

Senate Bill No. 543

(By Senator Sypolt (By Request))

[Introduced February 18, 2011; referred to the Committee on
Government Organization; then to the Committee on the Judiciary;
and then to the Committee on Finance.]

A BILL to repeal §8-12-5a of the Code of West Virginia, 1931, as amended; to repeal §20-2-19a of said code; to repeal §61-7-6 and §61-7-6a of said code; to repeal §61-7A-1 and §61-7A-5 of said code; to amend and reenact §2-2-1 of said code; to amend and reenact §5A-4-3 of said code; to amend and reenact §6-3-1 and §6-3-1a of said code; to amend and reenact §7-1-3 of said code; to amend and reenact §7-4-1 of said code; to amend and reenact §7-11-5 of said code; to amend and reenact §7-14E-2 of said code; to amend and reenact §8-12-5 of said code; to amend and reenact §8-29B-5 of said code; to amend and reenact §15-2-24b and §15-2-25 of said code; to amend said code by adding thereto a new section, designated §15-2-25a; to amend and reenact §15-5-6 and §15-5-19a of said code; to amend and

1 reenact §17C-2-3 of said code; to amend said code by adding
2 thereto a new section, designated §18C-1-6; to amend and
3 reenact §18C-5-2 of said code; to amend and reenact §18C-6-2
4 of said code; to amend and reenact §18C-7-3 of said code; to
5 amend and reenact §20-1-2 of said code; to amend and reenact
6 §20-2-2a, §20-2-5, §20-2-5c, §20-2-6, §20-2-6a, §20-2-32,
7 §20-2-37, §20-2-42l, §20-2-42p, §20-2-46e and §20-2-58 of said
8 code; to amend and reenact §20-7-9 and §20-7-11 of said code;
9 to amend and reenact §24A-7-6 of said code; to amend and
10 reenact §25-1-11c of said code; to amend and reenact §27-3-1
11 of said code; to amend said code by adding thereto a new
12 section, designated §27-5-6; to amend said code by adding
13 thereto a new section, designated §30-29-11; to amend and
14 reenact §32-4-407 of said code; to amend and reenact §33-41-8
15 of said code; to amend and reenact §44A-2-6 of said code; to
16 amend said code by adding thereto a new section, designated
17 §48-22-804; to amend and reenact §48-27-403, §48-27-502,
18 §48-27-601 and §48-27-1002 of said code; to amend and reenact
19 §49-2B-3 of said code; to amend and reenact §50-1-14 of said
20 code; to amend and reenact §55-18-1 of said code; to amend
21 said code by adding thereto a new section, designated §55-18-
22 3; to amend and reenact §61-5-8 of said code; to amend and
23 reenact §61-6-1a and §61-6-19 of said code; to amend and

1 reenact §61-7-1, §61-7-2, §61-7-3, §61-7-4, §61-7-5, §61-7-7,
2 §61-7-9, §61-7-10 and §61-7-11a of said code; to amend said
3 code by adding thereto two new sections, designated §61-7-11b
4 and §61-7-11c; to amend and reenact §61-7-12 of said code; to
5 amend said code by adding thereto a new section, designated
6 §61-7-13; to amend and reenact §61-7-14 of said code; to amend
7 said code by adding thereto seven new sections, designated
8 §61-7-14a, §61-7-15a, §61-7-16, §61-7-17, §61-7-18, §61-7-19
9 and §61-7-20; to amend and reenact §61-7A-2, §61-7A-3 and
10 §61-7A-4 of said code; to amend and reenact §61-11-9 of said
11 code; to amend and reenact §62-12-6 of said code; to amend
12 said code by adding thereto two new sections, designated
13 §64-5-1a and §64-5-1b; to amend said code by adding thereto a
14 new section, designated §64-7-3a; to amend said code by adding
15 thereto two new sections, designated §64-10-3a and §64-10-3b;
16 and to amend said code by adding thereto a new article,
17 designated §64-12-1 and §64-12-2, all relating to the
18 regulation of firearms and other deadly weapons; providing
19 uniform statutory definition of "business days" for purposes
20 of computation of time; providing that the rights of local
21 conservators of the peace and reserve deputy sheriffs to keep
22 and bear arms as private citizens are neither enlarged nor
23 diminished by virtue of their positions; clarifying various

1 grants of authority to certain state officers and agents to
2 carry firearms and concealed weapons while on duty; codifying
3 common-law arrest powers of prosecuting attorneys and
4 assistant prosecuting attorneys; repealing special fees for
5 fingerprinting services for applicants for federal firearm
6 licenses; repealing authority of municipalities to prohibit
7 the carrying of certain weapons; limiting access to records
8 pertaining to licenses to carry concealed weapons, qualified
9 retired law-enforcement officers qualified to carry concealed
10 firearms pursuant to the federal Law Enforcement Officers
11 Safety Act of 2004 and licensed hunters, trappers and
12 fishermen; requiring qualifying law-enforcement officers
13 employed by a West Virginia law-enforcement agency to receive
14 certification to carry a concealed firearm nationwide as
15 provided in the federal Law Enforcement Officers Safety Act of
16 2004; establishing procedure for a retired or medically
17 discharged member of the State Police to appeal a denial of a
18 letter of authorization to carry concealed handguns; providing
19 that certain methods of authorization for retired or medically
20 discharged members of the State Police to carry concealed
21 handguns are cumulative; providing that a letter of
22 authorization for a retired or medically discharged member of
23 the State Police to carry concealed weapons shall be deemed a

1 West Virginia license to carry concealed weapons for the
2 purpose of participating in reciprocity with other states;
3 providing that law-enforcement agencies are neither prohibited
4 from nor required to permit an officer to carry his or her
5 service weapon off duty; requiring West Virginia
6 law-enforcement agencies to offer access to training and
7 certification for honorably retired officers to be permitted
8 to carry a concealed firearm nationwide as a qualified retired
9 law-enforcement officer as provided in the federal Law
10 Enforcement Officers Safety Act of 2004; establishing program
11 for issuing special qualified retired law-enforcement officer
12 concealed firearm license by the State Police; authorizing
13 legislative rules; providing that special qualified retired
14 law-enforcement officer concealed firearm license is
15 cumulative and supplemental; prohibiting state financial
16 assistance to higher education institutions that infringe upon
17 an individual's right to keep and bear arms as provided by
18 law; expanding prohibition on interference with hunters,
19 trappers and fishermen to include the lawful possession or
20 control of lawfully taken wildlife; prohibiting certain
21 harassment, intimidation or threats against hunters, trappers
22 or fishermen; providing exemptions to prohibited acts relating
23 to interference with hunters, trappers and fishermen;

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

1 on legality of firearms' possession; clarifying effect of
2 protective orders on legality of firearms' possession;
3 prohibiting an adoption agency or entity from making
4 suitability determinations based on, requiring disclosure
5 relating to, or restricting the lawful possession, storage or
6 use of a firearm or ammunition; providing immunity from civil
7 liability for certain firearms safety instructors, course
8 providers, sponsoring organizations and participants;
9 modifying area covered by prohibition on transporting
10 restricted articles on correctional facility premises;
11 prohibiting the taking of lawfully possessed arms and
12 ammunition during a declared state of emergency or riot;
13 repealing prohibition on bringing weapons upon the State
14 Capitol Complex; declaring legislative findings and intent;
15 defining terms; limiting requirement of license to carry
16 concealed weapons to enumerated locations; providing
17 additional exemptions to requirement of license to carry
18 concealed weapons; granting full faith and credit to all
19 qualified out-of-state licenses or permits to carry concealed
20 weapons held by qualifying out-of-state licensees; requiring
21 certain persons who lawfully carry a concealed weapon without
22 a license to inform the law-enforcement officer and submit to
23 certain requests by the law-enforcement officer when the

1 person is contacted by a law-enforcement officer; providing
2 procedures for ascertaining the existence of a license or
3 other lawful authorization to carry a concealed weapon;
4 establishing certain rebuttable presumptions regarding the
5 existence or absence of evidence of a license or other lawful
6 authorization to carry a concealed weapon; establishing
7 multiple classes of licenses to carry concealed weapons;
8 prescribing eligibility criteria for each class of license;
9 repealing limitation of licenses to carry concealed weapons to
10 pistols and revolvers only; repealing license to carry
11 concealed weapons fee surcharge for Courthouse Facilities
12 Improvement Fund; requiring the inclusion of certain
13 information on applications for licenses to carry concealed
14 weapons; modifying eligibility criteria for licenses to carry
15 concealed weapons; specifying information to be provided in
16 application for license to carry concealed weapons; requiring
17 applicants for licenses to carry concealed weapons to provide
18 specified documentation with application; specifying required
19 components of background investigations of applicants for
20 licenses to carry concealed weapons; requiring background
21 check on applicants for licenses to carry concealed weapons to
22 determine an applicant's eligibility to possess or transport
23 firearms under state and federal law; requiring

1 fingerprint-based state and national criminal and mental
2 health background checks on applicants for Class 1 licenses;
3 establishing a State Police Concealed Weapons License
4 Background Check Administration Fund; source of funds; use of
5 funds; authorizing expenditures from collections; converting
6 county concealed weapons license administration funds to
7 perpetual revolving accounts; repealing authority of sheriff
8 to expend surplus funds in county concealed weapons license
9 administration fund; establishing additional means of
10 fulfilling requirement of demonstrating basic competence with
11 a handgun; prescribing additional requirement for Class 1, 2
12 and 4 licenses of completing certain live fire shooting
13 exercises and passing live fire shooting proficiency test;
14 requiring instructors of live fire shooting proficiency tests
15 to maintain records on students; modifying time limit for
16 sheriffs to act on applications for licenses to carry
17 concealed weapons; conforming requirements for Social Security
18 number solicitations on applications for licenses to carry
19 concealed weapons to Section 7 of the federal Privacy Act of
20 1974; establishing a uniform system of numbering and indexing
21 all licenses to carry concealed weapons throughout the state;
22 specifying the form and contents of licenses to carry
23 concealed weapons; establishing provisions governing the

1 change of a licensee's name or address; modifying the license
2 expiration and renewal cycle; prorating license fees;
3 extending licenses of active-duty members of the armed forces
4 while deployed; requiring Commissioner of Motor Vehicles to
5 produce license cards upon request of sheriff; payment of cost
6 of producing license cards; transferring responsibility for
7 preparing license applications and other forms from
8 superintendent to Attorney General; requiring sheriffs to
9 accept certain methods of payment for fees for licenses to
10 carry concealed weapons; establishing procedure for appealing
11 the suspension or revocation of a license to carry concealed
12 weapons; specifying form of notice of denial, suspension or
13 revocation of a license to carry concealed weapons; specifying
14 whether a license to carry concealed weapons shall be
15 suspended or revoked; establishing optional procedure for
16 reconsidering denial, suspension or revocation of license
17 prior to judicial appeal; closing proceedings and sealing
18 records in judicial appeals of denials, suspensions and
19 revocations of licenses to carry concealed weapons; modifying
20 immunity from civil liability for certain acts relative to
21 concealed weapons licensing; declaring licensing statute to be
22 comprehensive and preemptive; requiring courts to determine
23 whether individuals in proceedings resulting in

1 disqualification from licensure are licensed to carry a
2 concealed weapon; requiring court to notify issuing agency
3 upon a licensee becoming disqualified for certain causes from
4 continued licensure to carry concealed weapons; requiring
5 sheriffs to issue notice of license expiration and renewal
6 process; contents of notice; providing criminal penalties for
7 fraudulently obtaining or unlawfully disclosing confidential
8 information about individuals who have applied for or been
9 issued licenses to carry concealed weapons; establishing
10 provisions for the use of an alternate address by certain
11 classes of protected persons; requiring the Attorney General
12 to periodically notify the Attorney General and licensing
13 authority of each state of this state's recognition of
14 qualified out-of-state license or permit to carry concealed
15 weapons held by qualifying out-of-state licensees; requiring
16 the Attorney General to negotiate and execute reciprocity
17 agreements to secure recognition of West Virginia licenses
18 when required by other states as a condition of recognizing
19 West Virginia licenses; requiring the Attorney General and the
20 Superintendent of the State Police to provide certain annual
21 reports to the Legislature; requiring the Attorney General to
22 publish and annually revise a compendium of firearm and use of
23 force laws; providing for the disposition of applications for

