

16 ~~(g) (1) It shall be unlawful for any person to possess any~~
17 ~~firearm or any other deadly weapon on any premises which houses a~~
18 ~~court of law or in the offices of a family law master.~~

19 ~~(2) This subsection shall not apply to:~~

20 ~~(A) A law enforcement officer acting in his or her official~~
21 ~~capacity; and~~

22 ~~(B) A person exempted from the provisions of this subsection by~~
23 ~~order of record entered by a court with jurisdiction over such~~

1 ~~premises or offices.~~

2 ~~(3) Any person violating this subsection shall be guilty of a~~
3 ~~misdemeanor, and, upon conviction thereof, shall be fined not more~~
4 ~~than one thousand dollars, or shall be confined in jail not more~~
5 ~~than one year, or both.~~

6 ~~(h) (1) It shall be unlawful for any person to possess any~~
7 ~~firearm or any other deadly weapon on any premises which houses a~~
8 ~~court of law or in the offices of a family law master with the~~
9 ~~intent to commit a crime.~~

10 ~~(2) Any person violating this subsection shall be guilty of a~~
11 ~~felony, and, upon conviction thereof, shall be imprisoned in the~~
12 ~~penitentiary of this state for a definite term of years of not less~~
13 ~~than two years nor more than ten years, or fined not more than five~~
14 ~~thousand dollars, or both.~~

15 ~~(i) Nothing in this section may be construed to be in conflict~~
16 ~~with the provisions of federal law.~~

17 **§61-7-11b. Possessing deadly weapons in court proceedings and**
18 **chambers prohibited; exceptions; penalties; posting of**
19 **signs; secure weapon storage areas.**

20 (a) Except as otherwise provided by subsections (b) and (c) of
21 this section, a person may not knowingly:

22 (1) Possess one or more deadly weapons within the chambers of
23 any justice, judge or magistrate without the express permission and

1 authorization of that justice, judge or magistrate;

2 (2) Convey or attempt to convey one or more deadly weapons into
3 the chambers of any justice, judge or magistrate without the express
4 permission and authorization of that justice, judge or magistrate;

5 (3) Possess one or more deadly weapons within any courtroom
6 during any court proceeding without the express permission and
7 authorization of the presiding justice, judge or magistrate; or

8 (4) Convey or attempt to convey one or more deadly weapons into
9 any courtroom with the intent to cause that weapon to be present in
10 the courtroom during any court proceeding without the express
11 permission and authorization of the presiding justice, judge or
12 magistrate.

13 (b) Subsection (a) of this section does not apply to:

14 (1) Any justice, judge, magistrate, prosecutor or
15 law-enforcement officer, while acting in his or her official
16 capacity;

17 (2) A person exempted from the provisions of subsection (a) of
18 this section by order of record entered by a court with jurisdiction
19 over the applicable courtroom or chambers;

20 (3) A person who possesses, conveys or attempts to convey a
21 weapon to the extent reasonably necessary to convey the weapon to a
22 secure weapon storage area established pursuant to subsection (f) of
23 this section upon entering a restricted area under subsection (a) of

1 this section, check and store the weapon in the secure weapon
2 storage area during the person's presence in the restricted area
3 under subsection (a) of this section and remove the weapon from the
4 secure weapon storage area and convey the weapon outside the
5 restricted area under subsection (a) of this section upon the
6 person's departure from the restricted area under subsection (a) of
7 this section;

8 (4) The transitory possession or use of a deadly weapon during
9 an act committed in self-defense or in defense of another person or
10 any other act committed if legally justified or excused, provided
11 such possession or use lasts no longer than is reasonably necessary;
12 or

13 (5) Any premises that is not in full compliance with the
14 requirements of secure weapon storage areas under subsection (d) of
15 this section and the signage requirements of subsection (e) of this
16 section.

17 (c) Notwithstanding subdivisions (1) and (2), subsection (b) of
18 this section, any justice, judge or magistrate may prohibit any
19 person from possessing or carrying any weapon in his or her
20 courtroom or chambers and subdivisions (1) and (2), subsection (b)
21 of this section, do not apply to any person who possesses or carries
22 any weapon in any courtroom or chambers of any justice, judge or
23 magistrate in violation of the order of the applicable justice,

1 judge or magistrate.

2 (d) The authority in control of each place into which the
3 possession or conveyance of a deadly weapon is prohibited by
4 subsection (a) of this section shall make available at each public
5 entrance to any place into which the possession or conveyance of a
6 deadly weapon is prohibited by subsection (a) of this section a
7 secure weapon storage area for the temporary checking of concealable
8 weapons by persons entering the place into which the possession or
9 conveyance of a deadly weapon is prohibited by subsection (a) of
10 this section. The person who takes custody of any checked weapon or
11 other personal property shall issue an itemized receipt for the
12 checked items to the person who checked those items, unless those
13 items were checked by being deposited directly in a self-service
14 storage locker by the person who checked those items. Receipts or
15 record keeping are not required for weapons and other items directly
16 placed and retrieved from a self-service storage locker by the
17 person who checked the weapon or other property. The Administrator
18 of the Supreme Court of Appeals shall promulgate a uniform form for
19 receipts required under this subsection and distribute copies of
20 this form to all court security officers in sufficient quantities to
21 ensure compliance with this subsection. All officers, employees or
22 other agents of this state or any political subdivision of this
23 state who maintain records of checked weapons and other personal

1 property for which receipts are issued under this subsection shall
2 purge each record within a reasonable amount of time, not to exceed
3 two business days, after the weapon and other checked personal
4 property have been retrieved by the person who checked the weapon
5 and other personal property. The Supreme Court of Appeals shall
6 propose in its annual budget request pursuant to Article VIII, §3
7 and Article VI, §51(b)(5) of the state Constitution, sufficient
8 funds to establish and upgrade self-service keyed storage lockers
9 for all court facilities in sufficient numbers to meet the general
10 demand for weapon storage so as to minimize the incidence of
11 designated court security officials taking possession of weapons
12 where self-service keyed storage lockers are not available in
13 sufficient quantities to fulfill the usual and customary demand.
14 The authority in control of each place into which the possession or
15 conveyance of a deadly weapon is prohibited by subsection (a) of
16 this section shall post a notice of the location of each secure
17 weapon storage facility as required by subsection (e) of this
18 section.

19 (e) The authority in control of each place into which the
20 possession or conveyance of a deadly weapon is prohibited by
21 subsection (a) of this section shall cause to be displayed at all
22 public entrances to the place into which the possession or
23 conveyance of a deadly weapon is prohibited by subsection (a) of

1 this section, signs conforming to the specifications of section
2 fifteen of this article, which shall contain the following text:

3 "Possessing a deadly weapon within [insert appropriate
4 description of place into which the possession or conveyance of a
5 deadly weapon is prohibited by subsection (a) of this section] or
6 conveying or attempting to convey a deadly weapon into [insert
7 appropriate description of place into which the possession or
8 conveyance of a deadly weapon is prohibited by subsection (a) of
9 this section] in West Virginia is prohibited by WV Code §61-7-11b
10 and punishable as a MISDEMEANOR.

11 A license to carry a concealed weapon is NOT an exception to
12 this provision.

13 Posted pursuant to WV Code §61-7-11b."

14 (f) If a place into which the possession or conveyance of a
15 deadly weapon is prohibited by subsection (a) of this section is
16 within a permanent secure restricted access area established
17 pursuant to section eleven-c of this article, the secure weapon
18 storage areas required by subsection (d) of this section may be
19 supplanted by the secure weapon storage areas required by section
20 eleven-c of this article and the signs required by subsection (e) of
21 this section may be supplanted by the signs required by section
22 eleven-c of this article.

23 (g) Except as otherwise provided by subsection (h) of this

1 section, any person who violates subsection (a) of this section is
2 guilty of a misdemeanor and, upon conviction thereof, shall be fined
3 not more than \$2,500 or confined in jail for not more than one year,
4 or both fined and confined.

5 (h) Any person who is licensed under section four or five of
6 this article to carry concealed weapons or who is authorized by
7 subsection (d), section three of this article, to carry a concealed
8 weapon without a license, who violates subsection (a) of this
9 section, is guilty of a misdemeanor and, upon conviction thereof,
10 shall be fined not more than \$500; for a second offense occurring
11 within one year of the date on which the first offense was committed
12 and subsequent to a conviction for the first offense, fined not more
13 than \$1,000, confined in jail for not more than six months, or both
14 fined and confined; and, for a third or subsequent offense within
15 one year and subsequent to the second prior conviction, punished as
16 provided in subsection (g) of this section.

17 (i) For the purposes of this section, "courtroom" includes any
18 regularly-appointed courtroom located within any courthouse in this
19 state and any other room or outdoor premises in which court may be
20 temporarily held while court is in session.

21 **§61-7-11c. Establishment of secure restricted access areas in public**
22 **buildings; procedures; prohibition of deadly weapons**
23 **in secure restricted access area; penalty; secure**

1 weapon storage areas; posting of signs; reporting
2 requirements.

3 (a) A public agency that has jurisdiction and control over any
4 public building or any portion of a public building may designate
5 all or part of any area of any public building under its
6 jurisdiction and control as a secure restricted access area and
7 restrict or prohibit the possession of firearms and other deadly
8 weapons within the secure restricted access area if:

9 (1) Prior to establishing the secure restricted access area:

10 (A) The public agency drafts and publishes a written plan
11 specifying:

12 (i) The name (if any), address and other descriptive
13 information about the public building for which the secure
14 restricted access area is proposed;

15 (ii) The portions of the public building contained within the
16 secure restricted access area;

17 (iii) All current public entrances and exits to or from the
18 public building and, if different, the proposed secure restricted
19 access area, and, with regard to public entrances and exits, the
20 general days and hours those entrances and exits are currently open
21 to public access and will be open to public access under the plan;

22 (iv) The anticipated cost of equipping every entrance to the
23 secure restricted access area with the storage lockers and metal

1 detectors or other electronic weapon screening devices required by
2 subdivision (2) of this subsection;

3 (v) The anticipated cost of maintaining law-enforcement
4 officers or other security personnel at the security screening
5 stations at each entrance to the secure restricted access area
6 required by subdivision (2) of this subsection;

7 (vi) The funding sources for the costs specified in
8 subparagraphs (iv) and (v) of this paragraph;

9 (vii) Whether licensees under sections four and five of this
10 article and individuals authorized by subsection (d), section three
11 of this article, to carry a concealed weapon without a license, will
12 be exempted from or subject to a weapons restriction pursuant to
13 subdivision (2), subsection (b) of this section;

14 (viii) That the public agency has good and substantial reason,
15 based upon specific and articulated facts and reasoning, for
16 establishing the secure restricted access area and accompanying
17 weapons restrictions, in light of:

18 (I) Other provisions of this article and federal laws
19 regulating firearms;

20 (II) The strong public policy presumption of this state in
21 favor of an individual's right to keep and bear arms, either openly
22 or concealed, at all times and places, including within all public
23 buildings other than correctional facilities as provided by

1 subdivision (1), subsection (c), section eight, article five of this
2 chapter, school safety zones as provided by section eleven-a of this
3 article, certain portions of court facilities as provided by section
4 eleven-b of this article and in secure restricted access areas as
5 provided by this section; and

6 (III) The statistically insignificant incidence of crimes
7 involving the misuse of deadly weapons committed by individuals
8 licensed to carry concealed weapons pursuant to section four or five
9 of this article or authorized to carry a concealed weapon without a
10 license pursuant to subsection (d), section three of this article,
11 or who exercise their right to open carry;

12 (ix) The public agency's plan for implementing adequate
13 security measures in and around the secure restricted access area to
14 guarantee the safety of all persons inside the secure restricted
15 access area from felony crimes of violence and detect and prevent
16 the unauthorized possession or carrying of weapons within the secure
17 restricted access area. For the purposes of this subparagraph,
18 "adequate security measures" include the use of electronic equipment
19 and personnel to detect and restrict the carrying of any weapons
20 into the secure restricted access area, including, but not limited
21 to, the minimum security measures required by subdivision (2) of
22 this subsection;

23 (B) The public agency forwards a copy of the plan specified in

1 paragraph (A) of this subdivision and public hearing notice
2 specified in paragraph (C) of this subdivision to the Attorney
3 General, who shall publish a copy of those documents on the Internet
4 and notify interested organizations and persons in communication
5 with the Attorney General about firearm law issues;

6 (C) The public agency holds a public comment period of not less
7 than thirty days in length, followed by a public hearing, on the
8 plan specified in paragraph (A) of this subdivision, which shall be
9 preceded by the publication of the plan and a notice of the public
10 comment period and public hearing:

11 (i) On the Attorney General's web site as provided by paragraph
12 (B) of this subdivision;

13 (ii) In a Class III-0 legal advertisement in accordance with
14 the provisions of article three, chapter fifty-nine of this code,
15 whose publication area shall be each county and municipality in
16 which a public building subject to the proposed plan is located, and
17 whose last publication shall be not less than seven nor more than
18 fourteen days before the public hearing; and

19 (iii) The State Register, if the public building is owned,
20 leased or controlled by an agency as defined in section two, article
21 one, chapter twenty-nine-a of this code;

22 (D) If the public agency modifies or revises the plan following
23 the public comment period and public hearing, the public agency

1 submits the modified or revised plan to the Attorney General in the
2 same manner as required for the original plan by paragraph (B) of
3 this subdivision and conducts a public comment period and public
4 hearing on the modified or revised plan in the same manner as
5 required for the original plan by paragraph (C) of this subdivision;

6 (E) If the affected public building is owned, leased or
7 controlled by:

8 (i) A county or municipality, the applicable county commission
9 or municipal governing body enacts an ordinance granting final
10 approval for the plan and the establishment of the secure restricted
11 access area; or

12 (ii) A county board of education, the county board of education
13 adopts a resolution granting final approval for the plan and the
14 establishment of the secure restricted access area;

15 (iii) The Legislature or either house thereof, the Legislature
16 adopts a concurrent resolution or the affected house (if a single
17 house) adopts a resolution granting final approval for the plan and
18 the establishment of the secure restricted access area; or

19 (iv) A state institution of higher education, the board of
20 governors of that institution adopts a resolution granting final
21 approval for the plan and receives the written approval of the
22 governor for the plan; or

23 (v) An agency, as defined in section two, article one, chapter

1 twenty-nine-a of this code, of the executive branch of state
2 government, the Governor grants approval for the plan in writing;
3 and

4 (F) Any secure restricted access area established pursuant to
5 this subdivision shall be established for not more than two years at
6 a time and may be reestablished only through the same process
7 required for its initial establishment; and

8 (2) At all times the secure restricted access area is in
9 effect;

10 (A) Signs conforming to the specifications of section fifteen
11 of this article that clearly describe the applicable weapons
12 restriction or prohibition, the availability of a secure weapon
13 storage area and the misdemeanor penalties for violating subsection
14 (c) of this section shall be displayed at every entrance to the
15 secure restricted access area. The text of the sign shall conclude,
16 "Posted pursuant to WV Code §61-7-11c.";

17 (B) Armed, uniformed security personnel and electronic weapons
18 screening devices shall be permanently in place at each entrance to
19 the secure restricted access area that is not secured as provided by
20 paragraph (F) of this subdivision;

21 (C) Security personnel shall electronically screen every person
22 not exempted under subsection (b) of this section who enters the
23 secure restricted access area through a point of entry described in

1 paragraph (B) of this subdivision and all handbags, briefcases and
2 other personal effects of those persons to determine whether each
3 nonexempt person who enters the secure restricted access area is
4 carrying a deadly weapon of any kind;

5 (D) The public agency shall maintain at each security station
6 described in paragraphs (B) and (C) of this subdivision a secure
7 weapon storage area consisting of self-service storage lockers in
8 which individuals entering the secure restricted access area may
9 check and store deadly weapons and other objects excluded from the
10 secure restricted access area and other personal effects the person
11 may elect to store if the storage locker will contain those items.
12 However, the public agency may provide for the checking and secure
13 storage of deadly weapons by other means if all self-service storage
14 lockers at the applicable location are in use or otherwise
15 unavailable. The person who takes custody of any weapon or other
16 personal property not placed in a self-service storage locker shall
17 issue an itemized receipt for the checked items to the person who
18 checked those items. All officers, employees or other agents of any
19 public agency who maintain records of checked weapons and other
20 personal property for which receipts are issued under this paragraph
21 shall purge each record within a reasonable amount of time, not to
22 exceed two business days, after the weapon and other checked
23 personal property have been retrieved by the person who checked the

1 weapon and other personal property;

2 (E) Security personnel shall require each person who is
3 carrying a deadly weapon of any kind and not exempted under
4 subsection (b) of this section to leave the weapon in a secure
5 weapon storage area described in paragraph (D) of this subdivision
6 while the nonexempt person is in the secure restricted access area.
7 The security personnel may require every person who carries a
8 concealed weapon in a place described in subsection (b), section
9 three of this article, regardless of whether that person is exempted
10 from this section by subsection (b) of this section, to display the
11 documents described in subdivision (3), subsection (h), section
12 three of this article or evidence of entitlement to an exemption
13 under subsection (d), section three of this article; and

14 (F) All points of ingress or egress to the secure restricted
15 access area that are not open to public or employee access and which
16 are not subject to the security measures required by paragraphs (B)
17 through (E) of this subdivision shall be secured by biometric entry
18 locking devices and monitored and recorded by high-definition video
19 surveillance equipment through which all points of ingress or egress
20 to the secure restricted access area are monitored at all times by
21 on-duty law-enforcement officers or armed, uniformed security
22 personnel who are stationed on the premises and able to promptly
23 respond to any apparent security breach. The signs posted pursuant

1 to paragraph (A) of this subdivision at each point of ingress or
2 egress secured pursuant to this paragraph shall include a notice of
3 the location or locations of entrances to the secure restricted
4 access area that are open to public or employee access and subject
5 to paragraphs (B) through (E) of this subdivision.