1 licenses to carry concealed weapons filed before and pending
2 on the effective date of this act; providing for
3 classification of licenses to carry concealed weapons in
4 effect on the effective date of this act; specifying
5 procedures for upgrading or modifying class of license to
6 carry concealed weapons; establishing emergency license to
7 carry concealed weapons; eligibility criteria; license fee;
8 creating uniform rule concerning the requirement to carry and
9 exhibit license when carrying a concealed weapon for both West
10 Virginia licensees and qualified out-of-state licensees;
11 conforming classes of persons prohibited from possessing
12 firearms to federal law; clarifying conflicting statutory
13 language; prohibiting certain persons from carrying a
14 concealed weapon in a public place; providing additional
15 procedures for relief from weapons disabilities; designating
16 officials authorized to certify the transfer and registration
17 of firearms subject to the National Firearms Act; establishing
18 time limit for designated officials to act on requests for
19 certification; establishing uniform standard for approving or
20 denying requested certifications; providing immunity from
21 civil liability for lawfully performing required
22 certifications; prohibiting licensed firearm dealers from
23 refusing to sell or otherwise transfer a firearm to any person

1 solely on the basis that the person purchased a firearm that
2 was later the subject of a law-enforcement trace request;
3 requiring licensed firearm dealers to perform certain acts
4 incident to firearm sales or transfers; prohibiting the
5 purchase or attempt to purchase a firearm from a firearm
6 dealer by certain persons; increasing criminal penalties for
7 any person other than a law-enforcement officer who knowingly
8 solicits, persuades, encourages or entices any other person to
9 violate firearm sales laws; civil remedies for unlawful denial
10 or delay of firearm sale or transfer; specifying areas subject
11 to prohibition on possession of deadly weapons on school
12 premises; providing exceptions; creating separate offense for
13 possessing deadly weapon in school safety zone with the intent
14 to use the deadly weapon unlawfully or to threaten or endanger
15 another person; providing criminal penalties; reducing
16 criminal penalties for unlawful possession of deadly weapon in
17 school safety zones without the intent to use the deadly
18 weapon unlawfully or to threaten or endanger another person;
19 modifying requirements and procedures for suspending or
20 revoking driver's license of person convicted of or
21 adjudicated a juvenile delinquent for such offenses;
22 prohibiting the possession or conveyance of deadly weapons
23 into certain areas of courthouses and other places where

1 judicial proceedings are held; declaring certain persons
2 exempt; requiring establishment of secure weapon storage areas
3 and posting of signs; providing for the consolidation of
4 required signage and secure weapon storage areas when premises
5 contained within secure restricted access area; providing for
6 the establishment of secure restricted access areas in certain
7 public buildings; procedures for establishment; prohibiting
8 the possession or conveyance of deadly weapons into secure
9 restricted access areas; providing criminal penalties for
10 possessing or conveying deadly weapons into restricted
11 premises; signage requirements; requiring the provision of
12 secure weapon storage areas at secure restricted access areas
13 for individuals to lawfully store firearms before entering
14 secure restricted access area; providing additional criminal
15 penalties for the use or possession of firearms or other
16 weapons during the commission of specified crimes; exempting
17 certain officers, employees and agents of the United States,
18 this state or a political subdivision of this state from
19 restrictions or prohibitions on possessing weapons imposed by
20 private property owners; requiring all private property owners
21 that have legally restricted or prohibited the possession or
22 carrying of weapons on their premises to give notice of such
23 prohibitions or restrictions by posting specified signs;

1 format of signs; effect of failure to properly post signs
2 indicating such prohibition or restriction; providing immunity
3 from civil liability to private property owners and private
4 employers for certain acts or omissions of individuals
5 licensed to carry concealed weapons or authorized to carry
6 concealed weapons without a license if the private property
7 owner or private employer voluntarily refrains from
8 restricting the possession or carrying of deadly weapons by
9 individuals licensed to carry concealed weapons or authorized
10 to carry concealed weapons without a license; prohibiting a
11 public or private employer from prohibiting a customer,
12 employee or invitee from possessing any legally owned firearm
13 or concealable weapon that is lawfully possessed and locked
14 inside or locked to a private motor vehicle in a parking lot;
15 prohibiting a public or private employer from violating the
16 privacy rights of a customer, employee or invitee by verbal or
17 written inquiry regarding the presence of a firearm or
18 concealable weapon inside or locked to a private motor vehicle
19 in a parking lot or by the search of a private motor vehicle
20 in a parking lot to ascertain the presence of a firearm or
21 concealable weapon within the vehicle; prohibiting actions by
22 a public or private employer against a customer, employee or
23 invitee based upon verbal or written statements concerning

1 possession of a firearm or concealable weapon stored inside a
2 private motor vehicle in a parking lot for lawful purposes;
3 providing conditions under which a search of a private motor
4 vehicle in the parking lot of a public or private employer may
5 be conducted; prohibiting a public or private employer from
6 conditioning employment upon specified licensure status or
7 upon a specified agreement; prohibiting a public or private
8 employer from attempting to prevent or prohibiting any
9 customer, employee or invitee from entering the parking lot of
10 the employer's place of business because the private motor
11 vehicle of a customer, employee or invitee contains a legal
12 firearm or concealable weapon; prohibiting public or private
13 employers from terminating the employment of or otherwise
14 discriminating against an employee, or expelling a customer or
15 invitee, for exercising his or her right to keep and bear arms
16 or for exercising the right of self defense; providing a
17 condition to the prohibition; providing that such prohibitions
18 apply to all public sector employers; providing that, when
19 subject to the prohibitions imposed by law, a public or
20 private employer has no duty of care related to the actions
21 prohibited; providing specified immunity from liability for
22 public and private employers; providing nonapplicability of
23 such immunity; providing construction; providing exceptions to

1 certain prohibitions; providing for enforcement of certain
2 prohibitions; providing for the award of reasonable personal
3 costs and losses; providing for the award of court costs and
4 attorney's fees; declaring the provisions of said code to be
5 the sole means by which the keeping and bearing of arms may be
6 regulated; preempting any ordinance, rule, policy or
7 administrative action inconsistent therewith; exceptions;
8 providing for enforcement of prohibition on additional
9 regulation of firearms or concealable weapons; providing rules
10 of construction; prohibiting the registration of firearms or
11 firearm owners; exceptions; compliance period for purging
12 prohibited registries; limiting seizures of concealable
13 weapons; providing remedies for unlawful seizure of
14 concealable weapon; providing civil and criminal penalties for
15 certain acts in violation of an individual's right to keep and
16 bear arms; defining certain acts as per se official misconduct
17 for purposes of removing public official from office;
18 establishing regulations for gun buy-back programs;
19 establishing procedures to protect interests of owners of
20 stolen firearms and preserve evidence of certain crimes;
21 requiring certain firearms disposed by a public agency to be
22 offered for sale to licensed firearm dealers by public auction
23 or sealed bids; procedures for public sale of certain

1 firearms; requiring award of court costs and attorney's fees
2 in certain cases; clarifying conflicting statutory language;
3 updating references to licenses to carry concealed weapons in
4 the central state mental health registry law; clarifying the
5 permissible use of records in the central state mental health
6 registry; establishing statute of limitations for prosecuting
7 certain crimes; authorizing the set aside and expungement of
8 certain criminal convictions involving misdemeanor crimes of
9 domestic violence; defining eligible offenses; form and
10 contents of petition; filing fee; service and notice
11 requirements; prosecutor, victim and state agency opposition
12 to petition; court procedure for hearing and ruling upon the
13 petition; presumptions and burdens of proof; establishing
14 procedures for expunging records; effects of set aside and
15 expungement; and repealing or revising various archaic
16 language.

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

18 That §8-12-5a of the Code of West Virginia, 1931, as amended,
19 be repealed; that §20-2-19a of said code be repealed; that §61-7-6
20 and §61-7-6a of said code be repealed; that §61-7A-1 and §61-7A-5
21 of said code be repealed; that §2-2-1 of said code be amended and
22 reenacted; that §5A-4-3 of said code be amended and reenacted; that
23 §6-3-1 and §6-3-1a of said code be amended and reenacted; that

1 §7-1-3 of said code be amended and reenacted; that §7-4-1 of said
2 code be amended and reenacted; that §7-11-5 of said code be amended
3 and reenacted; that §7-14E-2 of said code be amended and reenacted;
4 that §8-12-5 of said code be amended and reenacted; that §8-29B-5
5 of said code be amended and reenacted; that §15-2-24b and §15-2-25
6 of said code be amended and reenacted; that said code be amended by
7 adding thereto a new section, designated §15-2-25a; that §15-5-6
8 and §15-5-19a of said code be amended and reenacted; that §17C-2-3
9 of said code be amended and reenacted; that said code be amended by
10 adding thereto a new section, designated §18C-1-6; that §18C-5-2 of
11 said code be amended and reenacted; that §18C-6-2 of said code be
12 amended and reenacted; that §18C-7-3 of said code be amended and
13 reenacted; that §20-1-2 of said code be amended and reenacted; that
14 §20-2-2a, §20-2-5, §20-2-5c, §20-2-6, §20-2-6a, §20-2-32, §20-2-37,
15 §20-2-421, §20-2-42p, §20-2-46e and §20-2-58 of said code be
16 amended and reenacted; that §20-7-9 and §20-7-11 of said code be
17 amended and reenacted; that §24A-7-6 of said code be amended and
18 reenacted; that §25-1-11c of said code be amended and reenacted;
19 that §27-3-1 of said code be amended and reenacted; that said code
20 be amended by adding thereto a new section, designated §27-5-6;
21 that said code be amended by adding thereto a new section,
22 designated §30-29-11; that §32-4-407 of said code be amended and
23 reenacted; that §33-41-8 of said code be amended and reenacted;

1 that §44A-2-6 of said code be amended and reenacted; that said code
2 be amended by adding thereto a new section, designated §48-22-804;
3 that §48-27-403, §48-27-502, §48-27-601 and §48-27-1002 of said
4 code be amended and reenacted; that §49-2B-3 of said code be
5 amended and reenacted; that §50-1-14 of said code be amended and
6 reenacted; that §55-18-1 of said code be amended and reenacted;
7 that said code be amended by adding thereto a new section,
8 designated §55-18-3; that §61-5-8 of said code be amended and
9 reenacted; that §61-6-1a and §61-6-19 of said code be amended and
10 reenacted; that §61-7-1, §61-7-2, §61-7-3, §61-7-4, §61-7-5,
11 §61-7-7, §61-7-9, §61-7-10 and §61-7-11a of said code be amended
12 and reenacted; that said code be amended by adding thereto two new
13 sections, designated §61-7-11b and §61-7-11c; that §61-7-12 of said
14 code be amended and reenacted; that said code be amended by adding
15 thereto a new section, designated §61-7-13; that §61-7-14 of said
16 code be amended and reenacted; that said code be amended by adding
17 thereto seven new sections, designated §61-7-14a, §61-7-15a,
18 §61-7-16, §61-7-17, §61-7-18, §61-7-19 and §61-7-20; that §61-7A-2,
19 §61-7A-3 and §61-7A-4 of said code be amended and reenacted; that
20 §61-11-9 of said code be amended and reenacted; that §62-12-6 of
21 said code be amended and reenacted; that said code be amended by
22 adding thereto two new sections, designated §64-5-1a and §64-5-1b;
23 that said code be amended by adding thereto a new section,

1 designated §64-7-3a; that said code be amended by adding thereto
2 two new sections, designated §64-10-3a and §64-10-3b; and that said
3 code be amended by adding thereto a new article, designated
4 §64-12-1 and §64-12-2, all to read as follows:

5 **CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS,**
6 **DEFINITIONS AND LEGAL CAPACITY.**

7 **ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF**
8 **STATUTES; DEFINITIONS.**

9 **§2-2-1. Legal holidays; official acts or court proceedings.**

10 (a) The following days are legal holidays:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (15) Any day proclaimed or ordered by the Governor or the
10 President of the United States as a day of special observance or
11 Thanksgiving, or a day for the general cessation of business, is a
12 holiday.

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

19 (c) Any day or part thereof designated by the Governor as time
20 off, without charge against accrued annual leave, for state
21 employees statewide may also be time off for county employees if
22 the county commission elects to designate the day or part thereof
23 as time off, without charge against accrued annual leave for county

1 employees. Any entire or part statewide day off designated by the
2 Governor may, for all courts, be treated as if it were a legal
3 holiday.