6 (b)(1) When acting in an official capacity and upon
7 presentation of a government-issued photo identification showing
8 that the person is described in subdivision (2), (3), (4), (5) or
9 (6), subsection (d), section three of this article, a person
10 described in subdivision (2), (3), (4), (5) or (6), subsection (d),
11 section three of this article, is exempt from weapons screenings and
12 prohibitions or restrictions under subsection (a) of this section
13 when the person is acting in an official capacity.

14 (2) The public agency in control of any public building that
15 designates a secure restricted access area under subsection (a) of
16 this section may, in writing, exempt from weapons restrictions and
17 screenings under subsection (a) of this section certain classes of
18 persons not described in subdivision (1) of this subsection or
19 specific named individuals and shall cause a copy of a list of all
20 exemptions granted under this subdivision to be maintained by the
21 security personnel at each entrance to the applicable secure
22 restricted access area.

23 (3) Any individual authorized by subdivisions (1) or (2),

1 subsection (b), section eleven-b of this article, to possess or
2 convey a deadly weapon into a court facility, shall be permitted to
3 convey any weapon to and from a court facility as permitted by
4 section eleven-b of this article.

5 (c) (1) Except as otherwise provided by subsection (b) of this
6 section, a person may not knowingly and willfully:

7 (A) Possess one or more deadly weapons within a secure
8 restricted access area of a public building established under
9 subsection (a) of this section, beyond the security checkpoints and
10 designated secure weapon storage area; or

11 (B) Convey or attempt to convey one or more deadly weapons into
12 a secure restricted access area of a public building established
13 under subsection (a) of this section, beyond the security
14 checkpoints and designated secure weapon storage area.

15 (2) Except as otherwise provided by subdivision (3) of this
16 subsection, any person who violates subdivision (1) of this
17 subsection is guilty of a misdemeanor and, upon conviction thereof,
18 shall be fined not more than \$2,500 or confined in jail for not more
19 than one year, or both fined and confined.

20 (3) Any person who is licensed under section four or five of
21 this article to carry concealed weapons or authorized by subsection
22 (d), section three of this article, to carry a concealed weapon
23 without a license, who violates subdivision (1) of this subsection,

1 is guilty of a misdemeanor and, upon conviction thereof, shall be
2 fined not more than \$500.

3 (d) For the purposes of section sixteen of this article, this
4 section is a specific statutory authorization of restrictions or
5 prohibitions on the possession and carrying of concealable weapons,
6 firearms and parts, components and ammunition for firearms.

7 (e) Together with section sixteen of this article, this section
8 is the sole and exclusive means by which any public agency may
9 restrict or prohibit the possession or carrying of deadly weapons
10 within a public building unless the Legislature has, in some other
11 provision of this code, specifically and expressly:

12 (1) Restricted or prohibited the possession or carrying of
13 deadly weapons within the type of public building involved and
14 prescribed a criminal penalty for violations of the applicable
15 restriction or prohibition; or

16 (2) Authorized the public agency to restrict or prohibit the
17 possession or carrying of deadly weapons, prescribed a criminal
18 penalty for violations of the applicable restriction or prohibition
19 and, if the restriction or prohibition pertains to a public
20 building, the express statutory authorization for the restriction or
21 prohibition includes the type of public building involved and
22 authorization for the restriction or prohibition without the public
23 agency implementing the security and electronic weapon screening

1 requirements of subsection (a) of this section.

2 (f) This section does not apply to any weapon restriction or
3 prohibition established pursuant to subdivisions (5) through (10),
4 subsection (d), section sixteen of this article, or any federal law.
5 This section does not apply to any public building security plan
6 under which the otherwise lawful possession or carrying of deadly
7 weapons is not restricted or prohibited except as otherwise provided
8 by subsection (e) of this section.

9 (g) On the first day of each regular session of the
10 Legislature, each public agency of state government that establishes
11 any secure restricted access area pursuant to this section shall
12 issue to the Governor, the Attorney General and the Legislative
13 Librarian a report enumerating, for the prior calendar year:

14 (1) All individual public buildings in which secure restricted
15 access areas were established or maintained pursuant to this
16 section, including the county and municipality, if any, in which
17 each applicable public building is located and the street address of
18 each applicable public building; and

19 (2) With regard to each individual location identified pursuant
20 to subdivision (1) of this subsection:

21 (A) Any resulting reduction in the number of public entrances
22 maintained at each location or the hours of operation of those
23 public entrances;

1 (B) Statistical data for the number of individuals who checked
2 their weapons as provided by subdivision (3), subsection (a) of this
3 section, including the mean, sixty-seventh percentile, eightieth
4 percentile and ninety-fifth percentile daily figures for each
5 location;

6 (C) The number of keyed, self-service weapon storage lockers
7 provided at each location;

8 (D) The number of arrests and resulting dispositions for
9 violations of subsection (c) of this section or other violations of
10 this article discovered at the security checkpoints at each
11 location; and

12 (E) The costs of establishing and maintaining each secure
13 restricted access area and the funding source for those costs.

14 (h) Not later than February 1 of each year, each county or
15 municipal public agency that establishes any secure restricted
16 access area pursuant to this section shall issue to the Governor,
17 the Attorney General, the Legislative Librarian and the appropriate
18 county commission or municipal governing body, a report enumerating,
19 for the prior calendar year, the same information as is required of
20 public agencies of state government under subsection (g) of this
21 section.

22 (i) All reports under subsections (g) and (h) of this section
23 shall be of public record. The Attorney General shall publish on

1 the Internet for public viewing all reports transmitted to the
 2 Attorney General pursuant to subsections (g) and (h) of this
 3 section. Any person may also obtain one print copy of each report
 4 free of charge but the issuing agency may charge the actual marginal
 5 cost of printing to provide additional copies of any report provided
 6 in print.

7 **§61-7-12. Wanton endangerment involving a firearm.**

8 Any person who discharges one or more rounds of live ammunition
 9 from a firearm in a manner that wantonly performs any act with a
 10 firearm which creates a substantial risk of death or serious bodily
 11 injury to ~~another shall be~~ one or more other persons is guilty of a
 12 felony and, upon conviction thereof, shall be ~~confined in the~~
 13 ~~penitentiary~~ imprisoned in a state correctional facility for a
 14 definite term ~~of years~~ of not less than one year nor more than five
 15 years, or, in the discretion of the court, confined in ~~the county~~
 16 jail for not more than one year, or fined not ~~less than two hundred~~
 17 ~~fifty dollars nor~~ more than \$2,500, or both fined and imprisoned.

18 ~~For purposes of this section, the term "firearm" shall have the~~
 19 ~~same meaning ascribed to such term as set forth in section two of~~
 20 ~~this article.~~

21 **§61-7-13. Criminal misconduct involving weapons; classifications;**
 22 **offenses; penalties.**

23 (a) Except to the extent that a greater minimum sentence is

1 otherwise provided by this section, any person who, during and in
2 relation to any aggravated felony, including any aggravated felony
3 that provides for an enhanced punishment if committed by the use of
4 a deadly or dangerous weapon or device, uses or carries a firearm,
5 or who, in furtherance of any aggravated felony, possesses a
6 firearm, is guilty of a felony and, upon conviction thereof, shall
7 be:

8 (1) Imprisoned in a state correctional facility for life
9 without parole, life or any definite term of not less than a
10 mandatory minimum sentence of:

11 (A) If the firearm is discharged, ten years;

12 (B) If the firearm is brandished and paragraph (A) of this
13 subdivision does not apply, seven years. For purposes of this
14 paragraph, the term "brandish" means, with respect to a firearm, to
15 display all or part of the firearm, or otherwise make the presence
16 of the firearm known to another person, in order to intimidate that
17 person, regardless of whether the firearm is directly visible to
18 that person; or

19 (C) In any other case, five years; and

20 (2) Fined not more than \$250,000.

21 (b) If the firearm possessed by a person convicted of a
22 violation of subsection (a) of this section is a firearm, as defined
23 in 26 U.S.C. §5845(a), as it exists as of January 1, 2011, that is

1 regulated by the National Firearms Act, 26 U.S.C. Chapter 53, as it
2 exists as of January 1, 2011, the minimum term of imprisonment under
3 subdivision (1), subsection (a) of this section, shall be doubled.

4 (c) If there is a second or subsequent conviction under
5 subsection (a) or (b) of this section, including convictions under
6 a law of another state or the United States that would constitute
7 such an offense if committed in this state, for an act occurring
8 after conviction and imposition of sentence for the prior offense,
9 the person shall:

10 (1) Be sentenced to a mandatory term of imprisonment of:

11 (A) Life without parole or life if the firearm involved is a
12 firearm, as defined in 26 U.S.C. §5845(a), as it exists as of
13 January 1, 2011, that is regulated by the National Firearms Act, 26
14 U.S.C. Chapter 53, as it exists as of January 1, 2011; or

15 (B) Otherwise, life without parole, life or a definite term of
16 not less than 25 years; and

17 (2) Fined not more than \$250,000.

18 (d) A person may not, while unlawfully possessing any Schedule
19 I or II controlled substance, knowingly possess a firearm or
20 concealable weapon.

21 (e) A person may not, while unlawfully possessing any Schedule
22 I or II controlled substance, knowingly carry about his or her
23 person a loaded firearm or concealed weapon.

1 (f) A person may not knowingly and willfully carry about his or
2 her person any deadly weapon with the specific intent to use the
3 weapon to commit a felony crime of violence.

4 (g) Subsections (d) through (f) of this section do not apply to
5 the possession or carrying of a firearm in a manner punishable under
6 subsection (a), (b) or (c) of this section.

7 (h) A person may not wear or otherwise be equipped with body
8 armor while committing a felony crime of violence.

9 (i) Any person who violates subsection (d), (f) or (h) of this
10 section is guilty of a felony and, upon conviction thereof, shall be
11 imprisoned for a definite term of not less than one year nor more
12 than ten years, fined not more than \$100,000, or both fined and
13 imprisoned. Any person who violates subsection (e) of this section
14 is guilty of a felony and, upon conviction thereof, shall be
15 imprisoned for not less than two years nor more than twenty years
16 and fined not more than \$250,000. However, notwithstanding any
17 provision of this code to the contrary, if the defendant unlawfully
18 discharged a firearm during the commission of an offense punishable
19 under this section, the defendant shall be sentenced to a mandatory
20 minimum term of imprisonment of five years.

21 (j) Notwithstanding any provision of this code to the contrary:

22 (1) Each offense under this section is a separate and distinct
23 offense from any other crime that may constitute a predicate offense

1 for any offense under this section.

2 (2) The sentences of imprisonment for any felony under this
3 section are mandatory sentences.

4 (3) Each sentence of imprisonment for any felony under this
5 section shall be served consecutively to any other sentence,
6 including any sentence for any other crime in the course of which a
7 person committed an offense under this section.

8 (4) A person is not eligible for probation for any felony under
9 this section.

10 (5) A person is not eligible for parole for any felony under
11 this section until he or she has served the minimum sentence
12 prescribed under this section.

13 (6) The prosecuting attorney shall, in all cases in which a
14 defendant is convicted of a felony punishable under this section and
15 has been previously convicted of a felony for which the defendant is
16 eligible for any sentencing enhancement under section eighteen,
17 article eleven of this chapter, obtain and present to the court
18 record evidence of all prior felony convictions against the
19 defendant and seek the maximum recidivist sentencing enhancement for
20 which the defendant is eligible under section eighteen, article
21 eleven of this chapter. A prosecuting attorney may not refuse or
22 fail to act as required by this subdivision or to negotiate or enter
23 into any plea agreement to avoid any recidivist sentencing

1 enhancement required by this subdivision and section eighteen,
2 article eleven of this chapter. Nothing in this subdivision may be
3 construed to prohibit any sentencing order or plea agreement that
4 provides for any sentence for any offense under this section to be
5 served concurrent with any sentence of imprisonment in a federal
6 correctional facility for any offense under Title 18, Chapter 44 of
7 the United States Code (18 U.S.C. §§921 through 931), arising from
8 the same transaction or occurrence.

9 (k) Any person who knowingly and willfully carries about his or
10 her person any deadly weapon with the specific intent to use the
11 weapon to commit a misdemeanor crime of violence is guilty of a
12 misdemeanor and, upon conviction thereof, shall be confined in jail
13 for not more than one year or fined not more than \$2,500, or both
14 fined and confined.

15 (l) For the purposes of subsections (f) and (k) of this
16 section, the intent to use a weapon unlawfully shall not be inferred
17 from the mere possession, carrying or concealment of a loaded or
18 unloaded firearm or any other weapon.

19 **§61-7-14. Right of private property owners to limit carrying of**
20 **deadly weapons on private property.**

21 ~~Notwithstanding the provisions of this article, any owner,~~
22 ~~lessee or other person charged with the care, custody and control of~~
23 ~~real~~

1 (a) Except as otherwise provided in this section, a private
2 property owner in possession of private property may restrict or
3 prohibit the carrying, openly or concealed, of any ~~firearm or~~ deadly
4 weapon on private property under his or her the domain ~~Provided,~~
5 ~~That for purposes of this section "person" means an individual or~~
6 ~~any entity which may acquire title to real property and control of~~
7 the private property owner in accordance with the provisions of this
8 section and section fifteen of this article. A landlord may not
9 restrict or prohibit the otherwise lawful possession or carrying of
10 any deadly weapon by a tenant or a tenant's guests.

11 (b) A private property owner who establishes any restriction or
12 prohibition on the carrying of a deadly weapon pursuant to
13 subsection (a) of this section shall give notice of the restriction
14 or prohibition in writing by posting signs in the form required by
15 section fifteen of this article. A property owner, employer or
16 other person may not subject any person who violates any restriction
17 or prohibition on carrying a deadly weapon unless the private
18 property owner gave notice of the restriction or prohibition by
19 posting signs in the specific form required by this subsection or
20 the person who violated the restriction or prohibition carried the
21 weapon in violation of federal law or a provision of this article
22 other than this section. The signage requirements of this
23 subsection are mandatory, technical requirements that a person may

1 not waive under any circumstance. Any contractual provision waiving
2 the right to notice in the form required by this subsection violates
3 public policy and is unlawful and unenforceable.

4 (c) Any private property owner who establishes a restriction or
5 prohibition on the carrying of deadly weapons pursuant to subsection
6 (a) of this section and gives notice of the restriction or
7 prohibition in accordance with subsection (b) of this section and
8 section fifteen of this article, may, upon discovering that a person
9 is carrying a deadly weapon on the private property owner's premises
10 in violation of the restriction or prohibition established and
11 posted by the private property owner in accordance with subsection
12 (b) of this section and section fifteen of this article, personally
13 demand either that the person leave the premises or that the person
14 leave the premises or temporarily relinquish custody of the deadly
15 weapon while the person remains on the premises.

16 (d) A person who carries a deadly weapon on a private property
17 owner's premises in violation of a restriction or prohibition
18 established and posted by the private property owner pursuant to
19 subsection (b) of this section and section fifteen of this article
20 and complies with the personal demand of the private property owner
21 under subsection (c) of this section upon being confronted about the
22 violation, is immune from criminal and civil liability for the
23 violation and may not be subjected to any other form of adverse

1 action by the private property owner.

2 (e) Subsections (b) through (d) of this section do not apply to
3 private residences. The lawful possessor of a private residence may
4 restrict or prohibit the carrying of deadly weapons and provide
5 notice thereof in any lawful manner.

6 ~~Any (f)(1) A person carrying or possessing~~ may not knowingly
7 and willfully carry a firearm or other deadly weapon on the ~~property~~
8 ~~premises of another who refuses to temporarily relinquish possession~~
9 ~~of such firearm or other deadly weapon, upon being requested to do~~
10 ~~so, or to leave such premises, while in possession of such firearm~~
11 ~~or other deadly weapon, shall be~~ a private property owner in
12 violation of a restriction or prohibition established and, except as
13 otherwise provided by subsection (e) of this section, posted by the
14 private property owner pursuant to this section and section fifteen
15 of this article, and knowingly and willfully defy a personal demand
16 of the private property owner under subsection (c) of this section
17 upon being confronted about the violation.

18 (2) Except as otherwise provided in subdivisions (3) and (4) of
19 this subsection, any person who knowingly and willfully violates
20 subdivision (1) of this subsection is guilty of a misdemeanor and,
21 upon conviction thereof, shall be fined not more than \$1,000, ~~or~~
22 confined in ~~the county jail~~ for not more than six months, or both
23 fined and confined. Provided, That the provisions of

1 (3) Except as otherwise provided in subdivision (4) of this
2 subsection, any person who is licensed under section four or five of
3 this article to carry concealed weapons or who is authorized by
4 subsection (d), section three of this article, to carry a concealed
5 weapon without a license, who knowingly and willfully violates
6 subdivision (1) of this subsection, is guilty of a misdemeanor and,
7 upon conviction thereof, shall be fined not more than \$25; for a
8 second offense occurring within one year of the date on which the
9 first offense was committed and subsequent to a conviction for the
10 first offense, fined not more than \$100; and, for a third or
11 subsequent offense within one year and subsequent to the second
12 prior conviction, punished as provided in subdivision (2) of this
13 subsection.

14 (4) Any person who violates subdivision (1) of this subsection
15 in a vehicle or vessel or in any parking lot or parking facility is
16 subject only to liability in a civil action for trespass on the case
17 and may not be criminally prosecuted.

18 (g) Any restriction or prohibition on carrying any weapon under
19 this section shall not apply to: ~~those persons set forth in~~
20 ~~subsections (3) through (6) of section six of this code while such~~
21 ~~persons are acting in an official capacity: Provided, however, That~~
22 ~~under no circumstances may any person possess or carry or cause the~~
23 ~~possession or carrying of any firearm or other deadly weapon on the~~

~~1 premises of any primary or secondary educational facility in this
2 state unless such person is a law-enforcement officer or he or she
3 has the express written permission of the county school
4 superintendent~~

5 (1) Any officer, employee or agent of the United States, this
6 state, any political subdivision of this state or any other state or
7 political subdivision thereof, when that person is acting in an
8 official capacity;

9 (2) Any person serving any summons, subpoena or other legal
10 process for any proceeding before any court or administrative agency
11 of this state, the United States or another state; or

12 (3) Any person who possesses, carries, transports or stores any
13 firearm, part of a firearm, ammunition, ammunition component or any
14 other deadly weapon in a motor vehicle pursuant to section
15 fourteen-a of this article.

16 (h) Notwithstanding article three-b of this chapter or the
17 common law of this state relating to trespassing, this section and
18 section fifteen of this article set forth the exclusive criteria to
19 provide for the exclusion of firearms and other deadly weapons from
20 private property and the exclusive criminal penalties that may
21 attach to violations thereof. Notwithstanding any provision of this
22 code or the common law of this state to the contrary, the provisions
23 of subsections (b) through (d) of this section and section fifteen

1 of this article shall apply to any action of any private property
2 owner to, in any manner, directly or indirectly, prohibit, restrict
3 or attempt to restrict or prohibit the carrying of firearms or other
4 weapons on private property, other than a private residence, or to
5 exclude any person from private property, other than a private
6 residence, where that exclusion is based, in whole or in part,
7 directly or indirectly, on the person's carrying of firearms or
8 other weapons. This subsection shall be liberally construed to
9 protect the right of a person otherwise lawfully carrying a firearm
10 or other weapon to notice in the form required by subsection (b) of
11 this section and section fifteen of this article, confrontation and
12 a demand to desist prior to incursion of civil or criminal liability
13 or any other legal consequences pursuant to subsection (c) of this
14 section and immunity from civil or criminal liability or other
15 consequences upon complying with personal demand to desist pursuant
16 to subsection (d) of this section.

17 (i) This section does not apply to any offense under subsection
18 (b), section three of this article.

19 (j) A private property owner who voluntarily refrains from
20 restricting or prohibiting persons who are licensed under section
21 four or five of this article to carry concealed weapons or
22 authorized by subsection (d), section three of this article to carry
23 a concealed weapon without a license, from carrying deadly weapons

1 on the private property owner's premises:

2 (1) Has no duty of care with respect to the acts or omissions
3 of persons who are licensed under section four or five of this
4 article to carry concealed weapons or authorized by subsection (d),
5 section three of this article, to carry a concealed weapon without
6 a license, resulting from any alleged discharge of a firearm or any
7 alleged unlawful or tortious use of a deadly weapon, unless the
8 private property owner knowingly and willfully and expressly
9 solicited, requested, commanded, encouraged or aided the person in
10 discharging a firearm or unlawfully using a deadly weapon;

11 (2) Shall be immune from liability in a civil action for any
12 injury, death or loss to any person or property that allegedly was
13 caused by or related to a person licensed under section four or five
14 of this article to carry concealed weapons or authorized by
15 subsection (d), section three of this article, to carry a concealed
16 weapon without a license, bringing a firearm or other deadly weapon
17 onto the premises or property of the private property owner,
18 including motor vehicles owned by the private property owner, unless
19 the private property owner acted with malicious purpose; and

20 (3) Is immune from liability in a civil action for any injury,
21 death or loss to any person or property that allegedly was caused by
22 or related to the private property owner's decision to permit a
23 person licensed under section four or five of this article to carry

1 concealed weapons or authorized by subsection (d), section three of
2 this article, to carry a concealed weapon without a license, to
3 bring a firearm or other deadly weapon onto the premises or property
4 of the private property owner.

5 (k) A private employer who voluntarily refrains from
6 restricting or prohibiting employees who are licensed under section
7 four or five of this article to carry concealed weapons or
8 authorized by subsection (d), section three of this article to carry
9 a concealed weapon without a license, from carrying deadly weapons
10 while acting in the course of their employment:

11 (1) Has no duty of care with respect to the acts or omissions
12 of employees who are licensed under section four or five of this
13 article to carry concealed weapons or authorized by subsection (d),
14 section three of this article, to carry a concealed weapon without
15 a license, resulting from any alleged discharge of a firearm or any
16 alleged unlawful or tortious use of a deadly weapon, unless the
17 private employer knowingly and willfully and expressly solicited,
18 requested, commanded, encouraged or aided the person in discharging
19 a firearm or unlawfully using a deadly weapon;

20 (2) Shall be immune from liability in a civil action for any
21 injury, death or loss to any person or property that allegedly was
22 caused by or related to an employee who is licensed under section
23 four or five of this article to carry concealed weapons or

1 authorized by subsection (d), section three of this article, to
2 carry a concealed weapon without a license, bringing a firearm or
3 other deadly weapon onto the premises or property of the private
4 employer, including vehicles owned by the private employer, unless
5 the private employer acted with malicious purpose; and

6 (3) Is immune from liability in a civil action for any injury,
7 death or loss to any person or property that allegedly was caused by
8 or related to the private employer's decision to permit a person
9 licensed under section four or five of this article to carry
10 concealed weapons or authorized by subsection (d), section three of
11 this article, to carry a concealed weapon without a license, to
12 bring a firearm or other deadly weapon onto the premises or property
13 of the private employer.

14 (1) The immunities from civil liability conferred by
15 subsections (j) and (k) of this section shall be liberally construed
16 to promote the public policy of this state of encouraging private
17 property owners and private employers to voluntarily refrain from
18 restricting or prohibiting the lawful possession or carrying of
19 deadly weapons by any individual who is licensed under section four
20 or five of this article to carry concealed weapons or authorized by
21 subsection (d), section three of this article, to carry a concealed
22 weapon without a license.

23 (m) (1) A private property owner who restricts or prohibits any

1 person who is licensed under section four or five of this article to
2 carry concealed weapons or authorized by subsection (d), section
3 three of this article, to carry a concealed weapon without a
4 license, from carrying a deadly weapon on private property
5 constituting a place of employment or a place of public
6 accommodation, shall be strictly liable for any damages resulting
7 from any felony crime of violence or felony sexual offense occurring
8 on the restricted premises.

9 (2) In this subsection:

10 (A) "Place of employment" includes any premises owned, leased,
11 operated or controlled by an employer as defined by section
12 fourteen-a of this article, in or on which any employee, as defined
13 by section fourteen-a of this article, regularly works.

14 (B) "Place of public accommodation" includes any place defined
15 as such by section three, article eleven, chapter five of this code,
16 or, except for the element of "affecting commerce," 42 U.S.C.
17 §12181(7), as it exists as of January 1, 2011.

18 **§61-7-14a. Right of employees and other persons to possess firearms**
19 **in vehicle; exceptions; remedies.**

20 (a) Notwithstanding any law of this state to the contrary,
21 except as otherwise provided in subsection (f) of this section:

22 (1) A public or private employer, higher education institution
23 or property owner may not prohibit any customer, employee, student

1 or invitee from possessing any legally owned firearm or concealable
2 weapon when the firearm or concealable weapon is lawfully possessed
3 and locked inside or locked to a private motor vehicle in a parking
4 lot and when the customer, employee, student or invitee is lawfully
5 in such area.

6 (2) A public or private employer, higher education institution
7 or property owner may not make any verbal or written inquiry
8 regarding the presence of a firearm or concealable weapon inside or
9 locked to a private motor vehicle in a parking lot or solicit
10 consent to search or search a private motor vehicle in a parking lot
11 to ascertain the presence of a firearm or concealable weapon within
12 the vehicle or take any action against a customer, employee, student
13 or invitee based upon verbal or written statements of any party
14 concerning possession of a firearm or concealable weapon stored
15 inside a private motor vehicle in a parking lot for lawful purposes.
16 A search of a private motor vehicle in the parking lot of a public
17 or private employer or higher education institution to ascertain the
18 presence of a firearm or concealable weapon within the vehicle may
19 only be conducted by an on-duty law-enforcement officer who strictly
20 complies with all applicable Constitutional, statutory and common
21 law protections against unreasonable searches and seizures.

22 (3) A public or private employer or higher education
23 institution may not condition employment or enrollment upon any

1 agreement by a current or prospective employee or student that
2 prohibits an employee or student from keeping a legal firearm or
3 concealable weapon locked inside or locked to a private motor
4 vehicle in a parking lot when the firearm or concealable weapon is
5 kept for lawful purposes.

6 (4) A public or private employer, higher education institution
7 or property owner may not prohibit or attempt to prevent any
8 customer, employee, student or invitee from entering any motor
9 vehicle parking lot because the private motor vehicle owned, leased,
10 operated or controlled by a customer, employee, student or invitee
11 contains a legal firearm or concealable weapon being carried for
12 lawful purposes, that is out of sight within a private motor vehicle
13 owned, leased, operated or controlled by a customer, employee,
14 student or invitee.

15 (5) A public or private employer or higher education
16 institution may not terminate the employment or enrollment of or
17 otherwise take any form of adverse action against an employee or
18 student, or expel a customer, student or invitee for exercising his
19 or her legal right to keep and bear arms or for exercising the right
20 of self-defense as long as a firearm or concealable weapon is not
21 publicly exhibited on private property for any reason other than
22 lawful defensive purposes.

23 (b) Subsection (a) of this section applies to all public agency

1 employers, public property owners and state institutions of higher
2 education, including those already prohibited from regulating
3 firearms under the provisions of section sixteen of this article,
4 and is in addition to and not in lieu of the provisions of section
5 sixteen of this article.

6 (c) (1) When subject to the provisions of subsection (a) of this
7 section, a public or private employer, higher education institution
8 or property owner has no duty of care related to the actions
9 prohibited under subsection (a) of this section.

10 (2) A public or private employer, higher education institution
11 or property owner is immune from liability in a civil action based
12 on actions or inactions taken in compliance with this section. The
13 immunity provided in this subdivision does not apply to civil
14 actions based on actions or inactions of public or private
15 employers, higher education institutions or property owners that are
16 unrelated to compliance with this section.

17 (3) Nothing contained in this section may be construed to
18 expand any existing duty or create any additional duty on the part
19 of any public or private employer, property owner, higher education
20 institution or any agent of any such entity.

21 (d) In addition to any other person who may have standing to
22 sue, the Attorney General shall enforce the protections of this
23 section on behalf of any customer, employee, student or invitee

1 aggrieved under this section who requests the Attorney General's
2 assistance. If there is reasonable cause to believe that the
3 aggrieved person's rights under this section have been violated by
4 a public or private employer, higher education institution or
5 property owner, the Attorney General shall commence a civil or
6 administrative action for damages, injunctive relief and civil
7 penalties, and such other relief as may be appropriate under the
8 laws of this state, or may negotiate a settlement with any employer,
9 higher education institution or property owner on behalf of any
10 person aggrieved under the section. However, nothing in this
11 subsection may be construed to impair the right of a person
12 aggrieved under this section to bring a civil action for violation
13 of rights protected under the section. In any successful action
14 brought by a customer, employee, student or invitee aggrieved under
15 this section, in addition to any other relief to which the person
16 may be entitled, the court shall award all reasonable personal costs
17 and losses suffered by the aggrieved person as a result of the
18 violation of his or her rights under this section. The court shall,
19 except when otherwise requested by the plaintiff, assign any civil
20 action brought under this section a high priority on its civil
21 docket and hear the case on an expedited basis.

22 (e) Any person who willfully violates subsection (a) of this
23 section is guilty of a felony and, upon conviction thereof, shall be

1 imprisoned in a state correctional facility for not less than one
2 year nor more than five years or fined not more than \$50,000, or
3 both fined or imprisoned. Any person who otherwise violates
4 subsection (a) of this section is guilty of a misdemeanor and, upon
5 conviction thereof, shall be confined in jail for not more than one
6 year or fined not more than \$10,000, or both fined and confined.
7 In all cases, any public officer who is convicted of violating
8 subsection (a) of this section shall forfeit his or her office
9 pursuant to section nine, article six, chapter six of this code.

10 (2) Except as required by the provisions of the state
11 Constitution or the United States Constitution, no public funds may
12 be used to defend the unlawful conduct of any person charged with a
13 violation of this section, except where such funds are obligated or
14 paid after the final dismissal of charges against such person or
15 acquittal at trial. Notwithstanding the foregoing provisions of this
16 subdivision, public funds may be expended to provide the services of
17 the office of public defender or court-appointed counsel as
18 otherwise provided by law.

19 (3) Any public agency in whose service or employ any provision
20 of this section is violated may be assessed a civil penalty of not
21 more than \$5,000,000 if the court determines that the violation was
22 willful and that any person at the public agency with oversight of
23 the offending official, designee, contractee or employee knew or in

1 the exercise of ordinary care should have known the act was a
2 violation of this section. The Attorney General, any person
3 aggrieved by a violation of this section or any organization whose
4 members have been aggrieved by a violation of this section may bring
5 a civil action to enforce the civil penalties assessed under this
6 subdivision.

7 (4) The prosecuting attorney shall investigate complaints of
8 criminal violations of this section occurring within his or her
9 county and, where evidence indicates a violation may have occurred,
10 shall prosecute violators.

11 (f) Subsection (a) of this section does not apply to:

12 (1) Any motor vehicle owned by a private employer, private
13 higher education institution or private property owner to which the
14 otherwise proscribed policy pertains;

15 (2) Any property owned, leased or occupied by the United States
16 government, upon which the possession or carrying of firearms is
17 prohibited or controlled by federal law or regulation; or

18 (3) Any other property owned or leased by a public or private
19 employer or the landlord of a public or private employer upon which
20 possession of a firearm or other legal product by a customer,
21 employee or invitee is prohibited pursuant to any federal law or
22 regulation, contract with a federal government entity or the laws of
23 this state.

1 (g) In this section:

2 (1) "Parking lot" includes any property that is used for
3 parking motor vehicles and is available to customers, employees,
4 students or invitees for temporary or long-term parking or storage
5 of motor vehicles.

6 (2) "Employee" includes any person who:

7 (A) Works for salary, wages or other remuneration;

8 (B) Is an independent contractor; or

9 (C) Is a volunteer, intern or other similar individual for an
10 employer.

11 (3) "Employer" includes any business that is a sole
12 proprietorship, partnership, corporation, limited liability company,
13 cooperative, joint venture, trust, firm, institution or association,
14 or public agency, that has one or more employees in this state.

15 (4) "Invitee" includes any business invitee, including a
16 customer or visitor, who is lawfully on the premises of a public or
17 private employer or higher education institution.

18 **§61-7-15a. Requirements for signage indicating weapons prohibitions;**
19 **failure to post constitutes defense.**

20 (a) All signs indicating a prohibition or restriction on
21 possessing or carrying handguns or other deadly weapons shall be in
22 the form prescribed by this section.