4 (d) In computing any period of time prescribed by any
5 applicable provision of this code or any legislative rule or other
6 administrative rule or regulation promulgated pursuant to the
7 provisions of this code, the day of the act, event, default or
8 omission from which the applicable period begins to run is not
9 included. The last day of the period so computed is included,
10 unless it is a Saturday, a Sunday, a legal holiday or a designated
11 day off in which event the prescribed period of time runs until the
12 end of the next day that is not a Saturday, Sunday, legal holiday
13 or designated day off.

14 (e) If any applicable provision of this code or any
15 legislative rule or other administrative rule or regulation
16 promulgated pursuant to the provisions of this code designates a
17 particular date on, before or after which an act, event, default or
18 omission is required or allowed to occur, and if the particular
19 date designated falls on a Saturday, Sunday, legal holiday or
20 designated day off, then the date on which the act, event, default
21 or omission is required or allowed to occur is the next day that is
22 not a Saturday, Sunday, legal holiday or designated day off.

23 (f) In computing any period of time prescribed by any

1 applicable provision of this code or any legislative rule or other
2 administrative rule or regulation promulgated pursuant to the
3 provisions of this code governing when an act, event, default or
4 omission is required or allowed to occur, when the applicable
5 statute or rule specifies that the prescribed amount of time is
6 measured in "business days," only those days that are not a
7 Saturday, Sunday, legal holiday or designated day off, shall be
8 included in the computation of the applicable time period. When the
9 applicable statute or rule does not specifically provide that the
10 applicable time period is measured in "business days," the
11 applicable time period shall be measured in calendar days and
12 Saturdays, Sundays, legal holidays and designated days off shall be
13 excluded from the applicable time period only as otherwise provided
14 in this article.

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

22 ~~(g)~~ (h) The provisions of this section do not increase or
23 diminish the legal school holidays provided in section two, article

1 five, chapter eighteen-a of this code.

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

3 **ARTICLE 4. GENERAL SERVICES DIVISION.**

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

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

21 ~~It shall be the duty of~~ (b) Any person ~~so~~ appointed and
22 qualified ~~to~~ as a security officer pursuant to subsection (a) of

1 this section shall preserve law and order on any premises under the
 2 jurisdiction of the secretary to which he ~~may be~~ or she is assigned
 3 by the secretary. For this purpose, ~~he~~ the security officer shall,
 4 as to offenses committed on such premises, have and may exercise
 5 all the powers and authority and shall be subject to all the
 6 responsibilities of a ~~deputy sheriff of the county~~ law-enforcement
 7 officer as defined in section one, article twenty-nine, chapter
 8 thirty of this code. The assignment of security officers to any
 9 premises under the jurisdiction of the secretary ~~shall~~ does not be
 10 ~~deemed to supersede in any way~~ or limit the authority or duty of
 11 other ~~peace~~ law-enforcement officers to preserve law and order on
 12 ~~such any~~ premises to which the secretary assigns a security officer
 13 pursuant to this section.

14 (c) The secretary may at his or her pleasure revoke the
 15 authority of any ~~such~~ security officer appointed pursuant to this
 16 section by filing a notice ~~to that effect~~ of revocation in the
 17 office of the clerk of the county commission of each county in
 18 which ~~his~~ the security officer's oath of office was filed. ~~and in~~
 19 ~~the case of officers licensed to carry a gun or other dangerous~~
 20 ~~weapon, by notifying the clerk of the circuit court of the county~~
 21 ~~in which the license therefor was granted~~

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

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

1 §6-3-1. Appointment of deputies and local conservators of the
2 peace; powers and duties; compensation; vacating
3 appointment of deputy sheriff; removal of
4 conservators.

5 (a) (1) The clerk of the Supreme Court of Appeals, or of any
6 circuit ~~criminal, common pleas, intermediate or county~~ magistrate
7 court ~~or of any tribunal established by law in lieu thereof,~~ may,
8 with the consent of the court, ~~or such tribunal,~~ duly entered of
9 record, appoint any person or persons his or her deputy or
10 deputies.

11 (2) A sheriff, surveyor of lands, clerk of the county
12 commission or assessor may, with the consent of the county ~~court~~
13 commission or tribunal established by law in lieu of a county
14 commission, duly entered of record, appoint any person or persons
15 his or her deputy or deputies.

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

21 (4) Each deputy ~~so appointed~~ shall take the same oath of
22 office required of his or her principal, and may, during his or her

1 continuance in office, perform and discharge any of the official
2 duties of his or her principal, and any default or misfeasance in
3 office of the deputy shall constitute a breach of the conditions of
4 the official bond of his or her principal.

5 (5) A sheriff in any county in which there are more than four
6 deputies shall devote his or her full time to the performance of
7 the services or duties required by law of such sheriff, and ~~he~~
8 shall not receive any compensation or reimbursement, directly or
9 indirectly, from any person, firm or corporation for the
10 performance of any private or public services or duties. ~~Provided,~~
11 ~~That~~ However, any ~~such~~ sheriff may retain or make any investment
12 and receive income therefrom, unless ~~such~~ the investment is
13 otherwise prohibited by law or will impair ~~his~~ the sheriff's
14 independence of judgment in the exercise of, or might reasonably
15 tend to conflict with the proper discharge of, the services or
16 duties of ~~his~~ the office of sheriff. A sheriff in any county in
17 which there are four or fewer deputies, or a deputy sheriff in any
18 county ~~irrespective~~ regardless of the number of deputies, need not
19 devote his or her full time to the services or duties of his or her
20 office as sheriff or his or her employment as deputy sheriff, as
21 the case may be; but any such sheriff or deputy sheriff shall not
22 engage in any business or transaction, accept other employment or
23 make any investment which is otherwise prohibited by law or which

1 will impair his or her independence of judgment in the exercise of,
2 or might reasonably tend to conflict with the proper discharge of,
3 the services or duties of ~~his~~ the office as sheriff or his or her
4 employment as deputy sheriff, as the case may be. A sheriff and his
5 or her deputies in any county, ~~irrespective~~ regardless of the
6 number of deputies, shall receive for the performance of their
7 public services and duties no compensation or remuneration except
8 such as may be regularly provided and paid out of public funds to
9 the amount and in the manner provided by law. No sheriff or deputy
10 sheriff in any county, ~~irrespective~~ regardless of the number of
11 deputies, may receive, directly or indirectly, any gift or donation
12 from any person, firm or corporation.

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

21 (7) Circuit courts shall have jurisdiction in equity and
22 mandamus, and the Supreme Court of Appeals shall have jurisdiction
23 in mandamus, upon the filing of a petition by the prosecuting

1 attorney, the Attorney General, or any three or more citizens of
2 the county, to require any sheriff and the county ~~court~~ commission
3 to vacate the appointment of any deputy, the appointment of which
4 is made or continued in violation of the provisions ~~hereof~~ of this
5 subsection. Any such proceeding may be instituted and prosecuted by
6 the Attorney General either in the circuit court of Kanawha County
7 or in the county for which such appointment was made.

8 (b) (1) Any resident or group of residents of any
9 unincorporated community ~~as hereinafter defined~~, may petition the
10 sheriff for the appointment of a local conservator of the peace and
11 ~~such~~ the sheriff, when in his or her opinion the public interests
12 require it, may with the assent of ~~said~~ the county ~~court~~ commission
13 and the judge of the circuit court duly entered of record, either
14 in term or vacation of any such court, appoint any person or
15 persons a local conservator or conservators of the peace to perform
16 the duties of a conservator of the peace outside of any
17 ~~incorporated city, town or village~~ municipality. No person shall be
18 appointed ~~such~~ local conservator of the peace who has not been a
19 bona fide resident and taxpayer of the county for at least one year
20 prior to his or her appointment. ~~Such~~ A local conservator of the
21 peace during his or her continuance in office, may perform and
22 discharge any of the official duties of the sheriff, subject
23 ~~nevertheless~~ to the provisions of this section. No local

1 conservator ~~so appointed~~ shall be subject to the direction or
2 control of any person other than ~~his principal~~ the appointing
3 sheriff and ~~he~~ a local conservator shall not perform any services
4 or duties, either private or public, except the duties required by
5 law of conservators of the peace pursuant to the provisions ~~hereof~~
6 of this subsection, for any person, firm, or corporation. No ~~such~~
7 local conservator shall be entitled to collect or receive any fees
8 provided by law to be paid to the sheriff or to a deputy sheriff,
9 but all fees provided by law for the sheriff, when such duties and
10 services are rendered by such local conservator, shall be paid to
11 the sheriff as regular collections of the sheriff's office. The
12 local conservator shall be paid for the public services ~~performed~~
13 ~~by him~~ the local conservator performs a salary of not less than \$75
14 per month out of the county treasury from a fund to be paid into
15 such treasury by a resident or the residents of the community for
16 which ~~he~~ the local conservator is appointed, for the sole purpose
17 of compensating ~~such~~ the local conservator or conservators and no
18 ~~such~~ local conservator ~~shall~~ may receive any other compensation,
19 directly or indirectly, from any person, firm, or corporation, for
20 any private or public service, except the salary payable to ~~him~~ the
21 local conservator for his or her public services and duties and
22 from such fund, except that ~~he~~ the local conservator shall be
23 entitled to witness and mileage fees when a witness in ~~a~~ any court

1 ~~of record~~ proceeding. Each local conservator ~~so appointed~~ shall
2 take the same oath of office required of ~~his principal~~ the
3 appointing sheriff and any default or misfeasance in the office of
4 ~~such~~ the local conservator shall constitute a breach of the
5 conditions of the official bond of ~~his principal~~ the appointing
6 sheriff.

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

1 appointment of ~~such~~ a local conservator until ~~such~~ after the
2 required publication has been made. The costs of the publication
3 shall be paid by the person or persons petitioning for the
4 appointment of the conservator.

5 No local conservator ~~shall~~ may be appointed ~~except it be made~~
6 ~~to appear to the satisfaction of~~ unless the county ~~court~~ commission
7 and the judge of the circuit court find that because of the lack of
8 sufficient funds, the geographical location of the unincorporated
9 community for which ~~such~~ the conservator is to be appointed, or
10 other good reason, the sheriff and ~~his regular~~ the sheriff's
11 deputies ~~and the constables of the county~~ are not sufficient to
12 afford proper local policing of ~~such~~ the community and that the
13 person or persons moving for the appointment of ~~such~~ the local
14 conservator have made satisfactory arrangements to compensate ~~him~~
15 the local conservator for his or her services as ~~such~~ a local
16 conservator of the peace.

17 (3) ~~Such~~ A local conservator of the peace shall have all the
18 powers and duties of a regularly appointed deputy sheriff except
19 that ~~he~~ a local conservator of the peace shall not execute any
20 civil process except such process as may be necessary to bring
21 parties before the court in any civil action ~~at law or suit in~~
22 ~~equity~~ and subpoenas for witnesses within the unincorporated
23 community for which he or she is appointed and within a distance of

1 one mile outside the boundaries thereof, except as hereinafter
2 expressly provided, ~~but he~~ and shall not participate in any strike,
3 unemployment boycott, or other industrial or labor dispute, nor
4 serve any court process of any character relating thereto. ~~He~~ A
5 local conservator of the peace shall act ~~as such local conservator~~
6 only in the unincorporated community for which he or she is
7 appointed, and within a distance of one mile from the boundaries
8 thereof as fixed by the county ~~court~~ commission: *Provided,*
9 ~~however,~~ That the authority of one local conservator shall not
10 extend into any other unincorporated community for which another
11 local conservator is appointed and acting, except as otherwise
12 expressly provided by subdivision (6) of this subsection, except
13 that in fresh pursuit ~~he~~ a local conservator may effect arrests
14 anywhere in the county. ~~He~~ A local conservator may also exercise
15 the powers of a regularly appointed deputy sheriff anywhere in the
16 county when required to guard or assist in guarding a payroll, or
17 any other property of value in transit to or from the
18 unincorporated community for which ~~he~~ the local conservator is
19 appointed. Any person arrested by ~~such~~ a local conservator shall,
20 with all convenient speed, be turned over to the sheriff or ~~one of~~
21 ~~his regular deputies,~~ or to a regular constable of the county to be
22 ~~dealt with according to law,~~ a deputy sheriff and ~~his~~ the local
23 conservator's authority for that purpose shall be coextensive with

1 the county.

2 (4) Any local conservator appointed to perform the duties of
3 conservator of the peace shall be a public officer and the payment,
4 or contribution to the payment of compensation of ~~such~~ the local
5 conservator shall not constitute the person, firm or corporation
6 making such payment or contribution the employer of ~~such~~ the local
7 conservator and no person, firm or corporation paying, or
8 contributing to the payment of compensation to ~~such~~ the local
9 conservator shall be ~~answerable in law or in equity~~ liable in any
10 civil action for any damages to person or property resulting from
11 any official act or omission of ~~such~~ any local conservator.

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

20 (6) Not more than one local conservator of the peace shall be
21 appointed, to perform the duties of conservator of the peace, for
22 each two thousand five hundred inhabitants of the county as
23 ascertained by the last regular decennial census after deducting

1 the number of inhabitants of the county residing in ~~the~~
2 ~~incorporated cities, towns and villages in such county~~
3 municipalities. Not more than one local conservator shall be
4 appointed for any unincorporated community unless the population
5 ~~thereof~~ of the community exceeds one thousand five hundred people,
6 ~~and in such which~~ case not more than two conservators ~~shall~~ may be
7 appointed for ~~such~~ the community.

8 (7) ~~The phrase~~ In this section, "unincorporated community"
9 ~~within the meaning of this section shall mean~~ means any center of
10 population ~~wherein~~ outside a municipality in which fifty or more
11 persons reside within an area of not more than one square mile.

12 (8) The county ~~court~~ commission and the judge of the circuit
13 court in approving the appointment of a local conservator shall
14 enter of record an order making ~~such~~ the appointment and shall show
15 ~~therein~~ in the order the necessity for the appointment, the person
16 or persons on whose motion the appointment is made, the arrangement
17 for the payment of compensation to such local conservator, the
18 unincorporated community or communities, for which the appointment
19 is made, including the general boundary of each unincorporated
20 community for which ~~he~~ the local conservator is appointed.

21 (9) No local conservator ~~shall~~ may act as an election official
22 or remain in, about or near any voting place or place of political
23 convention, further than is necessary for ~~him~~ the local conservator

1 to promptly ~~cast his~~ vote and retire from the voting place.

2 (10) Any local conservator ~~violating any of the provisions of~~
 3 ~~subdivisions~~ who violates subdivision (3) ~~and or~~ (9) of this
 4 subsection ~~shall be~~ is guilty of a misdemeanor and, upon conviction
 5 thereof, shall be fined not less than \$50 nor more than \$300, ~~or be~~
 6 confined in ~~the county~~ jail for not more than six months, or both.
 7 ~~in the discretion of the court; and it shall be the duty of The~~
 8 sheriff and the county ~~court to forthwith~~ commission shall
 9 immediately revoke ~~his the~~ appointment ~~irrespective of a local~~
 10 conservator who violates subdivision (3) or (9) of this subsection
 11 regardless of any criminal prosecution. A proceeding in mandamus or
 12 injunction shall lie in the circuit court and a proceeding in
 13 mandamus shall lie in the Supreme Court of Appeals at the instance
 14 of the prosecuting attorney, the Attorney General, or of any three
 15 or more citizens of the community for which ~~such the~~ conservator is
 16 appointed, to require the performance of ~~such this~~ duty by the
 17 sheriff and the county ~~court~~ commission.

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

23 A local conservator may be removed by the judge of the circuit

1 court, either in term or vacation, for drunkenness, gross
2 immorality, incompetence, neglect of duty, or other good cause,
3 upon the petition of three or more residents of the community for
4 which ~~he~~ the local conservator has been appointed. The petition
5 shall set forth the cause or causes for which ~~such~~ the removal of
6 the local conservator is ~~asked~~ demanded and shall show that demand
7 for removal has been made of the sheriff and the county ~~court~~
8 commission and that the sheriff and the county ~~court~~ commission
9 have failed to remove the local conservator. At least three copies
10 of the petition shall be filed, and upon the filing of the petition
11 the judge shall fix a time and place for a hearing thereon, which
12 time shall not be less than ten days after the filing of the
13 petition, and shall cause a copy thereof to be served upon the
14 sheriff and ~~such~~ the local conservator at least ten days before the
15 hearing thereon.

16 **§6-3-1a. Deputy sheriff's reserve; purpose; appointment and**
17 **qualifications of members; duties; attire; training;**
18 **oath; bond; not employee of sheriff or county**
19 **commission for certain purposes; limitation on**
20 **liability.**

21 (a) The sheriff of any county may, for the purposes
22 ~~hereinafter set forth~~ specified in this section, designate and

1 appoint a deputy sheriffs' reserve, hereinafter referred to as
2 "reserve" or "reserves." A reserve may not be designated or created
3 without the prior approval of the county commission for the
4 establishment of the reserve.

5 (b) Each sheriff may appoint as members of the reserve bona
6 fide citizens of the county who are of good moral character and who
7 have not been convicted of a felony or other crime involving moral
8 turpitude. Any ~~person so appointed~~ member of the reserve shall
9 serve at the will and pleasure of the sheriff and is not subject to
10 the provisions of article fourteen, chapter seven of this code. A
11 member of the reserve may not engage in any political activity or
12 campaign involving the office of sheriff or from which activity or
13 campaign the sheriff or ~~candidates therefor~~ any candidate for the
14 office of the sheriff appointing the member would directly benefit.

15 (c) ~~Members of the reserves shall not serve as law enforcement~~
16 ~~officers, nor carry firearms, but may carry other weapons provided~~
17 ~~that the sheriff certifies in writing to the county commission that~~
18 ~~the reserve has met the special training requirements for the~~
19 ~~weapon as established by the Governor's committee on crime,~~
20 ~~delinquency and corrections. The Governor's committee on crime,~~
21 ~~delinquency and corrections is authorized to promulgate legislative~~
22 ~~rules and emergency rules pursuant to the provisions of article~~
23 ~~three, chapter twenty-nine-a of this code to establish appropriate~~

1 ~~training standards.~~ The sheriff may provide the reserves ~~may be~~
2 ~~provided with~~ radio and other electronic communication equipment
3 for the purpose of maintaining contact with the sheriff's
4 department or other law-enforcement agencies.

5 (d) The duties of the reserves shall be limited to crowd
6 control or traffic control and direction within the county. In
7 addition, the reserves may perform such other duties of a
8 nonlaw-enforcement nature as are designated by the sheriff or by a
9 deputy sheriff designated and appointed by the sheriff for that
10 purpose: *Provided*, That a member of the reserves may not aid or
11 assist any law-enforcement officer in enforcing the statutes and
12 laws of this state in any labor trouble or dispute between employer
13 and employee.

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

17 ~~(e)~~ (f) After appointment to the reserves but prior to service
18 each member of the reserves shall receive appropriate training and
19 instruction in their functions and authority as well as the
20 limitations of authority. In addition, each member of the reserves
21 shall annually receive in-service training.

22 ~~(f)~~ (g) Each member of the reserve shall take the same oath as
23 prescribed by section five, article IV of the Constitution of ~~the~~

1 this state, ~~of West Virginia~~ but the taking of the oath does not
2 ~~serve to~~ make the member a public officer.

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

5 ~~(h)~~ (i) A member of the reserve is not an employee of either
6 the sheriff or ~~of the county commission for any purpose or purposes,~~
7 ~~including, but not limited to,~~ the purposes of workers'
8 compensation, civil service, unemployment compensation, public
9 employees retirement, public employees insurance or ~~for~~ any other
10 purpose. A member of the reserves may not receive any compensation
11 or pay for any services performed as a member nor may a member use
12 the designated uniform for any other similar work performed. A
13 member of the reserves is not a law-enforcement officer within the
14 meaning of section one, article twenty-nine, chapter thirty of this
15 code, and is not authorized by virtue of his or her appointment as
16 a member of the reserves to carry a concealed weapon without a
17 license. This section does not enlarge or diminish the right of a
18 member of the reserves to keep and bear arms in the same manner as
19 he or she may otherwise lawfully do so as a private citizen.

20 ~~(i)~~ (j) Neither the county commission nor the sheriff is liable
21 for any of the acts of any member of the reserves except in the case
22 of gross negligence on the part of the county commission or sheriff
23 in the appointment of the member or in the case of gross negligence

1 on the part of either the sheriff or any of his or her deputies in
2 directing any action on the part of the member.

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

4 **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

5 **§7-1-3. Jurisdiction, powers and duties.**

6 The county commissions, through their clerks, shall have the
7 custody of all deeds and other papers presented for record in their
8 counties and the same shall be preserved therein, or otherwise
9 disposed of as now is, or may be prescribed by law. ~~They~~ The county
10 commissions shall have jurisdiction in all matters of probate, the
11 appointment and qualification of personal representatives,
12 guardians, committees, curators and the settlement of their accounts
13 and in all matters relating to apprentices. ~~They~~ The county
14 commissions shall also, under the rules as now are or may be
15 prescribed by law, have the superintendence and administration of
16 the internal police and fiscal affairs of their counties, including
17 the establishment and regulation of roads, ways, streets, avenues,
18 drives and the like, and the naming or renaming thereof, in
19 cooperation with local postal authorities, the Division of Highways
20 and the directors of county emergency communications centers, to
21 assure uniform, nonduplicative conversion of all rural routes to
22 city-type addressing on a permanent basis, bridges, public landings,

1 ferries and mills, with authority to lay and disburse the county
2 levies. ~~They~~ The county commissions shall, in all cases of contest,
3 judge of the election, qualification and returns of their own
4 members, and of all county and district officers, subject to appeal
5 as prescribed by law. The tribunals as have been heretofore
6 established by the Legislature under and by virtue of section
7 thirty-four, article VIII of the Constitution of 1,872, for police
8 and fiscal purposes, shall, until otherwise provided by law, remain
9 and continue as at present constituted in the counties in which they
10 have been respectively established, and shall be and act as to
11 police and fiscal matters in lieu of the county commission herein
12 mentioned, until otherwise provided by law. And until otherwise
13 provided by law, the clerk as is mentioned in section twenty-six of
14 said article, as amended, shall exercise any powers and discharge
15 any duties heretofore conferred on, or required of, any court or
16 tribunal established for judicial purposes under said section, or
17 the clerk of the court or tribunal, respectively, respecting the
18 recording and preservation of deeds and other papers presented for
19 record, matters of probate, the appointment and qualification of
20 personal representatives, guardians, committees, curators and the
21 settlement of their accounts and in all matters relating to
22 apprentices. ~~The county commission may not limit the right of any~~
23 ~~person to purchase, possess, transfer, own, carry, transport, sell~~

1 ~~or store any revolver, pistol, rifle or shotgun or any ammunition~~
 2 ~~or ammunition components to be used therewith nor to so regulate the~~
 3 ~~keeping of gunpowder so as to, directly or indirectly, prohibit the~~
 4 ~~ownership of the ammunition: *Provided*, That no provision in this~~
 5 ~~section may be construed to limit the authority of a county to~~
 6 ~~restrict the commercial use of real estate in designated areas~~
 7 ~~through planning or zoning ordinances.~~

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

9 **§7-4-1. Duties of prosecuting attorney; further duties upon**
 10 **request of Attorney General.**

11 ~~It shall be the duty of~~ (a) ~~The prosecuting attorney to~~ shall
 12 attend to the criminal business of the state in the county in which
 13 ~~he~~ the prosecuting attorney is elected and qualified. ~~and~~ When ~~he~~
 14 the prosecuting attorney has information of the violation of any
 15 penal law committed within ~~such~~ the county served by the prosecuting
 16 attorney, ~~he~~ the prosecuting attorney shall institute and prosecute
 17 all necessary and proper proceedings against the offender and may
 18 ~~in such case~~ issue or cause to be issued a summons for any witness
 19 ~~he may deem~~ the prosecuting attorney considers material. Every
 20 public officer shall give ~~him~~ the prosecuting attorney information
 21 of the violation of any penal law committed within ~~his~~ the county
 22 served by the prosecuting attorney. ~~It shall also be the duty of~~

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

5 (c) The prosecuting attorney to shall attend to civil ~~suits~~
6 ~~actions~~ in ~~such~~ the county served by the prosecuting attorney in
7 which the state or any department, commission, ~~or board thereof,~~ or
8 other instrumentality of the state is interested, and ~~to~~ advise,
9 attend to, bring, prosecute or defend, as the case may be, all
10 matters, actions, suits and proceedings in which ~~such~~ the county or
11 ~~any~~ the county board of education is interested.