23 (b) A sign regulated by this section shall not be valid or

1 enforceable unless the sign:

2 (1) Expresses the prohibition in both written language
3 interdict and universal sign language;

4 (2) Is posted at every entrance into a building where any
5 person is prohibited or restricted from possessing or carrying a
6 weapon, including every separate entry door at any entrance equipped
7 with more than one door, and shall:

8 (A) Except as provided otherwise by paragraph (D) of this
9 subdivision, have an opaque white background;

10 (B) Be not less than 11 inches wide by 17 inches tall or, if
11 larger, in substantially similar proportions, except as otherwise
12 provided by paragraph (F) of this subdivision;

13 (C) Be bounded by a red rectangle not less than one-half of an
14 inch in width, whose corners may be squared or rounded, which shall
15 be surrounded on each side by not less than one-half of an inch of
16 the white background specified in paragraph (A) of this subdivision;

17 (D) Contain at the top of the inside of the area bounded by the
18 rectangular border described in paragraph (C) of this subdivision,
19 in bold, opaque, white, underscored, uppercase, 72-point or larger
20 type, the word "WARNING", centered between the lateral edges of the
21 rectangular border, imposed on an opaque red background that shall
22 extend not less than one-half of an inch in each direction from the
23 lettering and underscoring, with at least one-half of an inch of the

1 white background between those letters and the rectangle or any
2 other text or graphics;

3 (E) Contain immediately below the text described in paragraph
4 (D) of this subdivision, a graphic consisting of:

5 (i) A red circle with a red diagonal line that runs from the
6 upper left to the lower right at a 45 degree angle from the
7 horizontal, commonly known as the international "No" symbol, which
8 shall have circumference and diagonal line widths of not less than
9 one inch and an overall diameter equal to the width of the sign
10 minus two inches;

11 (ii) A black silhouette of a handgun inside the symbol
12 described in subparagraph (i) of this paragraph, which shall be
13 pointed facing right and, along its greatest dimension, occupy at
14 least 80 percent of the enclosed space within the symbol described
15 in subparagraph (i) of this paragraph; and

16 (iii) No text anywhere within the area beginning one inch above
17 the graphic and extending to one inch below the graphic;

18 (F) Contain below the graphic described in paragraph (E) of
19 this subdivision, in black 28-point or larger type, centered between
20 the lateral edges of the rectangular border described in paragraph
21 (B) of this subdivision, words indicating the nature of the
22 prohibition and any exemptions applicable thereto, including the
23 statement required by subsection (c) of this section, and the name,

1 physical street address and mailing address of the person under
2 whose authority the sign is posted and, if available, that person's
3 telephone number, e-mail address and Internet web site. If the
4 headline text described in paragraph (D) of this subdivision and the
5 graphic described in paragraph (E) of this subdivision leave
6 inadequate space, the sign's vertical dimensions may be increased to
7 accommodate the requirements of this paragraph without increasing
8 the width of the sign or the size of the graphic described in
9 paragraph (E) of this subdivision;

10 (G) Be placed so that the base of the sign is not less than 40
11 inches nor more than 60 inches from the bottom of the building's
12 entrance door; and

13 (H) Be posted in sufficient quantities to be clearly visible
14 and readable from a distance of at least 30 feet;

15 (3) If the designated premises does not have doors, the signs
16 required by this subsection shall:

17 (A) Except as provided otherwise by paragraph (D) of this
18 subdivision, have an opaque white background;

19 (B) Be not less than 36 inches wide by 48 inches tall or, if
20 larger, in substantially similar proportions, except as otherwise
21 provided by paragraph (F) of this subdivision;

22 (C) Be bounded by a red rectangle not less than one inch in
23 width, whose corners may be squared or rounded, which shall be

1 surrounded on each side by not less than one inch of the white
2 background specified in paragraph (A) of this subdivision;

3 (D) Contain at the top of the inside of the area bounded by the
4 rectangular border described in paragraph (C) of this subdivision,
5 in bold, opaque, white, underscored, uppercase type not less than
6 three inches tall, the word "WARNING", centered between the lateral
7 edges of the rectangular border, imposed on an opaque red background
8 that shall extend not less than one inch in each direction from the
9 lettering and underscoring, with at least one inch of the white
10 background between those letters and the rectangle or any other text
11 or graphics;

12 (E) Contain immediately below the text described in paragraph
13 (D) of this subdivision, a graphic consisting of:

14 (i) A red circle with a red diagonal line that runs from the
15 upper left to the lower right at a 45 degree angle from the
16 horizontal, commonly known as the international "No" symbol, which
17 shall have circumference and diagonal line widths of not less than
18 two inches and an overall diameter equal to the width of the sign
19 minus two inches;

20 (ii) A black silhouette of a handgun inside the symbol
21 described in subparagraph (i) of this paragraph, which shall be
22 pointed facing right and, along its greatest dimension, occupy at
23 least eighty percent of the enclosed space within the symbol

1 described in subparagraph (i) of this paragraph; and

2 (iii) No text anywhere within the area beginning two inches
3 above the graphic and extending to two inches below the graphic;

4 (F) Contain below the graphic described in paragraph (E) of
5 this subdivision, in black one-inch tall or larger type, centered
6 between the lateral edges of the rectangular border described in
7 paragraph (B) of this subdivision, words indicating the nature of
8 the prohibition and any exemptions applicable thereto, including the
9 statement required by subsection (c) of this section, and the name,
10 physical street address and mailing address of the person under
11 whose authority the sign is posted and, if available, that person's
12 telephone number, e-mail address and Internet web site. If the
13 headline text described in paragraph (D) of this subdivision and the
14 graphic described in paragraph (E) of this subdivision leave
15 inadequate space, the sign's vertical dimensions may be increased to
16 accommodate the requirements of this paragraph without increasing
17 the width of the sign or the size of the graphic described in
18 paragraph (E) of this subdivision;

19 (G) Be placed so that the base of the sign is not less than
20 forty inches nor more than sixty inches above the ground; and

21 (H) Be posted at every entry to the premises in sufficient
22 quantities to be clearly visible and readable from a distance of at
23 least thirty feet by any person entering the premises; and

1 (4) All text on any sign shall be in English or in identical
2 form in English and one or more other languages, at the option of
3 the person or entity responsible for posting the sign.

4 (c) Any sign regulated by this section shall clearly and
5 expressly state whether persons licensed under section four or five
6 of this article to carry concealed weapons or authorized by
7 subsection (d), section three of this article, to carry a concealed
8 weapon without a license, are exempt from the indicated restriction
9 or prohibition. For this purpose, the words "concealed weapons
10 license holders are not exempt," in which the word "not" is
11 boldfaced and underscored, immediately following the general
12 explanation of the indicated restriction or prohibition, shall be
13 sufficient to effectively state that persons licensed under section
14 four or five of this article to carry concealed weapons or
15 authorized by subsection (d), section three of this article, to
16 carry a concealed weapon without a license, are not exempt from the
17 indicated restriction or prohibition. Notwithstanding any provision
18 of this code to the contrary, the omission from any sign regulated
19 by this section of a clear and express statement that a person
20 licensed under section four or five of this article to carry
21 concealed weapons or authorized by subsection (d), section three of
22 this article, to carry a concealed weapon without a license, is not
23 exempt from the indicated restriction or prohibition, constitutes an

1 express exemption from the restriction or prohibition for persons
2 licensed under section four or five of this article to carry
3 concealed weapons or authorized by subsection (d), section three of
4 this article, to carry a concealed weapon without a license.

5 (d) The requirements of this section are mandatory, technical
6 requirements with which any entity subject to this section shall
7 strictly comply.

8 (e) Except as specifically and expressly provided otherwise by
9 a more specific provision of this code, it is an exception to any
10 criminal offense under this code prohibiting or restricting the
11 possession or carrying of deadly weapons in specified locations, a
12 defense to any civil action for trespassing and a bar to termination
13 from public or private employment or any other adverse action taken
14 against a person by a property owner resulting from an alleged
15 violation of a restriction or prohibition on carrying deadly
16 weapons, that signage required to be posted under this section was
17 not properly posted. In any criminal case, the state, or in any
18 other context, the party attempting to enforce the prohibition or
19 restriction on the possession or carrying of deadly weapons to which
20 the signage requirements of this section are applicable, has the
21 burden of negating the existence of the exception specified in the
22 preceding sentence.

23 **§61-7-16. Uniform law; preemption; exceptions; construction.**

1 (a) This article is uniformly applicable throughout this state
2 and in all of its political subdivisions.

3 (b) Except as otherwise provided in this section and
4 notwithstanding any provision of this code, the Code of State Rules,
5 the common law of this state or other applicable law of this state
6 to the contrary:

7 (1) The Legislature fully occupies and preempts the entire
8 field of regulation of concealable weapons, firearms and parts,
9 components and ammunition for any firearm within this state, to the
10 exclusion of all other public agencies within this state;

11 (2) Except as specifically provided otherwise by the United
12 States Constitution, the Constitution of this state, federal law or
13 a specific provision of this code, any person, without further
14 license, permission, restriction, delay or process, may own,
15 possess, carry, purchase, sell, transfer, transport, store and keep
16 any concealable weapon, firearm and parts, components and ammunition
17 for any firearm, anywhere in this state, including without
18 limitation anywhere within or upon any public building or any other
19 real or personal property owned, leased or controlled by any public
20 agency; and

21 (3) Any ordinance, resolution, motion, rule, policy, condition
22 of public employment, condition of public contracting, public
23 employee or contractor code of conduct, higher education institution

1 student code of conduct, administrative action or any other action
2 of any public agency, direct or indirect, other than those expressly
3 exempted by subsection (d) of this section, pertaining, either
4 directly or indirectly, to concealable weapons, firearms or parts,
5 components or ammunition for any firearm, or otherwise inconsistent
6 with this subsection, regardless of whether the same is adopted
7 before, on or after the effective date of this section, and
8 regardless of whether the public agency is acting in a police,
9 proprietary, employment or contracting capacity, is void.

10 (c) In this section:

11 (1) The possession, transportation or carrying of concealable
12 weapons, firearms and parts, components and ammunition for any
13 firearm include, but are not limited to, the possession,
14 transporting or carrying, openly or concealed, on or about the
15 person, of a concealable weapon, a firearm or parts, components or
16 ammunition for any firearm.

17 (2) The ownership, possession, carrying, purchase, sale,
18 transfer, transportation, storage or keeping of any concealable
19 weapon, firearm or parts, components or ammunition for any firearm,
20 include, but are not limited to, any decision by an owner or other
21 person in possession of any concealable weapon, firearm or parts,
22 components or ammunition for any firearm, to report or refrain from
23 reporting the loss or theft of any concealable weapon, firearm or

1 parts, components or ammunition for any firearm, to any
2 law-enforcement agency.

3 (d) Subsection (b) of this section does not apply to:

4 (1) A county or municipal planning or zoning ordinance that
5 regulates or prohibits the commercial sale of concealable weapons,
6 firearms and parts, components and ammunition for any firearm, in
7 areas zoned for residential or agricultural uses;

8 (2) A county or municipal planning or zoning ordinance that
9 regulates the hours of operation or the geographic areas where the
10 commercial sale of concealable weapons, firearms and parts,
11 components and ammunition for any firearm may occur, if the
12 ordinance:

13 (A) Is consistent with planning or zoning ordinances for other
14 retail businesses in the same geographic area;

15 (B) Does not result in a de facto prohibition of, or unduly
16 frustrate, the commercial sale or other transfer of concealable
17 weapons, firearms or parts, components and ammunition for any
18 firearm, in areas zoned for commercial, retail or industrial uses;
19 and

20 (C) Does not prohibit or restrict the commercial sale or other
21 transfer of concealable weapons, firearms or parts, components and
22 ammunition for any firearm, in areas zoned for commercial, retail or
23 industrial uses, based on the day of the week or time of the day of

1 the sale or other transaction, at any time between the hours of
2 eight o'clock antemeridian and ten o'clock postmeridian on any day;

3 (3) A municipal ordinance regulating trade in secondhand sales
4 or consignments of firearms or concealable weapons by pawn shops,
5 licensed firearm dealers and other businesses dealing in secondhand
6 goods, to the extent the ordinance furthers the interests of
7 recovering stolen property, returning stolen property to its
8 rightful owners and apprehending, prosecuting and convicting
9 individuals responsible for committing any offense under sections
10 thirteen, eighteen or nineteen, article three of this chapter, or
11 any other criminal offense under the laws of this state, the United
12 States or any other state, with respect to stolen property;

13 (4) Rules established by the Director of the Division of
14 Natural Resources pursuant to chapter twenty of this code regulating
15 hunting to the extent those rules do not contain more restrictive
16 provisions regulating the possession, carrying or transportation of
17 firearms than provided by the Legislature in article two, chapter
18 twenty of this code;

19 (5) The otherwise lawful, temporary disarming of any person who
20 has been contacted by a law-enforcement officer, subject to section
21 eighteen of this article;

22 (6) The otherwise lawful disarming of any person lawfully
23 detained by or in the lawful custody of any mental health facility

1 as defined in section nine, article one, chapter twenty-seven of
2 this code;

3 (7) Firearm safety rules applicable to any shooting range
4 owned, leased or controlled by, or to the conduct of participants in
5 any firearm safety or training class or hunter safety class
6 conducted or supervised by or conducted on property owned, leased or
7 controlled by, the public agency that establishes and enforces those
8 rules;

9 (8) Any resolution, motion, rule or policy adopted by the State
10 Board of Education, a county board of education, a primary or
11 secondary school or a higher education institution relating to:

12 (A) Students receiving military training in the Reserved
13 Officers' Training Corps or other military training program
14 administered by the educational institution;

15 (B) Athletic events involving firearms or concealable weapons;
16 or

17 (C) Authorizing a resident of a dormitory located at a higher
18 education institution to request in writing only a roommate who will
19 not possess deadly weapons within the dormitory room, providing for
20 the exclusion of deadly weapons from any dormitory room whose
21 residents make the election described in this paragraph in writing,
22 reserving to the residents of any such room the right to mutually
23 agree in writing to make or change an election under this paragraph

1 at any time, and to enforce any valid, written election under this
2 paragraph;

3 (9) Any regulation of the possession, carrying, storage,
4 transportation, use, care or maintenance of weapons owned by any
5 public agency;

6 (10) Any regulation of the possession, carrying, storage,
7 transportation, use, care or maintenance of weapons in the course of
8 employment by a public agency by individuals who are:

9 (A) Employed as law-enforcement officers or security personnel;

10 or

11 (B) Required by the public agency to possess, carry, transport
12 or store a weapon; or

13 (11) Any otherwise lawful action that is specifically and
14 expressly authorized by the Legislature in this code. For the
15 purposes of this subdivision, a provision of this code that does not
16 specifically and directly refer to concealable weapons, firearms or
17 parts, components or ammunition for firearms, or to deadly weapons,
18 shall not be construed to provide specific, express authorization.

19 (e) In addition to any other persons who may have proper
20 standing to sue, the prosecuting attorney of any county in which a
21 violation of this section has been alleged to have occurred, the
22 Attorney General, any person aggrieved by any alleged violation of
23 this section and any organization whose members are adversely

1 affected by any alleged violation of this section shall have
2 concurrent power to bring a civil action to enforce this section and
3 obtain declaratory and injunctive relief, actual and consequential
4 damages attributable to any violation of this section, attorney's
5 fees pursuant to section twenty of this article, liquidated damages
6 of three times the attorney's fees awarded pursuant to section
7 twenty of this article and any other relief to which the plaintiff
8 may be entitled under any other law of this state. The court shall,
9 except when otherwise requested by the plaintiff, assign any civil
10 action brought under this section a high priority on its civil
11 docket and hear the case on an expedited basis. Notwithstanding any
12 provision of this code or other law of this state to the contrary,
13 and except as specifically provided by the United States
14 Constitution, federal law or the Constitution of this state, when
15 any person, group or entity challenges any ordinance, resolution,
16 motion, rule, policy, administrative action or any other act of any
17 public agency as being in conflict with this section:

18 (1) The court shall presume that the challenged ordinance,
19 resolution, motion, rule, policy, administrative action or other act
20 is in conflict with this section unless the public agency proves
21 beyond a reasonable doubt that the challenged ordinance, resolution,
22 motion, rule, policy, administrative action or other act is not
23 preempted by and does not otherwise conflict with this section;

1 (2) The court shall liberally construe the provisions of this
2 subsection and subsections (b) and (c) of this section and narrowly
3 construe the provisions of subsection (d) of this section and any
4 provision of this code purporting to provide express authorization
5 as described in subdivision (11), subsection (d) of this section, in
6 favor of a presumption of an individual's right to keep and bear
7 arms at all times and all places for defense of self, family, home
8 and state, for lawful hunting and recreational uses and for any
9 other lawful purpose; and

10 (3) In any appeal of a case arising under this section, every
11 decision of the trial court in favor of the public agency and the
12 challenged action shall be reviewed de novo.

13 (f) (1) Any person who willfully violates subsection (b) of this
14 section is guilty of a felony and, upon conviction thereof, shall be
15 imprisoned in a state correctional facility for not less than one
16 year nor more than five years or fined not more than \$50,000, or
17 both fined and imprisoned. Any person who otherwise violates
18 subsection (b) of this section is guilty of a misdemeanor and, upon
19 conviction thereof, shall be confined in jail for not more than one
20 year or fined not more than \$10,000, or both fined and confined. In
21 all cases, any public officer who is convicted of violating
22 subsection (b) of this section shall forfeit his or her office
23 pursuant to section nine, article six, chapter six of this code.

1 (2) Except as required by the provisions of the state
2 Constitution or the United States Constitution, public funds may not
3 be used to defend the unlawful conduct of any person charged with a
4 violation of this section, except where such funds are obligated or
5 paid after the final dismissal of charges against such person or
6 acquittal at trial. Notwithstanding the foregoing provisions of this
7 subdivision, public funds may be expended to provide the services of
8 the office of public defender or court-appointed counsel as
9 otherwise provided by law.

10 (3) Any public agency in whose service or employ any provision
11 of this section is violated may be assessed a civil penalty of not
12 more than \$5 million if the court determines that the violation was
13 willful and that any person at the public agency with oversight of
14 the offending official, designee, contractee or employee knew or in
15 the exercise of ordinary care should have known the act was a
16 violation of this section. The Attorney General, any person
17 aggrieved by a violation of this section or any organization whose
18 members have been aggrieved by a violation of this section may bring
19 a civil action to enforce the civil penalties assessed under this
20 subdivision.

21 (4) The prosecuting attorney shall investigate complaints of
22 criminal violations of this section occurring within his or her
23 county and, where evidence indicates a violation may have occurred,

1 shall prosecute violators.

2 (g) In addition to any other remedies available by law for a
3 violation of this section, any violation of subsection (b) of this
4 section is, for the purposes of article six, chapter six of this
5 code, per se official misconduct by every person who engages in
6 conduct that violates subsection (b) of this section.

7 (h) This section is supplemental and additional to existing
8 rights to bear arms now guaranteed by the Constitution and laws of
9 this state and decisions of the courts of this state, and nothing in
10 this section may be construed to impair or diminish those rights.

11 **§61-7-17. Prohibition of registration of firearms and concealable**
12 **weapons; exceptions; penalty.**

13 (a) Legislative Findings And Intent.--The Legislature intends
14 through the provisions of this section to:

15 (1) Protect the right of individuals to keep and bear arms as
16 protected by both the Second Amendment to the United States
17 Constitution and Article III, §22 of the state Constitution;

18 (2) Protect the privacy rights of law-abiding owners of
19 firearms and concealable weapons; and

20 (3) Establish protections from registration of firearms,
21 concealable weapons or law-abiding owners thereof supplemental to
22 section sixteen of this article.

1 (b) Prohibitions.--A public agency or any other person, public
2 or private, may not keep or cause to be kept any list, record or
3 registry of privately-owned firearms, concealable weapons or any
4 list, record or registry of the owners thereof.

5 (c) Exceptions.--The provisions of subsection (b) of this
6 section do not apply to:

7 (1) Records of weapons that have been used in committing any
8 crime;

9 (2) Records relating to any person who has been convicted of a
10 crime;

11 (3) Records of weapons that have been reported stolen that are
12 retained for a period not in excess of ten days after such weapons
13 are recovered. Official documentation recording the theft of a
14 recovered weapon may be maintained no longer than the balance of the
15 year entered, plus two years;

16 (4) Firearm records that must be retained by licensed firearm
17 dealers under federal law, including copies of such records
18 transmitted to law-enforcement agencies. However, no public agency
19 or any other person, private or public, may accumulate, compile,
20 computerize or otherwise collect or convert such written records
21 into any form of list, registry or database for any purpose;

22 (5) Records of an insurer that, as a condition to providing
23 insurance against theft or loss of a firearm or concealable weapons,

1 identify the weapon. These records may not be sold, commingled with
2 records relating to other weapons or transferred to any other person
3 or entity. The insurer may not keep a record of such weapon more
4 than sixty days after the policy of insurance expires or after
5 notification by the insured that the insured is no longer the owner
6 of the weapon;

7 (6) Lists of customers of a dealer in firearms or concealable
8 weapons retained by the dealer, provided that the lists do not
9 disclose the particular weapons purchased and the lists, or any
10 parts thereof, are not to be sold, commingled with records relating
11 to other weapons or transferred to any other person or entity;

12 (7) Sales receipts retained by the seller of firearms or
13 concealable weapons or by a person providing credit for the
14 purchase, provided that the receipts may not serve as or be used for
15 the creation of a database for registration of firearms or
16 concealable weapons;

17 (8) Personal records of firearms or concealable weapons
18 maintained by the owner of such firearms or concealable weapons;

19 (9) Records maintained by a business that stores or acts as the
20 selling agent of firearms or concealable weapons on behalf of the
21 lawful owner of the weapons;

22 (10) Membership lists of organizations comprised of owners of
23 firearms or concealable weapons;

1 (11) Records maintained by an employer or contracting entity of
2 the firearms or concealable weapons owned by its officers, employees
3 or agents, if the weapons are used in the course of business
4 performed on behalf of the employer;

5 (12) Records maintained pursuant to sections four and five of
6 this article pertaining to any person who is or was a licensee or
7 applicant under section four or five of this article;

8 (13) Records of weapons involved in criminal investigations,
9 criminal prosecutions, criminal appeals and postconviction motions,
10 civil proceedings relating to the surrender or seizure of firearms
11 or concealable weapons including protective injunctions, commitments
12 to mental institutions and sheriff's levies pursuant to court
13 judgments, and voluntary surrender by the owner or custodian of the
14 weapon;

15 (14) (A) Records relating to purchases, sales, trades,
16 consignments or other acquisitions or dispositions of firearms or
17 concealable weapons on the secondhand market by any pawn shop,
18 licensed firearm dealer or other business dealing in secondhand
19 goods, created or maintained pursuant to any municipal ordinance
20 described in subdivision (3), subsection (d), section sixteen of
21 this article. Records described in this subdivision may be
22 maintained for not more than one year after the firearm or
23 concealable weapon was transferred from the pawn shop, licensed

1 firearm dealer or other business dealing in secondhand goods.

2 (B) Except as required by federal law, any firearm records kept
3 pursuant to paragraph (A) of this subdivision may not, at any time,
4 be electronically transferred to any public or private entity,
5 agency, business or enterprise, nor may any such records be copied
6 or transferred for purposes of accumulation of such records into
7 lists, registries, or databases.

8 (15) Paper documents relating to weapons involved in criminal
9 cases, criminal investigations and criminal prosecutions, civil
10 proceedings relating to the surrender or seizure of weapons
11 including protective injunctions, commitments to mental institutions
12 and sheriff's levies pursuant to court judgments, and voluntary
13 surrender by the owner or custodian of the weapon; or

14 (16) Noncriminal records relating to the receipt, storage or
15 return of concealable weapons, including, but not limited to,
16 records relating to weapons impounded for storage or safekeeping,
17 receipts proving that a weapon was returned to the rightful owner
18 and supporting records of identification and proof of ownership, or
19 records relating to weapons impounded pursuant to levies or court
20 orders: Provided, That these records may not be compiled, sorted,
21 or otherwise arranged into any lists, indexes or registries of
22 concealable weapons or owners thereof.

23 (d) Civil and criminal penalties and other remedies.--

1 (1) Any person who willfully violates subsection (b) of this
2 section is guilty of a felony and, upon conviction thereof, shall be
3 imprisoned in a state correctional facility for not less than one
4 year nor more than five years or fined not more than \$50,000, or
5 both fined and imprisoned. Any person who otherwise violates any
6 provision of this section is guilty of a misdemeanor and, upon
7 conviction thereof, shall be confined in jail for not more than one
8 year or fined not more than \$10,000, or both fined and confined. In
9 all cases, any public officer who is convicted of any violation of
10 this section shall forfeit his or her office pursuant to section
11 nine, article six, chapter six of this code.

12 (2) Except as required by the provisions of the state
13 Constitution or the United States Constitution, no public funds may
14 be used to defend the unlawful conduct of any person charged with a
15 violation of this section, except where such funds are obligated or
16 paid after the final dismissal of charges against such person or
17 acquittal at trial. Notwithstanding the foregoing provisions of
18 this subdivision, public funds may be expended to provide the
19 services of the office of public defender or court-appointed counsel
20 as otherwise provided by law.

21 (3) The public agency, or the designee of a public agency, in
22 whose service or employ, a list, record or registry was compiled in
23 violation of this section may be assessed a civil penalty of not

1 more than \$5 million if the court determines that the evidence shows
2 that the list, record or registry was compiled or maintained with
3 the knowledge or complicity of the management of the public agency.
4 The Attorney General, any person aggrieved by a violation of this
5 section or any organization whose members have been aggrieved by a
6 violation of this section may bring a civil action to enforce the
7 civil penalties assessed under this subdivision.

8 (4) The prosecuting attorney shall investigate complaints of
9 criminal violations of this section occurring within his or her
10 county and, where evidence indicates a violation may have occurred,
11 shall prosecute violators.

12 (5) In addition to any other persons who may have proper
13 standing to sue, the prosecuting attorney of any county where a
14 violation of this section has been alleged, the Attorney General,
15 any person aggrieved by any alleged violation of this section and
16 any organization whose members are adversely affected by any alleged
17 violation of this section shall have concurrent power to bring a
18 civil action to enforce this section and obtain declaratory and
19 injunctive relief, actual and consequential damages attributable to
20 any violation of this section, attorney's fees pursuant to section
21 twenty of this article, liquidated damages of three times the
22 attorney's fees awarded pursuant to section twenty of this article
23 and any other relief to which the plaintiff may be entitled under

1 any other law of this state. The court shall, except when otherwise
2 requested by the plaintiff, assign any civil action brought under
3 this section a high priority on its civil docket and hear the case
4 on an expedited basis.

5 (6) In addition to any other remedies available by law for a
6 violation of this section, any violation of subsection (b) of this
7 section is, for the purposes of article six, chapter six of this
8 code, per se official misconduct by every person subject to the
9 provisions of that article who engages in conduct that violates
10 subsection (b) of this section.

11 (e) Construction. -- This section shall be liberally construed
12 to effectuate its remedial and deterrent purposes. This section may
13 not be construed to grant any substantive, procedural or privacy
14 right or civil claim to any criminal defendant, and a violation of
15 this section may not be grounds for the suppression of evidence in
16 any criminal case.

17 (f) Closed Records.--Information specified in subdivisions (3),
18 (4), (11), (12), (13), (14) and (15), subsection (c) of this section
19 is exempt from disclosure pursuant to chapter twenty-nine-b of this
20 code and shall be kept confidential. However, this subsection may
21 not be construed to prevent:

22 (1) The inspection or copying of any record or other
23 information made confidential by this subsection:

1 (A) By the person to whom the record pertains;

2 (B) By the duly qualified conservator or guardian of a person
3 to whom the record pertains;

4 (C) By the duly qualified personal representative of a deceased
5 person to whom the record pertains or, if a personal representative
6 has not qualified, the next of kin of a deceased person to whom the
7 record pertains;

8 (D) By an attorney, attorney-in-fact or other agent or
9 representative acting pursuant to a written power of attorney or
10 other written authorization signed by the person to whom the record
11 pertains;

12 (E) By a duly authorized representative of a law-enforcement
13 agency for any official purpose or any other agency or
14 instrumentality of federal, state or local government seeking the
15 record in the ordinary course of performing its official duties for
16 an official purpose; or

17 (F) (i) Pursuant to an order of any court based upon a finding
18 of the court that the information is sufficiently necessary to a
19 proceeding before the court to substantially outweigh the importance
20 of maintaining the confidentiality of records established by this
21 subsection.

22 (ii) Before any court may grant access to any records pursuant
23 to this paragraph, the court shall order the party seeking access to

1 those records to give each affected person notice of the
2 proceedings, the request for confidential records under this
3 paragraph and the opportunity of affected persons to confidentially
4 intervene and object to the request by:

5 (I) Publishing a Class III-O legal advertisement in accordance
6 with the provisions of article three, chapter fifty-nine of this
7 code, whose publication area shall be every county in which any
8 person affected by the request is known to reside. For this
9 purpose, the custodian of records shall provide the court and the
10 party seeking access to those records a list, in writing, verified
11 under oath, of all counties in which the custodian of records has
12 information indicating that persons affected by the request reside;
13 and

14 (II) Directing any applicable custodian of records to print and
15 mail by first-class mail to each affected person, if any are known,
16 the costs for which the moving party shall prepay in full to the
17 sheriff or other applicable custodian of records, and perform this
18 notification in a manner not inconsistent with the confidentiality
19 provisions of this subsection.

20 (iii) Any affected person may, either in person or by counsel,
21 enter a confidential appearance before the court to object to the
22 request for disclosure and present evidence and arguments against
23 the proposed disclosure. The court shall take appropriate measures

1 to protect the confidentiality of individuals entering appearances
2 and objections to disclosures pursuant to this subparagraph;

3 (2) The disclosure of any information pertaining to current or
4 former applicants or licensees under section four or five of this
5 article in a manner expressly authorized by those sections; or

6 (3) Disclosure or publication of statistical summaries,
7 abstracts or other records containing information in an aggregate or
8 statistical form that does not disclose any personally-identifying
9 information.

10 (g) *Grace Periods.*--

11 (1) Any list, record or registry maintained or under
12 construction on the effective date of this section shall, unless
13 prohibited by law, be destroyed not later than midnight, September
14 30, 2011. Thereafter, failure to destroy any list, record or
15 registry maintained or under construction on the effective date of
16 this section shall result in civil and criminal liability under this
17 section.

18 (2) When any list, record or registry exempt under subsection
19 (c) of this section ceases to qualify for its exemption, it shall be
20 destroyed within sixty days of becoming nonexempt. Thereafter,
21 failure to destroy any such list, record or registry shall result in
22 civil and criminal liability under this section.

23 **§61-7-18. Seizures of weapons during law-enforcement contacts;**

1 restrictions; exceptions; preservation and care of
2 seized weapons.

3 (a) In addition to any other restrictions imposed by the
4 Constitution of the United States, federal law, the Constitution of
5 this state or any other law of this state, a law-enforcement officer
6 may disarm a person who is lawfully carrying a deadly weapon in
7 connection with any stop or detention only when that person is
8 contacted by a law-enforcement officer, as defined in section two of
9 this article.

10 (b) If a person who is contacted by a law-enforcement officer
11 surrenders a firearm or concealable weapon to the officer, either
12 voluntarily or pursuant to a request or demand of the officer, the
13 officer does not charge the person with a violation of this article
14 or arrest the person for any offense, the person is not otherwise
15 prohibited by law from possessing the firearm or concealable weapon
16 and the firearm or concealable weapon is not contraband, the officer
17 shall return the firearm or concealable weapon to the person at the
18 termination of the stop in the same condition and configuration as
19 it was at the time of surrender.

20 (c) If a person surrenders a firearm or concealable weapon to
21 a law-enforcement officer, either voluntarily or pursuant to a
22 request or demand of the officer and the law-enforcement officer did
23 not return the firearm or concealable weapon to the person at the

1 termination of the stop or otherwise promptly return the firearm or
2 concealable weapon to the person after the seizure of the firearm or
3 concealable weapon, the officer or other personnel at the officer's
4 law-enforcement agency having custody of the firearm or concealable
5 weapon shall maintain the integrity and identity of the firearm or
6 concealable weapon in such a manner that if the firearm or
7 concealable weapon subsequently is to be returned to the person from
8 which it was seized, it can be identified and returned to the person
9 in the same condition as when it was seized.

10 (d) The court shall, except when otherwise requested by the
11 plaintiff, assign any civil action brought under this section a high
12 priority on its civil docket and hear the case on an expedited
13 basis.

14 (e) In this section, "law-enforcement officer" means any
15 law-enforcement officer, as defined in section two of this article,
16 who is employed by a West Virginia law-enforcement agency, or any
17 other officer, agent or employee of this state or any political
18 subdivision of this state who possesses arrest powers.

19 **§61-7-19. Requirements for public agency gun buy-back programs;**
20 **disposition of firearms by public agencies.**

21 (a) A county, county commission, sheriff or any employee, agent
22 or any other instrumentality of any county, county commission or
23 sheriff may not participate in a gun buy-back program unless the

1 county commission of that county has enacted an ordinance
2 authorizing the participation of the county, county commission,
3 sheriff or applicable employee or agent in the program.

4 (b) A municipality or any employee, agent or other
5 instrumentality of a municipality may not participate in a gun
6 buy-back program unless the governing body of that municipality has
7 enacted an ordinance authorizing the participation of that
8 municipality or applicable employee or agent in the program.

9 (c) Every public agency that participates in a gun buy-back
10 program or other program in which firearms or ammunition are
11 purchased or voluntarily surrendered for any purpose shall assure
12 that:

13 (1) The firearm is transferred to a West Virginia
14 law-enforcement agency, which shall check the serial number of each
15 firearm that is purchased or surrendered to the program against
16 local, state and federal records of stolen firearms and, if the West
17 Virginia law-enforcement agency finds that the firearm is a stolen
18 firearm, prevent the firearm from being sold or otherwise disposed
19 of as required by subsection (e) of this section without the express
20 written permission of the lawful owner of the firearm and, if the
21 lawful owner of the firearm does not give express written permission
22 for the firearm to be sold or otherwise disposed of as required by
23 subsection (e) of this section, return the firearm to its lawful

1 owner except as otherwise required by subsection (d) of this
2 section;

3 (2) If the West Virginia law-enforcement agency determines that
4 a firearm that is purchased by, or surrendered to, the gun buy-back
5 program is stolen, the West Virginia law-enforcement agency, in
6 cooperation with the prosecuting attorneys of the appropriate
7 counties and other law-enforcement agencies with appropriate
8 jurisdiction, shall make a reasonable and diligent effort to
9 identify, arrest and prosecute any person who committed any offense
10 under section thirteen, eighteen or nineteen, article three of this
11 chapter, or any other criminal offense under the laws of this state,
12 the United States or any other state, with respect to the stolen
13 firearm;

14 (3) Prior to the disposition of any firearm that is purchased
15 by or surrendered to a gun buy-back program, the West Virginia
16 law-enforcement agency shall make a written determination as to
17 whether probable cause exists to believe the firearm was used in a
18 crime, and if the West Virginia law-enforcement agency finds
19 probable cause to believe the firearm was used in a crime, retain
20 the firearm for evidence, or, if the West Virginia law-enforcement
21 agency does not find probable cause to believe the firearm was used
22 in a crime and the firearm is a rifled firearm, fire a test bullet
23 from the firearm and retain the fired bullet and fired cartridge

1 case for possible use as evidence, or, if the firearm is a smooth
2 bore firearm, fire a test bullet from the firearm and retain the
3 fired cartridge case for possible use as evidence; and

4 (4) The firearm is disposed of as required by subsections (d)
5 and (e) of this section.