12 ~~It shall be the duty of~~ (d) The prosecuting attorney to shall
13 keep his or her office open in the charge of a responsible person
14 during the hours polls are open on general, primary and special
15 county-wide election days, and the prosecuting attorney ~~or his~~ and
16 assistant prosecuting attorneys, if any, shall be available for the
17 purpose of advising election officials. ~~It shall be the further duty~~
18 ~~of~~

19 (e) The prosecuting attorney, when requested by the Attorney
20 General, to shall perform or ~~to~~ assist the Attorney General in
21 performing, in the county ~~in which he is elected~~ served by the
22 prosecuting attorney, any legal duties required to be performed by
23 the Attorney General, and which are not inconsistent with the duties

1 of the prosecuting attorney as the legal representative of ~~such the~~
 2 county. ~~It shall also be the duty of~~

3 (f) The prosecuting attorney, when requested by the Attorney
 4 General, ~~to shall~~ perform or ~~to~~ assist the Attorney General in
 5 performing any legal duties required to be performed by the Attorney
 6 General, in any county other than ~~that the county~~ in which such
 7 prosecuting attorney is elected and qualified, and for the
 8 performance of any such duties in any county other than ~~that in~~
 9 ~~which such the county served by the~~ prosecuting attorney, ~~is elected~~
 10 ~~he~~ the prosecuting attorney shall be paid his or her actual
 11 expenses.

12 (g) Upon the request of the Attorney General, the prosecuting
 13 attorney shall make a written report of the state and condition of
 14 ~~the several causes~~ all cases in which the state is a party, pending
 15 in ~~his~~ the county served by the prosecuting attorney, and upon any
 16 matters referred to ~~him~~ the prosecuting attorney by the Attorney
 17 General as provided by law.

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

19 **§7-11-5. General powers of commission; rules and regulations;**
 20 **misdemeanor offenses; park police authorized.**

21 ~~The~~ (a) Each county parks and recreation commission shall have
 22 the necessary powers and authority to manage and control all public

1 parks and recreational properties and facilities owned by the county
2 or commission and used as a part of such public parks and recreation
3 system, including the ~~right~~ power to promulgate rules and
4 regulations concerning the management and control of such parks and
5 recreational properties and facilities and to enforce any ~~such~~ rules
6 ~~and regulations so~~ promulgated pursuant to this section.

7 ~~The~~ (b) Each county parks and recreation commission shall also
8 have plenary power and authority to prepare and submit to the county
9 ~~court~~ commission for adoption rules ~~and regulations~~ regulating the
10 use of any parks and recreational properties and facilities under
11 the control of the Parks and Recreation Commission and prohibiting
12 any type of use of or activities in connection with any such
13 properties or facilities, and any such rules ~~and regulations~~, if so
14 adopted, shall be duly entered of record in the order book of the
15 county ~~court~~ commission. ~~The violation of~~ Any person who violates
16 any ~~such~~ rule ~~and regulation so~~ adopted by the county ~~court~~ shall
17 ~~constitute~~ commission under this subsection is guilty of a
18 misdemeanor and, ~~any person convicted of any such violation upon~~
19 conviction thereof, shall be ~~punished by a fine of~~ fined not less
20 than \$5 nor more than \$100, ~~or by imprisonment~~ confined in jail for
21 ~~a period not exceeding~~ not more than thirty days, or by both. ~~such~~
22 ~~fine and imprisonment.~~ Justices of the peace of the county shall
23 ~~have concurrent jurisdiction with the circuit court and other courts~~

1 ~~of record (having criminal jurisdiction) of any misdemeanor offenses~~
2 ~~arising under this article.~~ The violation of any such rule and
3 ~~regulation~~ which also constitutes the violation of any state law or
4 municipal ordinance may be prosecuted and punished as a violation
5 of such state law or municipal ordinance rather than under the
6 provisions of this section. To enforce any such rules, ~~and~~
7 ~~regulations~~ to protect and preserve all properties and facilities
8 under the control of the Parks and Recreation Commission and to
9 preserve law and order in connection therewith, the Parks and
10 Recreation Commission shall have plenary power and authority to
11 provide in its bylaws procedures for the appointment, supervision
12 and discharge of one or more park police officers. Whenever any such
13 appointment is made, a copy of the order of appointment shall be
14 filed by the commission with the county ~~court~~ commission.

15 (c) In any area under the jurisdiction and control of the Parks
16 and Recreation Commission, or in connection with any properties or
17 facilities under the jurisdiction and control of the Parks and
18 Recreation Commission, or in pursuit of one or more individuals
19 therefrom, any park police officer ~~so appointed~~ shall have all of
20 the power and authority ~~which that~~ a ~~regularly appointed deputy~~
21 ~~sheriff of such county~~ law-enforcement officer, as defined in
22 section one, article twenty-nine, chapter thirty of this code, has
23 in enforcing the criminal laws of the state. ~~Notwithstanding any~~

~~1 provisions of this code to the contrary, park police officers
2 appointed as aforesaid shall not be required to obtain a state
3 license to carry a weapon, as required by the provisions of section
4 two, article seven, chapter sixty-one of this code. When any such
5 commission has purchased one or more policies of public liability
6 insurance providing the commission and its officers, agents and
7 employees insurance coverage for legal liability of said commission
8 and its officers, agents and employees for bodily injury, personal
9 injury or damage (including, but not limited to, false arrest and
10 false imprisonment) and property damage, and affording said
11 commission and its officers, agents and employees insurance coverage
12 against any and all legal liability arising from, growing out of,
13 by reason of or in any way connected with, any acts or omissions of
14 said commission, or its officers, agents or employees in the
15 performance of their official duties, and so long as the coverage
16 aforesaid remains in full force and effect as to such park police
17 officers, then the bond specified in section five, article seven of
18 said chapter sixty-one shall not be required as to such park police
19 officers.~~

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

22 **§7-14E-2. Statewide uniform fees for reports generated by**

1 **sheriff's offices; dedication of fees.**

2 (a) The county commission of each county ~~in this state~~ shall
3 set a uniform fee for obtaining ~~certain~~ traffic accident reports,
4 criminal investigation reports, incident reports and property
5 reports ~~This fee shall be set at a minimum of~~ not less than \$10 for
6 ~~each report, with a maximum of~~ nor more than \$20 for each report.
7 Ten dollars of the charge for each report shall be deposited into
8 the Deputy Sheriff Retirement Fund created in section six, article
9 fourteen-d of this chapter. ~~The reports for which a charge may be~~
10 ~~made are traffic accident reports, criminal investigation reports,~~
11 ~~incident reports and property reports.~~

12 (b) All sheriff's offices in this state shall collect a fee of
13 \$5 for performing the following services: Adult private employment
14 fingerprinting; ~~fingerprinting for federal firearm permits;~~ motor
15 vehicle number identification; adult identification cards; and
16 photo-identification cards. Upon collection, these fees shall be
17 deposited into the Deputy Sheriff Retirement Fund created in section
18 six, article fourteen-d of this chapter.

19 (c) All sheriff's offices in this state shall collect a fee of
20 \$5 for each nongovernmental background investigation report. Upon
21 collection, these fees shall be deposited into the Deputy Sheriff
22 Retirement Fund created in section six, article fourteen-d of this
23 chapter.

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

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

6 ~~(e)~~(f) Any county commission which fails to make any payment
7 due the Deputy Sheriff Retirement Fund by the fifteenth day
8 following the end of each calendar month in which a fee or other
9 contribution is received by the county's sheriff may be required to
10 pay the actuarial rate of interest lost on the total amount owed for
11 each day the payment is delinquent. Accrual of the loss of earnings
12 owed by the delinquent county commission commences after the
13 fifteenth day following the end of the calendar month in which the
14 fee or other contribution is due and continues until receipt of the
15 delinquent amount. Interest compounds daily and the minimum
16 surcharge is \$50.

17 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

18 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
19 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
20 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
21 **MUNICIPALITIES.**

22 **§8-12-5. General powers of every municipality and the governing**

1 **body thereof.**

2 In addition to the powers and authority granted by: (i) The
3 Constitution of this state; (ii) other provisions of this chapter;
4 (iii) other general law; and (iv) any charter, and to the extent not
5 inconsistent or in conflict with any of the foregoing except special
6 legislative charters, every municipality and the governing body
7 thereof shall have plenary power and authority therein by ordinance
8 or resolution, as the case may require, and by appropriate action
9 based thereon:

10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or vacate,
12 discontinue and close, streets, avenues, roads, alleys, ways,
13 sidewalks, drains and gutters, for the use of the public, and to
14 improve and light the same, and have them kept free from
15 obstructions on or over them which have not been authorized pursuant
16 to the succeeding provisions of this subdivision; and, subject to
17 such terms and conditions as the governing body shall prescribe, to
18 permit, without in any way limiting the power and authority granted
19 by the provisions of article sixteen of this chapter, any person to
20 construct and maintain a passageway, building or other structure
21 overhanging or crossing the airspace above a public street, avenue,
22 road, alley, way, sidewalk or crosswalk, but before any permission
23 for any person to construct and maintain a passageway, building or

1 other structure overhanging or crossing any airspace is granted, a
2 public hearing thereon shall be held by the governing body after
3 publication of a notice of the date, time, place and purpose of the
4 public hearing has been published as a Class I legal advertisement
5 in compliance with the provisions of article three, chapter
6 fifty-nine of this code and the publication area for the publication
7 shall be the municipality: *Provided*, That any permit so granted
8 shall automatically cease and terminate in the event of abandonment
9 and nonuse thereof for the purposes intended for a period of ninety
10 days, and all rights therein or thereto shall revert to the
11 municipality for its use and benefit;

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

16 (3) To prevent by proper penalties the throwing, depositing or
17 permitting to remain on any street, avenue, road, alley, way,
18 sidewalk, square or other public place any glass, scrap iron, nails,
19 tacks, wire, other litter or any offensive matter or anything likely
20 to injure the feet of individuals or animals or the tires of
21 vehicles;

22 (4) To regulate the use of streets, avenues, roads, alleys,
23 ways, sidewalks, crosswalks and public places belonging to the

1 municipality, including the naming or renaming thereof, and to
2 consult with local postal authorities, the Division of Highways and
3 the directors of county emergency communications centers to assure
4 uniform, nonduplicative addressing on a permanent basis;

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

11 (6) To establish, construct, alter, operate and maintain, or
12 discontinue, bridges, tunnels and ferries and approaches thereto;

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

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

17 (9) To control and administer the waterfront and waterways of
18 the municipality and to acquire, establish, construct, operate and
19 maintain and regulate flood control works, wharves and public
20 landings, warehouses and all adjuncts and facilities for navigation
21 and commerce and the utilization of the waterfront and waterways and
22 adjacent property;

23 (10) To prohibit the accumulation and require the disposal of

1 garbage, refuse, debris, wastes, ashes, trash and other similar
2 accumulations whether on private or public property: *Provided,*
3 That, in the event the municipality annexes an area which has been
4 receiving solid waste collection services from a certificated solid
5 waste motor carrier, the municipality and the solid waste motor
6 carrier may negotiate an agreement for continuation of the private
7 solid waste motor carrier services for a period of time, not to
8 exceed three years, during which time the certificated solid waste
9 motor carrier may continue to provide exclusive solid waste
10 collection services in the annexed territory;

11 (11) To construct, establish, acquire, equip, maintain and
12 operate incinerator plants and equipment and all other facilities
13 for the efficient removal and destruction of garbage, refuse,
14 wastes, ashes, trash and other similar matters;

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

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

20 (14) To regulate the keeping of gunpowder and other
21 combustibles. However, any regulation of the keeping of gunpowder
22 pursuant to this subdivision may not act, directly or indirectly,
23 to prohibit the otherwise lawful ownership, possession, control or

1 storage of gunpowder or ammunition for any firearm;

2 (15) To regulate or prohibit the outdoor discharge of firearms,
3 other than (i) the discharge of a firearm by a law-enforcement
4 officer acting in the course of performance of his or her official
5 duties; (ii) the discharge of a firearm by a wildlife damage control
6 agent licensed pursuant to section fifty-a, article two, chapter
7 twenty of this code, acting in the course of killing or attempting
8 to kill nuisance wildlife as authorized by that section; (iii) the
9 discharge of a firearm for the specific purpose of killing nuisance
10 wildlife as authorized by a permit issued pursuant to section
11 fifteen, article two, chapter twenty of this code; or (iv) the
12 discharge of a firearm at an established shooting range, and to
13 arrest, convict and punish any individual for knowingly and
14 willfully discharging a firearm in violation of the applicable
15 restriction or prohibition. It is a defense to a charge of knowingly
16 and willfully discharging a firearm in violation of a municipal
17 ordinance under this subdivision that the defendant discharged the
18 firearm under circumstances in which the defendant was justified or
19 excused under the laws of this state in using deadly force in
20 self-defense or the defense of other persons or property;