6 (d) Prior to returning a stolen firearm to its owner, the West
7 Virginia law-enforcement agency shall determine whether the owner of
8 the firearm is prohibited from possessing a firearm under federal
9 law and the laws of the state in which the owner resides. If the
10 owner of the firearm is prohibited from possessing a firearm under
11 federal law or the laws of the state in which the owner resides, the
12 law-enforcement agency shall take appropriate actions to permit the
13 owner of the firearm to direct its sale or other lawful disposition
14 and protect the owner's property rights in the firearm in light of
15 the applicable prohibition on possession.

16 (e) Every public agency that disposes of any firearm, including
17 any firearm owned by that agency or which was acquired through a gun
18 buy-back program or forfeiture, shall offer that firearm for sale by
19 public auction or sealed bids to a licensed firearm dealer. The
20 public agency shall publish a Class III-0 legal advertisement in
21 accordance with the provisions of article three, chapter fifty-nine
22 of this code, whose last publication shall be at least 21 days but
23 not more than 28 days before the date of the auction or the opening

1 of sealed bids, whose publication area shall be the county in which
2 the firearms to be sold are located. Each advertisement shall
3 include a notice of the sale, the name, address, telephone number
4 and electronic contact information of the agency conducting the sale
5 and the availability of a list of the firearms to be sold and the
6 opportunity to inspect the firearms to be sold prior to the date of
7 the auction or opening of sealed bids. Any firearm remaining in
8 possession of the public agency after not less than three attempts
9 to sell at public auction or by sealed bids may be disposed of in
10 any lawful manner. This subsection does not apply to any firearm
11 that is transferred to an honorably retired law-enforcement officer,
12 as authorized by any provision of this code providing for the sale
13 or other transfer of the service weapon of an honorably-retired
14 law-enforcement officer to that officer.

15 (f) A court or law-enforcement agency may not improperly retain
16 a firearm for an alleged official use for the purpose or intent of
17 evading the required sale of the firearm to a licensed firearm
18 dealer pursuant to subsection (e) of this section. Any firearm that
19 is not in active use for official law-enforcement purposes or
20 retained for evidentiary purposes in an active criminal
21 investigation or pending civil or criminal case shall be presumed,
22 subject to rebuttal by clear and convincing evidence, to be subject
23 to a public sale as required by subsection (e) of this section.

1 (g) In addition to any other person who may have standing to
2 sue, any citizen or taxpayer of this state or licensed firearm
3 dealer in this state has standing to bring a private cause of action
4 to enforce subsections (e) and (f) of this section.

5 (h) In this section, "gun buy-back program" includes any
6 program in which any person is enticed to permanently surrender
7 possession and ownership of any firearm to any public agency or
8 designee of a public agency with a promise of any thing of value,
9 including but not limited to, immunity from criminal prosecution or
10 investigation of the circumstances of the person's possession or
11 acquisition of a surrendered firearm, in exchange for surrendering
12 a firearm.

13 **§61-7-20. Attorney's fees.**

14 (a) Notwithstanding any provision of this code or other law of
15 this state to the contrary, in addition to any other relief to which
16 a person may be entitled, the court shall award court costs,
17 attorney's fees and other reasonable expenses of litigation, to any
18 person who:

19 (1) Is an applicant or licensee under section four or five of
20 this article who prevails in any appeal of a denial, suspension or
21 revocation of any license, a petition for a writ of mandamus to
22 compel a sheriff to perform any duty under section four or five of
23 this article or any other action to compel a sheriff to comply with

1 section four or five of this article;

2 (2) Prevails in a civil action brought pursuant to paragraph
3 (I), subdivision (1), subsection (p), section four of this article;

4 (3) Is a licensee under section four or five of this article
5 who prevails against a civil action brought pursuant to subdivision
6 (9), subsection (q), section four of this article;

7 (4) Prevails in a petition under subsection (f), section nine
8 of this article or in a petition for a writ of mandamus or any other
9 civil action to enforce subsections (c) through (e), section nine of
10 this article;

11 (5) Prevails in a civil action to enforce subsections (b), (c),
12 (d) or (f), section ten of this article;

13 (6) Is a private property owner or employer who prevails
14 against a civil action based upon the immunity from liability
15 conferred by subsection (i) or (j), section fourteen of this
16 article;

17 (7) Is a private property owner or employer who prevails
18 against a civil action based upon the immunity from liability
19 conferred by subsection (c), section fourteen-a of this article;

20 (8) Prevails in a civil action against any public or private
21 employer or property owner to enforce subsections (b) through (d),
22 section fourteen of this article or section fourteen-a or fifteen of
23 this article;

1 (9) Prevails in a challenge to any ordinance, resolution,
2 motion, rule, policy, administrative action or any other act of any
3 public agency as being in conflict with section sixteen of this
4 article;

5 (10) Prevails in an action for a writ of mandamus to compel a
6 prosecuting attorney to act pursuant to subdivision (4), subsection
7 (e), section fourteen-a of this article, subdivision (4), subsection
8 (f), section sixteen of this article or subdivision (4), subsection
9 (d), section seventeen of this article;

10 (11) Prevails in a civil action to enforce section seventeen or
11 eighteen of this article;

12 (12) Prevails in a civil action under subsection (g), section
13 nineteen of this article, to enforce subsections (e) or (f) of that
14 section;

15 (13) Prevails in an action to remove a public officer from
16 office under article six, chapter six of this code based upon any
17 act of official misconduct or neglect of duty arising from any
18 violation of sections sixteen or seventeen of this article or any
19 other act that violated an individual's right to keep and bear arms
20 under the Constitution of the United States or the Constitution or
21 laws of this state; or

22 (14) Prevails against any public agency in a civil action to
23 vindicate his or her individual right to keep and bear arms under

1 the Constitution of the United States or the Constitution or laws of
2 this state.

3 (b) This section shall be liberally construed to promote the
4 vigorous pursuit of civil litigation to enforce the individual
5 rights described in subsection (a) of this section.

6 (c) This section shall apply retroactively to all cases pending
7 on the effective date of this section, including without limitation
8 any cases which may have been rendered moot by the enactment of this
9 legislation during the 2011 Regular Session of the Legislature,
10 including without limitation, any cases in which any act of any
11 state or local governmental entity that was being challenged on
12 federal law or Constitutional grounds was resolved on new state law
13 grounds under section sixteen of this article or any other provision
14 of this legislation as enacted during the 2011 Regular Session of
15 the Legislature.

16 **ARTICLE 7A. CENTRAL STATE MENTAL HEALTH REGISTRY OF PERSONS**
17 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**
18 **CONDITION.**

19 **§61-7A-2. Definitions.**

20 ~~As used In this article: and as the terms are deemed to mean in~~
21 ~~18 U. S. C. §922(g) and section seven, article seven of this chapter~~
22 ~~as each exists as of the thirty-first day of January, two thousand~~

1 eight

2 (1) ~~"A person Adjudicated as a mental defective" means a person~~
3 ~~who has been determined by a duly authorized court, tribunal, board~~
4 ~~or other entity to be mentally ill to the point where he or she has~~
5 to:

6 (A) Have been found by the final order of a court to be
7 incompetent to stand trial due to mental illness or insanity, has as
8 provided in section three, article six-a, chapter twenty-seven of
9 this code, unless the person is subsequently restored to competency
10 to stand trial and completes the proceedings in a state of
11 competence;

12 (B) Have been found not guilty in a criminal proceeding by
13 reason of mental illness or insanity or has been determined to be
14 unable to handle his or her own affairs due to mental illness or
15 insanity as provided in section four, article six-a, chapter
16 twenty-seven of this code;

17 (C) Presently be a mentally incompetent ward under article
18 fifteen, chapter forty-four of this code;

19 (D) Presently be a protected person under guardianship pursuant
20 to a final order of guardianship entered by a circuit court pursuant
21 to section thirteen, article two, chapter forty-four-a of this code;

22 or

23 (E) Have been found by a court or mental hygiene commissioner

1 in a proceeding under section six, article five, chapter
2 twenty-seven of this code, to be prohibited by 18 U.S.C. §922(g)(4)
3 or subdivision (4), subsection (a), section seven, article seven of
4 this chapter, from possessing firearms or ammunition.

5 (2) "Involuntarily committed to a mental institution" means to
6 have been involuntarily committed to a mental health facility, as
7 defined in section nine, article one, chapter twenty-seven of this
8 code, for treatment pursuant to the provisions of a final commitment
9 order issued by a circuit court in a proceeding under section four,
10 article five, chapter twenty-seven of this code.

11 ~~(3) "Mental institution" means any facility or part of a~~
12 ~~facility used for the treatment of persons committed for treatment~~
13 ~~of mental illness or addiction.~~

14 **§61-7A-3. Persons whose names are to be supplied to the central**
15 **state mental health registry.**

16 (a) The Superintendent of the West Virginia State Police and
17 the Secretary of the Department of Health and Human Resources, or
18 their designees, shall cooperate with the circuit clerk of each
19 county and Administrator of the West Virginia Supreme Court of
20 Appeals in compiling and maintaining a database containing the names
21 and identifying information of persons who ~~have~~ are currently
22 prohibited from possessing firearms by 18 U.S.C. §922(g)(4) or
23 subdivision (4), subsection (a), section seven, article seven of

1 this chapter, by reason of having been adjudicated ~~to be mentally~~ as
2 a mental defective or ~~who have been~~ involuntarily committed for
3 ~~treatment of~~ to a mental illness pursuant to the provisions of
4 ~~chapter twenty-seven of this code~~ institution. The registry shall be
5 maintained by the ~~Administrator of the Supreme Court of Appeals or~~
6 the Superintendent of the West Virginia State Police shall maintain
7 this registry.

8 (b) The name of any person who ~~has~~ is prohibited from
9 possessing firearms by 18 U.S.C. §922(g)(4) or subdivision (4),
10 subsection (a), section seven, article seven of this chapter, by
11 reason of having been adjudicated ~~to be mentally~~ as a mental
12 defective or ~~who has been~~ involuntarily committed for treatment of
13 to a mental illness pursuant to the provisions of chapter
14 ~~twenty-seven of this code which~~ institution, shall be provided to
15 the Superintendent of the West Virginia State Police for inclusion
16 in the central state mental health registry. Upon receipt of the
17 information ~~being received~~ by the central state mental health
18 registry, it may be transmitted to the National Instant Criminal
19 Background Check System and ~~to~~ county sheriffs.

20 (c) The Secretary of the Department of Health and Human
21 Resources and the circuit clerk of each county shall ~~as soon as~~
22 ~~practicable after the effective date of this article,~~ supply to the
23 Superintendent of the West Virginia State Police for inclusion in

1 the central state mental health registry the name and identifying
2 information required by the provisions of subsection (d) of this
3 section of all persons ~~covered by the provisions of this article~~
4 known to be currently prohibited from possessing firearms by 18
5 U.S.C. §922(g)(4) or subdivision (4), subsection (a), section seven,
6 article seven of this chapter, by reason of having been adjudicated
7 as a mental defective or involuntarily committed to a mental
8 institution, and shall, on an ongoing basis, continue to provide
9 ~~such and update this~~ information as it is developed.

10 (d) The central state mental health registry shall contain the
11 name, address at the time of commitment or adjudication, date of
12 birth, date of commitment or adjudication and of all persons who
13 ~~have~~ are currently prohibited from possessing firearms by 18 U.S.C.
14 §922(g)(4) or subdivision (4), subsection (a), section seven,
15 article seven of this chapter, by reason of having been adjudicated
16 ~~to be mentally~~ as a mental defective or ~~who have been~~ involuntarily
17 committed ~~for treatment of~~ to a mental illness pursuant to the
18 ~~provisions of chapter twenty seven of this code~~ institution.

19 (e) The central state mental health registry shall provide only
20 such information about a person on the registry to county sheriffs
21 and the National Instant Criminal Background Check System as is
22 necessary to identify registrants. ~~and~~

23 (f) ~~On or before the first day of January, two thousand ten,~~

1 The central state mental health registry shall contain the name,
 2 address at the time of commitment or adjudication, date of birth,
 3 date of commitment or adjudication and any other identifying
 4 characteristics of all persons who ~~have~~ are currently prohibited
 5 from possessing firearms by 18 U.S.C. §922(g)(4) or subdivision (4),
 6 subsection (a), section seven, article seven of this chapter, by
 7 reason of having been adjudicated ~~to be mentally~~ as a mental
 8 defective or ~~who have been~~ involuntarily committed ~~for treatment of~~
 9 ~~to a mental illness pursuant to the provisions of chapter~~
 10 ~~twenty-seven of this code~~ institution. Under no circumstances shall
 11 may the registry contain any information relating to any person's
 12 diagnosis or treatment. ~~provided~~

13 **§61-7A-4. Confidentiality; limits on use of registry information.**

14 (a) Notwithstanding any provision of this code to the contrary,
 15 the Superintendent of the State Police, the Secretary of the
 16 Department of Health and Human Resources and the circuit clerks and
 17 the Administrator of the Supreme Court of Appeals may provide notice
 18 to the central state mental health registry and the National Instant
 19 Criminal Background Check System established pursuant to Section
 20 103(d) of the Brady Handgun Violence Protection Act, Public Law
 21 103-159, §103, 107 Stat. 1536 (1993), reprinted in 18 U.S.C. §922
 22 notes, that a person:

23 ~~(i)~~ (1) Has been involuntarily committed ~~as provided in chapter~~

1 ~~twenty-seven of this code~~ to a mental institution;

2 (ii) (2) Has been adjudicated ~~mentally incompetent in a~~
3 ~~proceeding under article six a, of this chapter~~ as a mental
4 defective; or

5 (iii) (3) Has ~~regained the ability to possess a firearm~~ been
6 granted relief from disability by order of a circuit court in a
7 proceeding under subsection (e), section seven, article seven of
8 this chapter or the former enactment of section five of this
9 article, as it existed between June 8, 2008, and its repeal and
10 consolidation with the current enactment of subsection (e), section
11 seven, article seven of this chapter, as enacted concurrent with the
12 amendments to this section enacted during the 2011 Regular Session
13 of the Legislature.

14 (b) The information contained in the central state mental
15 health registry ~~is to~~ shall be used solely for the purpose of
16 records checks related to federal firearm licenses, firearms
17 purchases and for eligibility for ~~a state~~ any license or permit in
18 this state or any other state to purchase, possess, or carry or
19 transport a concealed firearm or concealed weapon, or to determine
20 in the course of a legitimate law-enforcement investigation whether
21 a specific, named individual who has possessed a firearm or carried
22 a concealed weapon is prohibited by subdivision (4), subsection (a),
23 section seven, article seven of this chapter or 18 U.S.C. §922(g)(4)

1 from possessing or carrying the weapon.

2 (c) Whenever a person's name and other identifying information
 3 ~~has~~ have been added to the central state mental health registry, ~~a~~
 4 the Superintendent of the State Police shall review ~~of~~ the state
 5 ~~concealed handgun weapons license~~ registry ~~shall be undertaken~~
 6 maintained pursuant to subdivision (2), subsection (1), section
 7 four, article seven of this chapter and, if ~~such~~ this review reveals
 8 that the person possesses a current ~~concealed handgun~~ license to
 9 carry concealed weapons, the superintendent shall immediately notify
 10 the issuing sheriff of the county issuing the concealed handgun
 11 license shall be informed of the person's change in status
 12 licensee's addition to the central state mental health registry and
 13 probable disqualification from continued licensure. Before the
 14 sheriff may initiate suspension or revocation proceedings against
 15 the named licensee, the sheriff shall independently verify that the
 16 information provided by the superintendent pertains to the named
 17 licensee and not another person and that the information proves the
 18 named licensee is actually disqualified from continued licensure, as
 19 required by subsection (q), section four, article seven of this
 20 chapter.

21 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

22 **§61-11-9. Limitation of prosecution; lost indictment.**

23 (a) Except as otherwise provided by subsection (d) of this

1 section, a prosecution for committing or procuring another person to
2 commit perjury, any felony under section eight, article five of this
3 chapter, any felony under article seven of this chapter or any
4 conspiracy or attempt to commit any of the foregoing offenses, shall
5 be commenced within three years next after the ~~perjury~~ offense was
6 committed.

7 (b) Except as otherwise provided by subsection (d) of this
8 section, a prosecution for a misdemeanor shall be commenced within
9 one year after the offense was committed.

10 (c) Except as otherwise provided by subsection (d) of this
11 section, failure to commence a prosecution within the time periods
12 required by this section or other applicable statute of limitations
13 in this code shall be a bar to prosecution. The periods of
14 limitation created in this section apply to crimes committed both
15 before and after the effective date of this subsection. ~~Provided,~~
16 ~~That whenever~~

17 (d) If the indictment in any case shall be stolen, lost or
18 destroyed, a new indictment may be found for the same offense
19 mentioned in the former indictment, at the first term of the court
20 after such theft, loss or destruction is discovered, or at the next
21 term thereafter, and as often as any such new indictment is stolen,
22 lost or destroyed, another indictment for the same offense may be
23 found at the first term of the court after such theft, loss or

1 destruction is discovered, or at the next term thereafter. ~~and~~ The
2 court shall, in every case where any ~~such~~ indictment has been
3 stolen, lost or destroyed, enter ~~such~~ the fact of the theft, loss or
4 destruction on its record. Whenever ~~such~~ a new indictment is found,
5 the clerk shall add to the entry of the finding thereof the
6 following: "This is the second (or third, etc., as the case may be)
7 indictment found against the said for the same
8 offense"; and the same proceedings shall be had in all respects on
9 any such new indictment as might have been had on the first
10 indictment if it had not been stolen, lost or destroyed. ~~And~~ If the
11 offense mentioned in any ~~such~~ replacement indictment is barred by
12 the statute of limitations, the time between the finding of the
13 first and last of such indictments shall not be computed or taken
14 into consideration in the computation of the time in which any such
15 indictment, after the first, should have been found.

16 **§61-11-27. Set aside and expungement of convictions of certain**
17 **misdemeanor crimes of domestic violence; procedures;**
18 **effect.**

19 (a) Any person convicted of a misdemeanor crime of domestic
20 violence in this state may, pursuant to the provisions of this
21 section, petition the circuit court of the county in which the
22 conviction occurred to set aside and expunge the conviction and the
23 records associated therewith. The petitioner shall, at the time of

1 filing the petition, pay the clerk of the circuit court a filing fee
2 equal to the filing fee for instituting a civil action pursuant to
3 subdivision (1), subsection (a), section eleven, article one,
4 chapter fifty-nine of this code. The petition shall be verified
5 under oath and include the following information:

6 (1) Petitioner's current name and all other legal names or
7 aliases by which petitioner has been known at any time;

8 (2) All of petitioner's addresses from the date of the
9 commission or alleged commission of the offenses for which a set
10 aside and expungement order is sought to the date of the petition;

11 (3) Petitioner's date and place of birth;

12 (4) Petitioner's date of arrest, the court of jurisdiction and
13 criminal complaint, indictment, summons or case number;

14 (5) The statute or statutes and offense or offenses for which
15 petitioner was charged and of which petitioner was convicted;

16 (6) The names of the victim or victims;

17 (7) Whether there is any current order for restitution,
18 protection, restraining order or other, no contact order prohibiting
19 the petitioner from contacting the victims or whether there has ever
20 been a prior order for restitution, protection or restraining order
21 prohibiting the petitioner from contacting the victim. If there is
22 such a current order, petitioner shall attach a copy of that order
23 to the petition;

1 (8) The court's disposition of the matter and punishment
2 imposed, if any;

3 (9) Why the petitioner seeks to have the conviction and
4 associated records set aside and expunged, such as, but not limited
5 to, employment or licensure purposes or regaining the right to
6 possess firearms, and why it should be granted;

7 (10) The steps the petitioner has taken since the time of the
8 offenses toward personal rehabilitation, including treatment, work
9 or other personal history that demonstrates rehabilitation;

10 (11) Whether petitioner has ever been granted expungement or
11 similar relief regarding a criminal conviction by any court in this
12 state, any other state or by any federal court; and

13 (12) Any supporting documents, affidavits or other information
14 supporting the petition to set aside and expunge the conviction.

15 (b) The State of West Virginia shall be named as the respondent
16 to any petition under this section. The petitioner shall serve a
17 copy of the petition and any supporting documentation pursuant to
18 the West Virginia Rules of Civil Procedure and the West Virginia
19 Trial Court Rules upon the prosecuting attorney of the county in
20 which the petitioner was convicted of the offense to which the
21 petition pertains. The prosecuting attorney shall serve by first
22 class mail a copy of the petition, accompanying documentation and
23 any proposed order to any identified victims. The prosecuting

1 attorney shall take reasonable steps to locate any identifiable
2 victims, including but not limited to, searches of driver's license,
3 voter registration and tax databases to which the prosecuting
4 attorney may have access for official purposes. If there are no
5 identifiable victims or the prosecuting attorney cannot locate and
6 serve an identifiable victim, the prosecuting attorney shall notify
7 the court and the petitioner and shall have no further duty with
8 respect to the location and service of any victim.

9 (c) Upon receipt of a petition under this section, the
10 prosecuting attorney, the victim or victims of the offense to which
11 the petition pertains and any other interested person or agency that
12 desires to oppose the petition to set aside and expungement of the
13 conviction shall, within thirty days after receipt of the petition
14 or ten days after receipt of a copy of the results of any
15 fingerprint-based background checks ordered by the court pursuant to
16 subsection (d) of this section, whichever later occurs, file a
17 notice of opposition with the court with supporting documentation
18 and sworn statements setting forth the reasons for opposing the
19 petition. The opponent shall serve a copy of any notice of
20 opposition with supporting documentation and sworn statements upon
21 the petitioner in accordance with trial court rules. The petitioner
22 shall be granted at least ten business days after service of any
23 notice of opposition to the petition for expungement to file a

1 reply.

2 (d) The court may require the petitioner to be fingerprinted
3 and submit to fingerprint-based state and national criminal
4 background checks and pay the costs thereof. If the court requires
5 a petitioner to be fingerprinted, the court shall arrange to have
6 the petitioner fingerprinted by a law-enforcement agency that has
7 the necessary equipment to take fingerprints by electronic imaging
8 to reduce the time and expense required to process the fingerprints.
9 The sheriff shall provide the results of any court-ordered
10 background check to the court, the prosecuting attorney and the
11 petitioner.

12 (e) Not earlier than the expiration of the time period for a
13 party to enter a notice of opposition to the petition and, if
14 applicable, for the petitioner to file a reply with the court, and
15 not later than thirty days after that date, the court shall:

16 (1) Summarily deny the petition if the court determines that
17 the petition is insufficient or, based upon supporting documentation
18 and sworn statements filed in opposition to the petition, the court
19 determines that the petitioner, as a matter of law, is not entitled
20 to relief under this section;

21 (2) Summarily grant the petition if the court does not
22 summarily deny the petition pursuant to paragraph (A) of this
23 subdivision, the petitioner does not request a hearing on the

1 petition, no opposition to the petition has been filed with the
2 court and the court does not desire, upon its own motion, to set the
3 matter for hearing; or

4 (3) Set the matter for hearing.

5 (f) If the court sets the matter for hearing, the clerk of the
6 court shall notify all interested parties who have filed a notice of
7 opposition. At the hearing, the court may inquire into the
8 background of the petitioner and shall have access to any reports or
9 records relating to the petitioner that are on file with any
10 law-enforcement authority and other agency which was in any way
11 involved with the petitioner's arrest, conviction, sentence and
12 post-conviction supervision, including any record of arrest or
13 conviction in any other state or federal court. The court may hear
14 testimony of witnesses and any other matter the court deems proper
15 and relevant to its determination regarding the petition. The court
16 shall enter an order reflecting its ruling on the petition with
17 appropriate findings of fact and conclusions of law. Upon entry of
18 an order granting or denying a petition under this section, the
19 clerk of the court shall transmit certified copies of the order to
20 the petitioner, prosecuting attorney and all parties that entered
21 notices of opposition to the petition.

22 (g) The following presumptions and burdens of proof shall apply
23 to any petition under this section:

1 (1) If fifteen years have elapsed since the date of conviction
2 and the petitioner has not been convicted within the last fifteen
3 years of any misdemeanor crime of domestic violence, there shall be
4 a strong presumption in favor of granting the petition unless an
5 opponent of the petition demonstrates by clear and convincing
6 evidence that the circumstances regarding the conviction and the
7 petitioner's record and reputation are such that the petitioner will
8 likely act in a manner dangerous to public safety and that the
9 granting of the petition would be contrary to the public welfare.

10 (2) If the offense is not subject to subdivision (1) of this
11 subsection, at least ten years have elapsed since the date of
12 conviction, at least five years have elapsed since completion of
13 sentence, probation, payment of all fines, court costs and
14 restitution and discharge from supervision by the court, whichever
15 last occurs, and, subsequent to the conviction, the petitioner has
16 not been convicted within the last ten years of any misdemeanor
17 crime of domestic violence, there shall be a presumption in favor of
18 granting the petition unless an opponent of the petition
19 demonstrates by a preponderance of evidence that the circumstances
20 regarding the conviction and the petitioner's record and reputation
21 are such that the petitioner will likely act in a manner dangerous
22 to public safety and that the granting of the petition would be
23 contrary to the public welfare.

1 (3) If the offense is not subject to subdivisions (1) or (2) of
2 this subsection, at least five years have elapsed since the date of
3 conviction and at least two years have elapsed since completion of
4 sentence, probation, payment of all fines, court costs and
5 restitution and discharge from supervision by the court, whichever
6 last occurs, and the petitioner has not been subsequently convicted
7 of any misdemeanor crime of domestic violence, the petitioner shall
8 demonstrate by a preponderance of evidence that the circumstances
9 regarding the conviction and the petitioner's record and reputation
10 are such that the petitioner not be likely to act in a manner
11 dangerous to public safety and that the granting of the petition
12 would not be contrary to the public welfare.

13 (4) In any other case, there is a presumption against granting
14 the petition unless the petitioner demonstrates by clear and
15 convincing evidence that the circumstances regarding the conviction
16 and the petitioner's record and reputation are such that the
17 petitioner will not be likely to act in a manner dangerous to public
18 safety and that the granting of the petition would not be contrary
19 to the public welfare.

20 (h) If the court grants the petition, the court shall order
21 that the conviction be set aside and that all records in the custody
22 of the court or any other agency or official, including
23 law-enforcement records, be expunged. If the court grants the

1 petition, the clerk of the court shall transmit a certified copy of
2 the order to every federal, state and local agency the court knows
3 or has reason to believe has records relating to the arrest, charge
4 or other matters arising out of the arrest or conviction covered by
5 the expungement order. Every agency with records relating to the
6 arrest, charge or other matters arising out of the arrest or
7 conviction that is ordered to expunge records shall certify to the
8 court within sixty days of the entry of the expungement order that
9 the required expungement has been completed. All orders enforcing
10 the expungement procedure shall be sealed and may be inspected only
11 upon order of the court. However, for the purposes of this section,
12 "records" do not include the records of the Governor, the
13 Legislature or the Secretary of State that pertain to a grant of
14 pardon and records that pertain to a grant of pardon are not subject
15 to an order of expungement.

16 (i) If the court grants a petition pursuant to this section,
17 notwithstanding any provision of this code or other law of this
18 state to the contrary:

19 (1) For all purposes under the laws of this state, the
20 conviction shall be set aside, the criminal proceedings in which the
21 petitioner was convicted of the expunged offense shall be considered
22 as having never occurred and the petitioner shall be treated as if
23 he or she had never been prosecuted for or convicted of the offense

1 to which the petition pertained; and

2 (2) The expungement shall have all necessary force and effect
3 to cause the expunged conviction or convictions to be considered
4 "set aside" and "expunged" in accordance with the usage of those
5 terms in 18 U.S.C. §921(a)(33)(B)(ii).

6 (j) In any appeal of a denial of a petition under this section,
7 all matters appealed by the petitioner shall be reviewed de novo.

8 (k) In this section, "misdemeanor crime of domestic violence"
9 means:

10 (1) Any misdemeanor offense of domestic assault or domestic
11 battery under the provisions of section twenty-eight, article two of
12 this chapter;

13 (2) Any misdemeanor offense of assault or battery under the
14 provisions of subsection (b) or (c), section nine, article two of
15 this chapter, brandishing a deadly weapon in violation of section
16 eleven, article seven of this chapter, or any misdemeanor offense
17 that has, as an element, the use or attempted use of physical force
18 or the threatened use of a deadly weapon, in which the victim was a
19 family or household member, as defined in section two hundred four,
20 article twenty-seven, chapter forty-eight of this code, of the
21 petitioner; or

22 (3) Any other offense that arguably constitutes a misdemeanor
23 crime of domestic violence as defined in 18 U.S.C. §921(a)(33)(A),

1 without regard to whether any of the exceptions specified in 18
2 U.S.C. §921(a)(33)(B) apply, for which the record of conviction may
3 reasonably be construed to cast doubt upon the petitioner's
4 eligibility to lawfully possess firearms under 18 U.S.C. §922(g)(9)
5 and subdivision (9), subsection (a), section seven, article seven of
6 this chapter.

7 **CHAPTER 62. CRIMINAL PROCEDURE.**

8 **ARTICLE 12. PROBATION AND PAROLE.**

9 **§62-12-6. Powers and duties of probation officers.**

10 (a) Each probation officer shall investigate all cases which
11 the court refers to the officer for investigation and shall report
12 in writing on each case. The probation officer shall furnish to
13 each person released on probation under the officer's supervision a
14 written statement of the probationer's conditions of probation
15 together with a copy of the rules prescribed by the court for the
16 supervision of probationers. The probation officer shall stay
17 informed concerning the conduct and condition of each probationer
18 under the officer's supervision and shall report on the conduct and
19 condition of each probationer in writing as often as the court
20 requires. The probation officer shall use all practicable and
21 suitable methods to aid and encourage the probationer to improve his
22 or her conduct and condition. The probation officer shall maintain
23 detailed work records and shall perform any other duties the court

1 requires. The probation officer has authority, with or without an
2 order or warrant, to arrest any probationer as provided in section
3 ten of this article, and to arrest any person on supervised release
4 when there is reasonable cause to believe that the person on
5 supervised release has violated a condition of release. A person on
6 supervised release so arrested shall be brought before the court for
7 a prompt and summary hearing.

8 ~~(b) Notwithstanding any provision of this code to the contrary:~~

9 ~~(b) (1) Any A~~ probation officer ~~appointed on or after July 1,~~
10 ~~2002,~~ may carry ~~handguns~~ concealed weapons without a license in the
11 course of the officer's official duties after meeting specialized
12 qualifications established by the Governor's Committee on Crime,
13 Delinquency and Correction, which ~~qualifications~~ shall include the
14 successful completion of handgun training, including a minimum of
15 four hours' training in handgun safety and comparable to the handgun
16 training provided to law-enforcement officers by the West Virginia
17 State Police.

18 (2) ~~Probation officers may only carry handguns in the course of~~
19 ~~their official duties after meeting the specialized qualifications~~
20 ~~set forth in~~ Subdivision (1) of this subsection may not be construed
21 to diminish the right of a probation officer to keep and bear arms
22 in the same manner as he or she may lawfully do so as a private
23 citizen.

1 (3) Nothing in this subsection ~~includes~~ may be construed to
2 include probation officers within the meaning of law-enforcement
3 officers as defined in section one, article twenty-nine, chapter
4 thirty of this code.

5 **CHAPTER 64. LEGISLATIVE RULES.**

6 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**
7 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

8 **§64-5-1a. Health and Human Resources; child care centers licensing.**

9 The legislative rule contained in title seventy-eight, series
10 one, and filed in the State Register on April 25, 2007, under the
11 authority of section four, article two-b, chapter forty-nine of this
12 code, relating to Department of Health and Human Resources (Child
13 Care Centers Licensing, 78 CSR 1) is reauthorized with the following
14 amendment:

15 On page seventy, section one, by striking subsection 20.3.a in
16 its entirety and renumbering subsequent subsections.

17 **§64-5-1b. Health and Human Resources; child-care and treatment**
18 **facilities.**

19 The legislative rule contained in title seventy-eight, series
20 three, and filed in the State Register on May 2, 2007, under the
21 authority of section three, article seventeen, chapter twenty-seven,
22 sections four, six and seven of article one-a, chapter twenty-seven

1 and article two-b, chapter forty-nine of this code, relating to the
2 Department of Health and Human Resources (Minimum Licensing
3 Requirements for Residential Child Care and Treatment Facilities for
4 Children and Transitioning Adults in West Virginia, 78 CSR 3) is
5 reauthorized with the following amendment:

6 On page thirty-one, section three, by striking subsection
7 12.5.c in its entirety and renumbering subsequent subsections
8 accordingly.

9 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO**
10 **PROMULGATE LEGISLATIVE RULES.**

11 **§64-7-3a. Lottery Commission; limited gaming facility rule.**

12 The legislative rule contained in title eighty-seven, series
13 four, filed in the State Register on April 20, 2000, under the
14 authority of section five, article twenty-five, chapter twenty-nine
15 of this code, relating to the West Virginia Lottery Commission
16 (Limited Gaming Facility Rule 179 CSR 4) is reauthorized with the
17 following amendment:

18 On page twelve, section four, by striking subsection 3.12 in
19 its entirety and renumbering subsequent subsections accordingly.

20 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE**
21 **LEGISLATIVE RULES.**

22 **§64-10-3a. Division of Natural Resources; commercial whitewater**

1 **outfitters.**

2 The legislative rule contained in title fifty-eight, series
3 twelve and filed in the State Register on March 27, 2008, under the
4 authority of section twenty-three-a, article two, chapter twenty of
5 this code, relating to the Division of Natural Resources (Commercial
6 Whitewater Outfitters 58 CSR 12) is reauthorized with the following
7 amendment:

8 On page seven, section twelve, by striking subsection 9.13 in
9 its entirety and renumbering subsequent subsections accordingly.