21 ~~(15)(16) To make regulations guarding against danger or damage by~~
22 ~~fire;~~

23 ~~(16) To arrest, convict and punish any individual for carrying~~

1 ~~about his or her person any revolver or other pistol, dirk, bowie~~
2 ~~knife, razor, slingshot, billy, metallic or other false knuckles or~~
3 ~~any other dangerous or other deadly weapon of like kind or~~
4 ~~character;~~

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

8 (18) To arrest, convict and punish any person for keeping a
9 house of ill fame, or for letting to another person any house or
10 other building for the purpose of being used or kept as a house of
11 ill fame, or for knowingly permitting any house owned by him or her
12 or under his or her control to be kept or used as a house of ill
13 fame, or for loafing, boarding or loitering in a house of ill fame,
14 or frequenting same;

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

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

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

22 (22) To arrest, convict and punish any person for gambling or
23 keeping any gaming tables, commonly called "A, B, C," or "E, O,"

1 table or faro bank or keno table, or table of like kind, under any
2 denomination, whether the gaming table be played with cards, dice
3 or otherwise, or any person who shall be a partner or concerned in
4 interest, in keeping or exhibiting the table or bank, or keeping or
5 maintaining any gaming house or place, or betting or gambling for
6 money or anything of value;

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

10 (24) To license, or for good cause to refuse to license in a
11 particular case, or in its discretion to prohibit in all cases, the
12 operation of pool and billiard rooms and the maintaining for hire
13 of pool and billiard tables notwithstanding the general law as to
14 state licenses for any such business and the provisions of section
15 four, article thirteen of this chapter; and when the municipality,
16 in the exercise of its discretion, refuses to grant a license to
17 operate a pool or billiard room, mandamus may not lie to compel the
18 municipality to grant the license unless it shall clearly appear
19 that the refusal of the municipality to grant a license is
20 discriminatory or arbitrary; and in the event that the municipality
21 determines to license any business, the municipality has plenary
22 power and authority and it shall be the duty of its governing body
23 to make and enforce reasonable ordinances regulating the licensing

1 and operation of the businesses;

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

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

7 (27) To arrest, convict and punish any person for cruelly,
8 unnecessarily or needlessly beating, torturing, mutilating, killing,
9 or overloading or overdriving or willfully depriving of necessary
10 sustenance any domestic animal;

11 (28) To provide for the regular building of houses or other
12 structures, for the making of division fences by the owners of
13 adjacent premises and for the drainage of lots by proper drains and
14 ditches;

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

18 (30) To prohibit with or without zoning the location of
19 occupied house trailers or mobile homes in certain residential
20 areas;

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

23 (32) To erect, establish, construct, acquire, improve, maintain

1 and operate a gas system, a waterworks system, an electric system
2 or sewer system and sewage treatment and disposal system, or any
3 combination of the foregoing (subject to all of the pertinent
4 provisions of articles nineteen and twenty of this chapter and
5 particularly to the limitations or qualifications on the right of
6 eminent domain set forth in articles nineteen and twenty of this
7 chapter), within or without the corporate limits of the
8 municipality, except that the municipality may not erect any system
9 partly without the corporate limits of the municipality to serve
10 persons already obtaining service from an existing system of the
11 character proposed and where the system is by the municipality
12 erected, or has heretofore been so erected, partly within and partly
13 without the corporate limits of the municipality, the municipality
14 has the right to lay and collect charges for service rendered to
15 those served within and those served without the corporate limits
16 of the municipality and to prevent injury to the system or the
17 pollution of the water thereof and its maintenance in a healthful
18 condition for public use within the corporate limits of the
19 municipality;

20 (33) To acquire watersheds, water and riparian rights, plant
21 sites, rights-of-way and any and all other property and
22 appurtenances necessary, appropriate, useful, convenient or
23 incidental to any system, waterworks or sewage treatment and

1 disposal works, as aforesaid, subject to all of the pertinent
2 provisions of articles nineteen and twenty of this chapter;

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

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

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

11 (37) To establish, construct, acquire, provide, equip, maintain
12 and operate recreational parks, playgrounds and other recreational
13 facilities for public use and in this connection also to proceed in
14 accordance with the provisions of article two, chapter ten of this
15 code;

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

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

21 (40) To establish and maintain a public health unit in
22 accordance with the provisions of section two, article two, chapter
23 sixteen of this code, which ~~unit~~ shall exercise its powers and

1 perform its duties subject to the supervision and control of the
2 West Virginia Board of Health and State Bureau for Public Health;

3 (41) To establish, construct, acquire, maintain and operate
4 hospitals, sanitarium and dispensaries;

5 (42) To acquire, by purchase, condemnation or otherwise, land
6 within or near the corporate limits of the municipality for
7 providing and maintaining proper places for the burial of the dead
8 and to maintain and operate the same and regulate interments therein
9 upon terms and conditions as to price and otherwise as may be
10 determined by the governing body and, in order to carry into effect
11 the authority, the governing body may acquire any cemetery or
12 cemeteries already established;

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

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

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

20 (46) Except as otherwise provided, to require and take bonds
21 from any officers, when considered necessary, payable to the
22 municipality, in its corporate name, with such sureties and in a
23 penalty as the governing body may see fit, conditioned upon the

1 faithful discharge of their duties;

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

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

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

12 (50) To create, maintain and operate a system for the
13 enumeration, identification and registration, or either, of the
14 inhabitants of the municipality and visitors thereto, or the classes
15 thereof as may be considered advisable;

16 (51) To require owners, residents or occupants of factory-built
17 homes situated in a factory-built rental home community with at
18 least ten factory-built homes, to visibly post the specific numeric
19 portion of the address of each factory-built home on the immediate
20 premises of the factory-built home of sufficient size to be visible
21 from the adjoining street. ~~Provided, That in the event~~ However, if
22 no numeric or other specific designation of an address exists for
23 a factory-built home subject to the authorization granted by this

1 subdivision, the municipality ~~has the authority to~~ may provide a
2 numeric or other specific designation of an address for the
3 factory-built home and require that it be posted in accordance with
4 the authority otherwise granted by this section;

5 (52) To appropriate and expend not exceeding \$0.25 per capita
6 per annum for advertising the municipality and the entertainment of
7 visitors;

8 (53) To conduct programs to improve community relations and
9 public relations generally and to expend municipal revenue for such
10 purposes;

11 (54) To reimburse applicants for employment by the municipality
12 for travel and other reasonable and necessary expenses actually
13 incurred by the applicants in traveling to and from the municipality
14 to be interviewed;

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

17 (56) To create and maintain an employee benefits fund which may
18 not exceed one tenth of one percent of the annual payroll budget for
19 general employee benefits and which is set up for the purpose of
20 stimulating and encouraging employees to develop and implement
21 cost-saving ideas and programs and to expend moneys from the fund
22 for these purposes;

23 (57) To enter into reciprocal agreements with governmental

1 subdivisions or agencies of any state sharing a common border for
2 the protection of people and property from fire and for emergency
3 medical services and for the reciprocal use of equipment and
4 personnel for these purposes;

5 (58) To provide penalties for the offenses and violations of
6 law mentioned in this section, subject to the provisions of section
7 one, article eleven of this chapter, and such penalties may not
8 exceed any penalties provided in this chapter and chapter sixty-one
9 of this code for like offenses and violations; and

10 (59) To participate in a purchasing card program for local
11 governments authorized and administered by the State Auditor as an
12 alternative payment method.

13 **ARTICLE 29B. AIRPORT SECURITY.**

14 **§8-29B-5. Jurisdiction of airport police officers.**

15 (a) In any area under the jurisdiction and control of the
16 airport operator, or in connection with the airport, or in pursuit
17 of one or more individuals therefrom, any airport police officer
18 shall have:

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

23 (2) Full power and authority to enforce ~~any and~~ all federal

1 laws and rules and regulations relating to airports, air passengers,
2 baggage inspection, the screening of air passengers and other
3 airport security measures;

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

6 (4) The power to search persons, packages, containers and
7 baggage. ~~and the power to arrest persons:— Provided, That the~~
8 ~~foregoing provisions of this section shall under no circumstances~~
9 ~~whatever~~

10 (b) Nothing in subsection (a) of this section may be construed
11 ~~as in any way limiting to limit the power and or authority of a~~
12 ~~municipal police any other law-enforcement officer, or deputy~~
13 ~~sheriff as defined in section one, article twenty-nine, chapter~~
14 ~~thirty of this code,~~ who has been assigned to serve as an airport
15 police officer which he or she has by virtue of his ~~being a~~
16 ~~municipal police or her position as a law-enforcement officer. or~~
17 ~~deputy sheriff and under no circumstances whatever shall~~

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

23 ~~Consistent with the provisions of section five, article seven,~~

~~1 chapter sixty one of this code, any municipal police officer or
2 deputy sheriff assigned as an airport police officer pursuant to the
3 provisions of subsection (b), section four of this article, and
4 (notwithstanding any provision of this code to the contrary) any
5 person appointed or designated as an airport police officer pursuant
6 to the provisions of subsection (c), section four of this article,
7 shall not be required to obtain a state license to carry a deadly
8 weapon, as provided for in section two, article seven of said
9 chapter sixty one. Any municipal police officer or deputy sheriff
10 assigned as an airport police officer pursuant to the provisions of
11 subsection (b), section four of this article shall not be required
12 to furnish any bond under section five, article seven of said
13 chapter sixty one other than the bond furnished thereunder as such
14 municipal police officer or deputy sheriff. When one or more
15 policies of public liability insurance are obtained providing
16 insurance coverage for legal liability of an airport police officer
17 for bodily injury, personal injury or damage (including, but not
18 limited to, false arrest and false imprisonment) and property
19 damage, and affording said airport police officer insurance coverage
20 against any and all legal liability arising from, growing out of,
21 or by reason of or in any way connected with, any acts or omissions
22 of said airport police officer in the performance of his official
23 duties, and so long as the coverage aforesaid remains in full force~~

1 ~~and effect as to such airport police officer, then the bond~~
2 ~~specified in section five, article seven of said chapter sixty-one~~
3 ~~shall not be required as to such airport police officer; otherwise~~
4 ~~such bond shall be required and must be furnished.~~

5

6 **CHAPTER 15. PUBLIC SAFETY.**

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

8 **§15-2-24b. Fees for adult private employment fingerprinting**
9 **services; dedication of fees.**

10 In addition to any fees that may be established or collected
11 by the State Police under any other provision of this article or
12 rule promulgated pursuant thereto, the State Police shall collect
13 a fee of \$20 for performing adult private employment fingerprinting
14 ~~or fingerprinting for federal firearm permits: Provided, That all~~
15 ~~except when performed for or on behalf of state entities. are exempt~~
16 ~~from the fee~~ Fees collected pursuant to this section shall be
17 deposited into the West Virginia State Police Retirement System and
18 shall be in addition to employer percent-of-payroll contribution.

19 **§15-2-25. Rules generally; carrying of weapons upon retirement or**
20 **medical discharge.**

21 (a) Subject to the written approval of the Governor and the
22 provisions of this article, the superintendent may make and

1 promulgate proper rules for the government, discipline and control
2 of the West Virginia State Police and shall also cause to be
3 established proper rules for the examinations of all applicants for
4 appointment thereto. The members of the West Virginia State Police
5 shall be permitted to carry arms and weapons and no license may be
6 required for the privilege.

7 **(b)** Upon retirement or medical discharge from the West Virginia
8 State Police and with the written consent of the superintendent, any
9 retired or medically discharged member who is not prohibited by
10 federal law or section seven, article seven, chapter sixty-one of
11 this code from possessing or transporting firearms or carrying a
12 concealed weapon in a public place may carry ~~a handgun~~ concealed
13 weapons without a license for the life of the member following
14 retirement or medical discharge ~~notwithstanding the provisions of~~
15 as if the member was licensed to carry concealed weapons pursuant
16 to section four, article seven, chapter sixty-one of this code.
17 ~~Provided, That~~ However, the superintendent's written ~~letter of~~
18 ~~consent~~ authorization to carry ~~a handgun~~ concealed weapons without
19 a license pursuant to this subsection may not last for more than
20 five years at a time and a retired or medically discharged member
21 who wishes to continue to carry ~~a handgun~~ concealed weapons without
22 a license pursuant to this subsection beyond five years ~~of~~ after the
23 date of his or her initial retirement or medical discharge ~~must~~

1 shall request and obtain a renewal of the superintendent's written
2 ~~permission~~ authorization to carry ~~a handgun~~ concealed weapons
3 without a license pursuant to this subsection at least once every
4 five years. A retired or medically discharged member desiring to
5 carry a handgun after retirement or medical discharge ~~must~~ pursuant
6 to this section shall provide his or her own handgun. Upon request,
7 each member shall be presented with a ~~letter~~ certificate of
8 authorization signed by the superintendent authorizing the retired
9 or medically discharged member to carry ~~a handgun~~ concealed weapons
10 without a license pursuant to this subsection. The ~~written~~
11 certificate of authorization shall be shall be carried by the
12 retired or medically discharged member at all times that he or she
13 ~~has a handgun on~~ carries about his or her person a concealed weapon
14 pursuant to this subsection. The superintendent may not issue a
15 ~~letter~~ certificate of authorization under this subsection to any
16 retired or medically discharged member who is prohibited by federal
17 law or section seven, article seven, chapter sixty-one of this code,
18 from possessing or transporting firearms or carrying a concealed
19 weapon in a public place, who is no longer employed by the State
20 Police due to a mental disability or who ~~the superintendent has~~
21 ~~reason to believe~~ is mentally incapacitated to the extent it would
22 ~~present a threat of physical harm to one or more persons for the~~
23 member is unable to carry a concealed weapon without creating a

1 manifest threat of physical harm to other persons. The
2 superintendent may revoke the authority at any time without cause
3 and without recourse. Conviction of the retired or medically
4 discharged member for the commission of any felony or for a
5 misdemeanor involving the improper or illegal use of a firearm shall
6 cause this authority to terminate immediately without a hearing or
7 other recourse and without any action on the part of the
8 superintendent. The superintendent may not withhold, deny or revoke
9 any certificate of authorization under this subsection if the
10 retired or medically discharged member is qualified for the
11 authorization. The superintendent shall promulgate a legislative
12 rule in accordance with the provisions of chapter twenty-nine-a of
13 this code, which ~~rule~~ shall prescribe requirements necessary for the
14 issuance and continuance of the authority herein granted and
15 procedures for appealing a denial or revocation of a certificate of
16 authorization to carry concealed weapons under this subsection in
17 accordance with subsection (f) of this section.

18 (c) In addition to any certificate of authorization under
19 subsection (b) of this section, the superintendent shall make
20 available to all eligible retired or medically discharged members
21 of the State Police a program for periodic qualification and
22 certification to carry concealed firearms nationwide under 18 U.S.C.
23 §926C if that retired or medically discharged member is otherwise

1 a qualified retired law-enforcement officer as that term is defined
2 in 18 U.S.C. §926C, which shall reasonably accommodate any physical
3 disability of the retired or medically-discharged member. The
4 superintendent may not charge a retired or medically-discharged
5 member a fee for the periodic qualification and certification.
6 However, a retired or medically-discharged member who wishes to
7 qualify shall provide at his or her own expense a suitable firearm
8 and the ammunition actually expended in the qualification. A
9 retired or medically discharged member of the State Police who
10 qualifies for both a certificate of authorization under subsection
11 (b) of this section and qualification and certification as a
12 qualified retired law-enforcement officer under 18 U.S.C. §926C,
13 shall be entitled to both and the corresponding rights, benefits,
14 privileges and immunities appertaining to each.

15 (d) Before issuing, renewing or reinstating any certificate of
16 authorization under subsection (b) of this section or a
17 certification as a qualified retired law-enforcement officer under
18 subsection (c) of this section, the superintendent shall conduct an
19 investigation which shall verify that the retired or medically
20 discharged member of the State Police is not prohibited by federal
21 law or section seven, article seven, chapter sixty-one of this code,
22 from possessing or transporting firearms or carrying a concealed
23 weapon in a public place. This investigation shall conform to the

1 requirements of 18 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1)
2 or other applicable federal law for qualifying certificates of
3 authorization issued under subsection (b) of this section and
4 certifications issued under subsection (c) of this section as an
5 alternative to the National Instant Criminal Background Check System
6 or other similar required background check for a resident of this
7 state to purchase a firearm through a licensed firearms dealer
8 within this state, including a background check conducted through
9 the National Instant Criminal Background Check System and, if the
10 retired or medically discharged member is not a citizen of the
11 United States, a federal Immigration Alien Query.

12 (e) Each certificate of authority under subsection (b) of this
13 section or certification under subsection (c) of this section,
14 issued on or after the effective date of the amendments to this
15 section enacted during the 2011 Regular Session of the Legislature,
16 shall be no larger than three and three-eighths inches wide by two
17 and one-eighth inches long, shall be made of a hard, laminated
18 material suitable for carrying in a wallet, similar to a driver's
19 license, and shall contain the retired or medically discharged
20 member's name, address, signature and full-face color photograph,
21 the superintendent's signature or a facsimile thereof affixed by any
22 person authorized to act on the superintendent's behalf pursuant to
23 section five, article two, chapter two of this code, the dates of

1 issue and expiration, the words "Qualified Retired Law Enforcement
2 Officer under 18 U.S.C. §926C" in conspicuous type in the case of
3 a certification under subsection (c) of this section and other
4 information the superintendent considers appropriate.

5 (f) Any denial, suspension, revocation or other termination by
6 the superintendent of a retired or medically discharged member's
7 certificate of authority under subsection (b) of this section or
8 certification as a qualified retired law-enforcement officer under
9 subsection (c) of this section, is subject to article five, chapter
10 twenty-nine-a of this code.

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

1 certified mail.

2 (h) Any person to whom a certificate of authorization has been
3 issued under subsection (b) of this section or certification as a
4 qualified retired law-enforcement officer has been issued under
5 subsection (c) of this section, who becomes ineligible to continue
6 holding the certificate or certification shall immediately surrender
7 the certificate or certification to the superintendent regardless
8 of whether the superintendent discovers the disqualification and
9 initiates revocation proceedings under subsection (g) of this
10 section.

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

19 (j) The superintendent shall reinstate a certificate of
20 authorization under subsection (b) of this section or certification
21 as a qualified retired law-enforcement officer under subsection (c)
22 of this section that was revoked pursuant to subsection (g) of this
23 section or surrendered pursuant to subsection (h) of this section

1 if the person to whom the revoked or surrendered certificate or
2 certification was issued subsequently ceases to be prohibited by
3 federal law or section seven, article seven, chapter sixty-one of
4 this code, from possessing or transporting firearms or carrying a
5 concealed weapon in a public place and fulfills all other
6 requirements to receive the applicable certificate of authorization
7 under subsection (b) of this section or certification as a qualified
8 retired law-enforcement officer under subsection (c) of this
9 section.

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

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

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

22 (C) The duly qualified personal representative of a deceased
23 person to whom the record pertains, or, if a personal representative

1 has not qualified, the next of kin of a deceased person to whom the
2 record pertains;

3 (D) An attorney, attorney-in-fact or other agent or
4 representative acting pursuant to a written power of attorney or
5 other written authorization signed by the person to whom the record
6 pertains;

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

12 (F) By any licensed firearm dealer within this state from which
13 a retired or medically discharged member proposes purchasing a
14 firearm, for the purpose of verifying the validity of the
15 certificate of authorization issued under subsection (b) of this
16 section or certification as a qualified retired law-enforcement
17 officer issued under subsection (c) of this section; or

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

1 (ii) Before any court may grant access to any records pursuant
2 to this paragraph, the court shall order the moving party to give
3 each affected applicant or licensee notice of the proceedings, the
4 request for confidential records under this paragraph and the
5 opportunity of affected persons to confidentially intervene and
6 object to the request by directing the superintendent to print and
7 mail by first-class mail to each affected person, the costs for
8 which the moving party shall prepay in full to the superintendent,
9 and perform this notification in a manner not inconsistent with the
10 confidentiality provisions of this subsection.

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

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

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

19 (B) The superintendent shall furnish to the state executive
20 committee of any political party, as defined in section eight,
21 article one, chapter three of this code, that has not obtained
22 records pursuant to this subdivision within the immediate preceding
23 six months, a current list of the names, birthdates, mailing
24 addresses, telephone numbers, e-mail addresses and county of

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

7 (C) 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 paragraph (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 individual retired or medically discharged member of the State
21 Police who has applied for or been issued a certificate of authority
22 under subsection (b) of this section or certification as a qualified
23 retired law-enforcement officer under subsection (c) of this
24 section, may disclosed pursuant to this subdivision, the person

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

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

22 (m) A certificate of authority under subsection (b) of this
23 section and certification as a qualified retired law-enforcement
24 officer under subsection (c) of this section are cumulative and

1 supplemental to one another and to any license to carry concealed
2 weapons under section four, article seven, chapter sixty-one of this
3 code or authorization under federal law or the laws of this state
4 to carry a concealed weapon without a license. Subsections (b)
5 through (l) of this section are supplemental and additional to
6 existing rights to bear arms, and nothing in subsections (b) through
7 (l) of this section may be construed to impair or diminish those
8 rights.

9 **§15-2-25a. Certification to carry concealed firearm by qualified**
10 **retired law-enforcement officers.**

11 (a) Not later than September 1, 2011, the superintendent shall
12 establish a program for qualifying and certifying any person who is
13 eligible for qualification and certification to carry concealed
14 firearms as a qualified retired law-enforcement officer pursuant to
15 18 U.S.C. §926C. The superintendent shall propose rules for
16 legislative approval in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code to implement this program
18 and shall initially promulgate emergency rules pursuant to
19 provisions of section fifteen, article three, chapter twenty-nine-a
20 of this code.

21 (b) The rules promulgated pursuant to subsection (a) of this
22 section shall:

23 (1) Make all necessary provisions to create a program open to
24 all residents of this state entitled by virtue of past employment

1 to be considered qualified retired law-enforcement officers within
2 the meaning of 18 U.S.C. §926C and who elect to become so certified
3 are, in fact, promptly qualified and certified so as to obtain all
4 rights, benefits, privileges and immunities of 18 U.S.C. §926C, on
5 a uniform, nondiscretionary basis;

6 (2) Provide that the required qualification shall be offered
7 at least once quarterly in each county of this state in which a
8 State Police troop headquarters is located and in any other counties
9 of this state designated by the superintendent;

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

15 (4) Provide that the certificate issued to a qualified
16 law-enforcement officer under this program shall be no larger than
17 three and three-eighths inches wide by two and one-eighth inches
18 long and shall be made of a hard, laminated material suitable for
19 carrying in a wallet, similar to a driver's license, and shall
20 contain the words "Qualified Retired Law-Enforcement Officer under
21 18 U.S.C. §926C" in conspicuous type;

22 (5) Provide that all documents a qualified retired
23 law-enforcement officer is required to file with the superintendent
24 under this section may be filed by mailing them to the headquarters

1 of the State Police, by delivering them in person to the
2 headquarters of the State Police or any troop headquarters or
3 detachment or by any other method the superintendent may authorize;

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

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

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

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

22 (d) Before issuing, renewing or reinstating any certificate
23 under this section, the superintendent shall conduct an
24 investigation which shall verify that the applicant is a qualified

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

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

1 (f) Any person who has been issued a certification as a
2 qualified retired law-enforcement officer under this section and
3 becomes ineligible to continue holding the certification shall
4 immediately surrender the certification to the superintendent
5 regardless of whether the superintendent discovers the
6 disqualification and initiates revocation proceedings under
7 subsection (e) of this section.

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

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

1 certification under this section.

2 (i) (1) Notwithstanding any provision of this code or other law
3 of this state to the contrary, except as otherwise provided by this
4 subsection, the names, addresses and other personally-identifying
5 information of qualified retired law-enforcement officers who apply
6 for or have been issued a certificate of qualification under this
7 section or otherwise participates in a program under this section,
8 shall be confidential, are not public records and may be copied or
9 inspected only by:

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

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

13 (C) 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) 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) 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
24 record in the ordinary course of performing its official duties for

1 an official purpose; or

2 (F) By any licensed firearm dealer within this state from which
3 a qualified retired law-enforcement officer who presents a
4 certificate under this section proposes purchasing a firearm, for
5 the purpose of verifying the validity of the certificate; or

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

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

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

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

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

16 (4) (A) The superintendent shall furnish to any nonprofit
17 firearm-related or hunting-related educational or issue-advocacy
18 organization exempt from federal income taxation under §501(c) of
19 the Internal Revenue Code that has not obtained records pursuant to
20 this subdivision within the immediate preceding six months, a
21 current list of the names, mailing addresses, telephone numbers,
22 e-mail addresses and county of residence if a resident of this
23 state, of all qualified retired law-enforcement officers who have
24 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
24 maintaining the database required by this paragraph.