10 **§64-10-3b. Division of Natural Resources; public use of state**
11 **parks.**

12 The legislative rule contained in title fifty-eight, series
13 thirty-one and filed in the State Register on May 4, 2006, under the
14 authority of section seven, article one, chapter twenty of this
15 code, relating to the Division of Natural Resources (Public use of
16 West Virginia State Parks, State Forests, and State Wildlife
17 Management Areas Under the Division of Natural Resources 58 CSR 31)
18 is reauthorized with the following amendment:

19 On page two, section thirty-one, subsection 2.14 by striking
20 "uncased firearms," and inserting in lieu thereof "a loaded or
21 uncased rifle, a loaded or uncased shotgun,".

22 **ARTICLE 12. RACING COMMISSION.**

1 **§64-12-1. Thoroughbred racing.**

2 The legislative rule contained in title one hundred
3 seventy-eight, series one and filed in the State Register on April
4 6, 2007, under the authority of sections five, six, eight and
5 thirteen, article twenty-three, chapter nineteen of this code,
6 relating to the Racing Commission (Thoroughbred Racing 178 CSR 1) is
7 reauthorized with the following amendment:

8 On page thirty, section one, subsection 37.6 by striking
9 "firearm, or other deadly weapon".

10 **§64-12-2. Greyhound racing.**

11 The legislative rule contained in title one hundred
12 seventy-eight, series two and filed in the state Register on May 5,
13 2006, under the authority of sections six, article twenty-three,
14 chapter nineteen of this code, relating to the Racing Commission
15 (Greyhound Racing 178 CSR 2) is reauthorized with the following
16 amendment:

17 On page twenty-nine, section two, subsection 40.6 by striking
18 "carries or exhibits a deadly weapon".

NOTE: The purpose of this bill is to regulate firearms and other deadly weapons. The bill attempts to deal with this issue in

every provision of the Code where firearms and carrying or exhibiting a deadly or dangerous weapon is mentioned. This bill is to be known as "The West Virginia Gun Owners' Protection Act of 2011". Otherwise, the bill regulates firearms and other deadly weapons; it provides uniform statutory definition of "business days" for purposes of computation of time; it provides that the rights of local conservators of the peace and reserve deputy sheriffs to keep and bear arms as private citizens are neither enlarged nor diminished by virtue of their positions. The bill clarifies various grants of authority to certain state officers and agents to carry firearms and concealed weapons while on duty. It codifies common law arrest powers of prosecuting attorneys and assistant prosecuting attorneys and repeals special fees for fingerprinting services for applicants for federal firearm licenses. The bill repeals the authority of municipalities to prohibit the carrying of certain weapons and limits access to records pertaining to licenses to carry concealed weapons, qualified retired law-enforcement officers qualified to carry concealed firearms pursuant to the federal Law Enforcement Officers Safety Act of 2004 and licensed hunters, trappers and fishermen. The bill requires qualifying law-enforcement officers employed by a West Virginia law-enforcement agency to receive certification to carry a concealed firearm nationwide as provided in the federal Law Enforcement Officers

Safety Act of 2004 and establishes a procedure for a retired or medically discharged member of the State Police to appeal a denial of a letter of authorization to carry concealed handguns; it provides that certain methods of authorization for retired or medically discharged members of the State Police to carry concealed handguns are cumulative, that a letter of authorization for a retired or medically discharged member of the State Police to carry concealed weapons shall be considered a West Virginia license to carry concealed weapons for the purpose of participating in reciprocity with other states; that law-enforcement agencies are neither prohibited from nor required to permit an officer to carry his or her service weapon off-duty; and requires West Virginia law-enforcement agencies to offer access to training and certification for honorably retired officers to be permitted to carry a concealed firearm nationwide as a qualified retired law-enforcement officer as provided in the federal Law Enforcement Officers Safety Act of 2004. The bill establishes a program for issuing special qualified retired law-enforcement officer concealed firearm license by the State Police, authorizing legislative rules and provides that special qualified retired law-enforcement officer concealed firearm license is cumulative and supplemental. The bill prohibits state financial assistance to higher education institutions that infringe upon an individual's right to keep and

bear arms as provided by law, expands prohibition on interference with hunters, trappers and fishermen to include the lawful possession or control of lawfully-taken wildlife, prohibits certain harassment, intimidation or threats against hunters, trappers or fishermen, provides exemptions to prohibited acts relating to interference with hunters, trappers and fishermen, provides exemption from prohibited acts relating to interference with hunters, trappers and fishermen for Constitutionally-protected activities, increases criminal penalties for interference with hunters, trappers and fishermen, provides civil remedies for unlawful interference with hunters, trappers and fishermen, clarifies that hunting statutes generally do not prohibit the otherwise lawful carrying of handguns for self-defense purposes and exempts persons who are licensed or otherwise authorized to lawfully carry concealed weapons from certain limitations on how firearms may be carried or transported. The bill provides additional lawful means for the transportation of rifles and shotguns in or on vehicles and vessels. The bill clarifies language on Sunday hunting local option election ballots to accurately state the nature of the question propounded. It modifies restrictions relating to discharging firearms near residences, parks and certain other public places and consolidates and clarifies certain penalty provisions. The bill requires notice of a guardianship or conservatorship

hearing to include a warning of the potential consequences of the guardianship or conservatorship action on the alleged protected person's ability to lawfully possess firearms. It requires domestic violence protective orders to contain certain warnings about implications of order on legality of firearms possession and clarifies the effect of protective orders on legality of firearms possession. The bill prohibits an adoption agency or entity from making suitability determinations based on, requiring disclosure relating to, or restricting the lawful possession, storage or use of a firearm or ammunition. The bill provides immunity from civil liability for certain firearms safety instructors, course providers, sponsoring organizations and participants. It modifies the area covered by prohibition on transporting restricted articles on correctional facility premises. The bill prohibits the taking of lawfully possessed arms and ammunition during a declared state of emergency or riot. It repeals the prohibition on bringing weapons upon the State Capitol Complex. The bill declares legislative findings and intent and defines terms. It limits the requirement of license to carry concealed weapons to enumerated locations, provides additional exemptions to requirement of license to carry concealed weapons, grants full faith and credit to all qualified out-of-state license or permit to carry concealed weapons held by qualifying out-of-state licensees, requires certain persons who lawfully carry

a concealed weapon without a license to inform the law-enforcement officer and submit to certain requests by the law-enforcement officer when the person is contacted by a law-enforcement officer and provides procedures for ascertaining the existence of a license or other lawful authorization to carry a concealed weapon. The bill establishes certain rebuttable presumptions regarding the existence or absence of evidence of a license or other lawful authorization to carry a concealed weapon, establishes multiple classes of licenses to carry concealed weapons, prescribing eligibility criteria for each class of license, repeals limitation of licenses to carry concealed weapons to pistols and revolvers only, repeals license to carry concealed weapons fee surcharge for Courthouse Facilities Improvement Fund; requiring the inclusion of certain information on applications for licenses to carry concealed weapons, modifies eligibility criteria for licenses to carry concealed weapons and specifies information to be provided in application for license to carry concealed weapons. The bill requires applicants for licenses to carry concealed weapons to provide specified documentation with application, specifies required components of background investigations of applicants for licenses to carry concealed weapons, requires background check on applicants for licenses to carry concealed weapons to determine an applicant's eligibility to possess or transport firearms under state and federal law and

requires fingerprint-based state and national criminal and mental health background checks on applicants for Class 1 licenses. The bill establishes a State Police Concealed Weapons License Background Check Administration Fund, provides for the source of funds use of funds and authorizes expenditures from collections. The bill converts county concealed weapons license administration funds to perpetual revolving accounts and repeals authority of sheriff to expend surplus funds in county concealed weapons license administration fund. The bill establishes additional means of fulfilling requirement of demonstrating basic competence with a handgun, prescribes additional requirement for Class 1, 2 and 4 licenses of completing certain live fire shooting exercises and passing live fire shooting proficiency test and requires instructors of live fire shooting proficiency tests to maintain records on students. The bill modifies time limit for sheriffs to act on applications for licenses to carry concealed weapons. It conforms requirements for Social Security number solicitations on applications for licenses to carry concealed weapons to Section 7 of the federal Privacy Act of 1974, establishes a uniform system of numbering and indexing all licenses to carry concealed weapons throughout the state, specifies the form and contents of licenses to carry concealed weapons, establishes provisions governing the change of a licensee's name or address, modifies the license expiration and

renewal cycle, prorates license fees and extends licenses of active-duty members of the Armed Forces while deployed. The bill requires Commissioner of Motor Vehicles to produce license cards upon request of sheriff, provides for the payment of cost of producing license cards, transfers responsibility for preparing license applications and other forms from Superintendent to Attorney General and requires sheriffs to accept certain methods of payment for fees for licenses to carry concealed weapons. The bill establishes procedure for appealing the suspension or revocation of a license to carry concealed weapons; specifying form of notice of denial, suspension or revocation of a license to carry concealed weapons. It specifies whether a license to carry concealed weapons shall be suspended or revoked, establishes optional procedure for reconsidering denial, suspension or revocation of license prior to judicial appeal, closing proceedings and sealing records in judicial appeals of denials, suspension and revocations of licenses to carry concealed weapons and modifies immunity from civil liability for certain acts relative to concealed weapons licensing. The bill declares licensing statute to be comprehensive and preemptive. It requires courts to determine whether individuals in proceedings resulting in disqualification from licensure are licensed to carry a concealed weapon and to notify issuing agency upon a licensee becoming disqualified for certain causes from continued licensure to

carry concealed weapons. It requires sheriffs to issue notice of license expiration and renewal process and provides contents of notice. The bill provides criminal penalties for fraudulently obtaining or unlawfully disclosing confidential information about individuals who have applied for or been issued licenses to carry concealed weapons. It establishes provisions for the use of an alternate address by certain classes of protected persons. It requires the Attorney General to periodically notify the Attorney General and licensing authority of each state of this state's recognition of qualified out-of-state license or permit to carry concealed weapons held by qualifying out-of-state licensees and to negotiate and execute reciprocity agreements to secure recognition of West Virginia licenses when required by other states as a condition of recognizing West Virginia licenses. It further requires the Attorney General and the Superintendent of the State Police to provide certain annual reports to the Legislature, requiring the Attorney General to publish and annually revise a compendium of firearm and use of force laws. The bill provides for the disposition of applications for licenses to carry concealed weapons filed before and pending on the effective date of this article. The bill provides for classification of licenses to carry concealed weapons in effect on the effective date of this article, specifies procedures for upgrading or modifying class of license to carry

concealed weapons, establishes emergency license to carry concealed weapons, eligibility criteria, license fee and creating uniform rule concerning the requirement to carry and exhibit license when carrying a concealed weapon for both West Virginia licensees and qualified out-of-state licensees. The bill conforms classes of persons prohibited from possessing firearms to federal law, clarifies conflicting statutory language, prohibits certain persons from carrying a concealed weapon in a public place and provides additional procedures for relief from weapons disabilities. The bill designates officials authorized to certify the transfer and registration of firearms subject to the National Firearms Act. It establishes time limit for designated officials to act on requests for certification, establishes uniform standard for approving or denying requested certifications and provides immunity from civil liability for lawfully performing required certifications. The bill prohibits licensed firearm dealers from refusing to sell or otherwise transfer a firearm to any person solely on the basis that the person purchased a firearm that was later the subject of a law-enforcement trace request, requires licensed firearms dealers to perform certain acts incident to firearm sales or transfers and prohibits the purchase or attempt to purchase a firearm from a firearm dealer by certain persons. The bill increases criminal penalties for any person other than a law-enforcement officer who

knowingly solicits, persuades, encourages or entices any other person to violate firearm sales laws. It provides civil remedies for unlawful denial or delay of firearm sale or transfer. It specifies areas subject to prohibition on possession of deadly weapons on school premises, with exceptions, creates separate offense for possessing deadly weapon in school safety zone with the intent to use the deadly weapon unlawfully or to threaten or endanger another person and provides criminal penalties. The bill reduces criminal penalties for unlawful possession of deadly weapon in school safety zones without the intent to use the deadly weapon unlawfully or to threaten or endanger another person. It modifies requirements and procedures for suspending or revoking driver's license of person convicted of or adjudicated a juvenile delinquent for such offenses. It prohibits the possession or conveyance of deadly weapons into certain areas of courthouses and other places where judicial proceedings are held and declares certain persons exempt. It requires establishment of secure weapon storage areas and posting of signs and provides for the consolidation of required signage and secure weapon storage areas when premises contained within secure restricted access area. It provides for the establishment of secure restricted access areas in certain public buildings, procedures for establishment and prohibits the possession of or conveyance of deadly weapons into secure restricted access

areas. The bill provides criminal penalties for possessing or conveying deadly weapons into restricted premises, signage requirements and requires the provision of secure weapon storage areas at secure restricted access areas for individuals to lawfully store firearms before entering secure restricted access area. The bill provides additional criminal penalties for the use or possession of firearms or other weapons during the commission of specified crimes. It exempts certain officers, employees and agents of the United States, this state or a political subdivision of this state from restrictions or prohibitions on possessing weapons imposed by private property owners, requiring all private property owners that have legally restricted or prohibited the possession or carrying of weapons on their premises to give notice of such prohibitions or restrictions by posting specified signs, provides the format of signs, effect of failure to properly post signs indicating such prohibition or restriction and provides immunity from civil liability to private property owners and private employers for certain acts or omissions of individuals licensed to carry concealed weapons or authorized to carry concealed weapons without a license if the private property owner or private employer voluntarily refrains from restricting the possession or carrying of deadly weapons by individuals licensed to carry concealed weapons or authorized to carry concealed weapons without a license. The bill

prohibits a public or private employer from prohibiting a customer, employee or invitee from possessing any legally owned firearm or concealable weapon that is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and prohibits a public or private employer from violating the privacy rights of a customer, employee or invitee by verbal or written inquiry regarding the presence of a firearm or concealable weapon inside or locked to a private motor vehicle in a parking lot or by the search of a private motor vehicle in a parking lot to ascertain the presence of a firearm or concealable weapon within the vehicle. It prohibits actions by a public or private employer against a customer, employee or invitee based upon verbal or written statements concerning possession of a firearm or concealable weapon stored inside a private motor vehicle in a parking lot for lawful purposes. It provides conditions under which a search of a private motor vehicle in the parking lot of a public or private employer may be conducted, prohibits a public or private employer from conditioning employment upon specified licensure status or upon a specified agreement, prohibits a public or private employer from attempting to prevent or prohibiting any customer, employee or invitee from entering the parking lot of the employer's place of business because the private motor vehicle of a customer, employee or invitee contains a legal firearm or concealable weapon and prohibits public or private

employers from terminating the employment of or otherwise discriminating against an employee, or expelling a customer or invitee, for exercising his or her right to keep and bear arms or for exercising the right of self-defense. It provides a condition to the prohibition and that such prohibitions apply to all public-sector employers. It provides that, when subject to the prohibitions imposed by law, a public or private employer has no duty of care related to the actions prohibited, provides specified immunity from liability for public and private employers, provides nonapplicability of such immunity, provides construction and exceptions to certain prohibitions, provides for enforcement of certain prohibitions and provides for the award of reasonable personal costs and losses and award of court costs and attorney's fees. The bill declares the provisions of the West Virginia Code to be the sole means by which the keeping and bearing of arms may be regulated, preempting any ordinance, rule, policy or administrative action inconsistent therewith and stating exceptions. It provides for enforcement of prohibition on additional regulation of firearms or concealable weapons, provides rules of construction, prohibits the registration of firearms or firearm owners, with exceptions, provides compliance period for purging prohibited registries, limits seizures of concealable weapons and provides remedies for unlawful seizure of concealable weapon. The bill provides civil and criminal

penalties for certain acts in violation of an individual's right to keep and bear arms and defines certain acts as *per se* official misconduct for purposes of removing public official from office. The bill establishes regulations for gun buy-back programs, establishes procedures to protect interests of owners of stolen firearms and preserve evidence of certain crimes, requires certain firearms disposed by a public agency to be offered for sale to licensed firearm dealers by public auction or sealed bids, procedures for public sale of certain firearms and requires award of court costs and attorney's fees in certain cases. The bill clarifies conflicting statutory language, updates references to licenses to carry concealed weapons in the state central mental health registry law and clarifies the permissible use of records in the central state mental health registry. The bill establishes statute of limitations for prosecuting certain crimes. It authorizes the setting aside and expungement of certain criminal convictions involving misdemeanor crimes of domestic violence. It defines eligible offenses. It provides a form and contents of petition, filing fee, service and notice requirements, prosecutor, victim and state agency opposition to petition, court procedure for hearing and ruling upon the petition, presumptions and burdens of proof, establishes procedures for expunging records and effects of set aside and expungement; and repeals or revising various archaic

language.

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

§15-2-25a, §18C-1-6, §27-5-6, §30-29-11, §48-22-804, §55-18-3, §61-7-11b, §61-7-11c, §61-7-13, §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18, §61-7-19, §61-7-20, §61-11-27, §64-5-1a, §64-5-1b, §64-7-3a, §64-10-3a, §64-10-3b, §64-12-1 and §64-12-2 are new; therefore, it has been completely underscored.

§20-2-2a and §61-7-2 and §61-7-5 have been completely rewritten; therefore, strikethroughs and underscoring have been omitted.