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

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

24 (k) A certification as a qualified retired law-enforcement

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

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

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

12 **§15-5-6. Emergency powers of Governor.**

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

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

21 (1) (A) An attack upon the United States has occurred or is
 22 anticipated in the immediate future; or ~~that~~

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

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

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

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

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

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

22 ~~(c)~~ (3) To procure materials and facilities for emergency
23 services by purchase, condemnation under the provisions of chapter
24 fifty-four of this code or seizure pending institution of

1 condemnation proceedings within thirty days from the seizing thereof
2 and to construct, lease, transport, store, maintain, renovate or
3 distribute such materials and facilities. Compensation for property
4 ~~so~~ procured under this subdivision shall be made in the manner
5 provided in chapter fifty-four of this code;

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

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

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

17 ~~(g)~~ (7) To suspend the provisions of any regulatory statute
18 prescribing the procedures for conduct of state business or the
19 orders, rules or regulations of any state agency, if strict
20 compliance ~~therewith~~ with the applicable regulatory statute would
21 in any way prevent, hinder or delay necessary action in coping with
22 the emergency;

23 ~~(h)~~ (8) To utilize ~~such~~ available resources of the state and
24 ~~of~~ its political subdivisions as ~~are~~ reasonably necessary to cope

1 with the emergency;

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

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

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

10 ~~No~~ (d) 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. The powers granted under this
15 section may not be interpreted to authorize the seizure or
16 confiscation of a firearm from a person, unless ~~that firearm is~~
17 ~~unlawfully possessed or unlawfully carried by the person, or the~~
18 person is unlawfully possessing or carrying the firearm or is
19 otherwise engaged in a criminal act; any prohibition or impairment
20 of the otherwise lawful possession, carrying, transportation or
21 storage of privately owned firearms or ammunition; or the suspension
22 of otherwise lawful firearm sales or transfers or any other lawful
23 firearms-related activity conducted by any person possessing a
24 federal firearms license.

1 §15-5-19a. Possession, carrying, transportation or storage of
 2 firearms not restricted during a declared state of
 3 emergency.

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

9 ~~No~~ (b) Notwithstanding any provision of this article to the
 10 contrary, the powers granted under this article to state or local
 11 authorities may not be interpreted to authorize the seizure or
 12 confiscation of a firearm from a person during a declared state of
 13 emergency, unless that firearm is unlawfully possessed or unlawfully
 14 carried by the person, or the person is unlawfully possessing or
 15 carrying the firearm or is otherwise engaged in a criminal act; any
 16 prohibition or impairment of the otherwise lawful possession,
 17 carrying, transportation or storage of privately owned firearms or
 18 ammunition; or the suspension of otherwise lawful firearm sales or
 19 transfers or any other lawful firearms-related activity conducted
 20 by any person possessing a federal firearms license.

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

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

23 §17C-2-3. Enforcement of chapter; designation and power of special
 24 officers; bond of special officers; failure to obey

1 **police officer or special officers.**

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

13 (b) The ~~West Virginia~~ Commissioner of Highways ~~is authorized~~
14 ~~to~~ may designate employees of the ~~West Virginia~~ Division of Highways
15 as special officers to enforce the provisions of this chapter only
16 when special officers are directing traffic upon bridges and the
17 approaches to bridges which are a part of the state road system when
18 any bridge needs special traffic direction and the superintendent
19 of the West Virginia State Police has informed the ~~West Virginia~~
20 Commissioner of Highways that he or she is unable to furnish
21 personnel for traffic direction. The ~~West Virginia~~ Commissioner of
22 Highways may also designate certain employees of the ~~West Virginia~~
23 Division of Highways serving as members of official weighing crews
24 as special officers to enforce the provisions of article seventeen

1 of this chapter. ~~Notwithstanding any provision of this code to the~~
2 ~~contrary,~~ Designated special officers serving as members of official
3 weighing crews may carry ~~handguns~~ concealed weapon without a license
4 in the course of their official duties after meeting specialized
5 qualifications established by the Governor's Committee on Crime,
6 Delinquency and Correction, which ~~qualifications~~ shall include the
7 successful completion of handgun training, including a minimum of
8 four hours' training in handgun safety, paid for by the Division of
9 Highways and comparable to the handgun training provided to
10 law-enforcement officers by the West Virginia State Police.
11 ~~Provided, That~~ However, nothing in this section ~~shall~~ may be
12 construed to include designated special officers authorized by the
13 provisions of this section ~~as~~ within the definition of
14 law-enforcement officers as ~~such are~~ defined in section one, article
15 twenty-nine, chapter thirty of this code. The ~~West Virginia~~
16 Commissioner of Highways shall provide a blanket bond in the amount
17 of \$10,000 for all employees designated as special officers ~~as above~~
18 provided pursuant to this subsection.

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

23 (d) ~~No~~ A person ~~shall~~ may not willfully fail or refuse to
24 comply with a lawful order or direction of any designated special

1 officer pursuant to the provisions of subsection (b) of this
2 section.

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

4 **ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**

5 **§18C-1-6. State-supported higher education institutions required**
6 **to respect individual's right to keep and bear arms**
7 **as condition of receiving state financial assistance.**

8 (a) A higher education institution within this state may not
9 be eligible for any form of financial assistance, direct or
10 indirect, from this state or any political subdivision of this
11 state, unless the institution and all its programs and activities
12 fully comply with the requirements of sections sixteen and
13 seventeen, article seven, chapter sixty-one of this code.

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

18 (c) In addition to any other person who may have proper
19 standing, the Attorney General, any citizen or taxpayer of this
20 state or any person whose rights under sections sixteen or
21 seventeen, article seven, chapter sixty-one of this code, have been
22 violated by a higher education institution that has received any
23 form of financial assistance, direct or indirect, from this state
24 or any political subdivision of this state, may bring a civil action

1 in the circuit court of Kanawha County or any county in which any
2 part of the institution is located to enjoin any alleged violations
3 of sections sixteen or seventeen, article seven, chapter sixty-one
4 of this code, enjoin the institution's receipt of any financial
5 assistance, direct or indirect, from this state or any political
6 subdivision of this state, in violation of subsection (a) of this
7 section and obtain any other relief to which the person may be
8 entitled, including without limitation attorney's fees and other
9 costs of litigation pursuant to section twenty, article seven,
10 chapter sixty-one of this code.

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

12 **§18C-5-2. Definitions.**

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

14 (1) A state institution of higher education as defined in
15 section two, article one, chapter eighteen-b of this code;
16 Alderson-Broadus College, Appalachian Bible College, Bethany
17 College, Mountain State University, Davis and Elkins College, Ohio
18 Valley University, Salem International University, the University
19 of Charleston, West Virginia Wesleyan College and Wheeling Jesuit
20 University, all in West Virginia; and

21 (2) Any other regionally or nationally accredited institution
22 of higher education in this state, public or private, approved by
23 the vice chancellor if the institution has been licensed for a
24 minimum of fifteen years subject to the provisions of section nine,

1 article two-b, chapter eighteen-b of this code and section six,
2 article two-b of said chapter.

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

7 (b) "Grant" or "grant program" means a higher education grant
8 or the higher education grant program authorized and established by
9 the provisions of this article.

10 (c) "Senior administrator" and "vice chancellor" mean the Vice
11 Chancellor for Administration, as provided in section two, article
12 four, chapter eighteen-b of this code.

13 **ARTICLE 6. WEST VIRGINIA ENGINEERING, SCIENCE AND TECHNOLOGY**
14 **SCHOLARSHIP PROGRAM.**

15 **§18C-6-2. Definitions.**

16 When used in this article the following terms have the
17 following meanings, unless the context clearly indicates a different
18 meaning:

19 (a) "ABET" means the Accrediting Board for Engineering and
20 Technology.

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

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

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

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

4 (2) Alderson-Broaddus College, Appalachian Bible College,
5 Bethany College, the College of West Virginia, Davis and Elkins
6 College, Ohio Valley College, Salem-Teikyo College, the University
7 of Charleston, West Virginia Wesleyan College and Wheeling Jesuit
8 College, all in West Virginia, and any other institution of higher
9 education in this state, public or private, approved by the senior
10 administrator: *Provided*, That if any institution listed in this
11 paragraph subdivision is not regionally accredited or does not fully
12 comply with the requirements of subsection (a), section six, article
13 one of this chapter and sections sixteen and seventeen, article
14 seven, chapter sixty-one of this code, it shall not be included as
15 an eligible institution;

16 (e) "Engineering, science and technology-related field" means
17 any position for which the employer provides a written statement
18 that engineering, science or technology skill, knowledge and
19 ability, as evidenced by the attainment of a certificate, associate
20 or baccalaureate degree in engineering, science or technology, are
21 preferred or required or where an industry-based certification
22 requirement exists.

23 (f) "Industry-based certification" means any special
24 certification required, necessary or deemed preferred for employment

1 in the field.

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

6 **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR**
7 **MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP**
8 **PROGRAM.**

9 **§18C-7-3. Definitions.**

10 (a) *General.* -- For the purposes of this article, terms have
11 the meaning ascribed to them in section two, article one of this
12 chapter, unless the context in which the term is used clearly
13 requires a different meaning or a specific definition is provided
14 in this section.

15 (b) *Definitions.* --

16 (1) "Eligible institution" means:

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

19 (B) Alderson-Broaddus College, Appalachian Bible College,
20 Bethany College, Davis and Elkins College, Mountain State
21 University, Ohio Valley University, the University of Charleston,
22 West Virginia Wesleyan College and Wheeling Jesuit University, all
23 in West Virginia. Any institution listed in this subdivision ceases
24 to be an eligible institution if: ~~it meets either of the following~~

1 conditions

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

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

5 (iii) It does not fully comply with the requirements of
6 subsection (a), section six, article one of this chapter and
7 sections sixteen and seventeen, article seven, chapter sixty-one of
8 this code; and

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

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

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

22 (B) The tuition amount paid by undergraduate health sciences
23 students at West Virginia University is considered to be the same
24 as the amount of tuition paid by all other West Virginia University

1 undergraduate students.

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

4

5 **CHAPTER 20. NATURAL RESOURCES.**

6 **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

7 **§20-1-2. Definitions.**

8 As used in this chapter, unless the context clearly requires
9 a different meaning:

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

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

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

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

17 "Bag limit" or "creel limit" means the maximum number of
18 wildlife which may be taken, caught, killed or possessed by any
19 person.

20 "Big game" means elk, deer, black bears, wild boars and wild
21 turkeys.

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

24 ~~"Citizen" means any native born citizen of the United States~~

1 ~~and foreign-born persons who have procured their final~~
2 ~~naturalization papers.~~

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

6 "Commission" means the Natural Resources Commission.

7 "Commissioner" means a member of the advisory commission of the
8 Natural Resources Commission.

9 "Director" means the Director of the Division of Natural
10 Resources.

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

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

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

21 "Game" means game animals, game birds and game fish. ~~as herein~~
22 ~~defined~~

23 "Game animals" include: (a) The elk; (b) the deer; (c) the
24 cottontail rabbits and hares; (d) the fox squirrels, commonly called

1 red squirrels, and gray squirrels and all their color phases - red,
2 gray, black or albino; (e) the raccoon; (f) the black bear; and (g)
3 the wild boar.

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

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

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

22 "Hunt" means to pursue, chase ~~catch~~ or take any wild birds or
23 wild animals ~~Provided, That the definition of "hunt" does not~~
24 ~~include an~~ except in any officially sanctioned and properly licensed

1 field trial, water race or wild hunt ~~as long as that field trial is~~
2 ~~not~~ other than a shoot-to-retrieve field trial.

3 "Lands" means land, waters and all other appurtenances
4 connected therewith.

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

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

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

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

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

24 "Open season" means the time during which the various species

1 of wildlife may be legally caught, taken, killed or chased in a
2 specified manner, ~~and shall include both the first and the last day~~
3 ~~of the season or period~~ as designated by the director.

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

9 "Personal watercraft" means:

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

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

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

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

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

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

1 public hunting or fishing seasons.

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

4 "Resident" means any person who:

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

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

17 (c) Is a full-time student of any college or university of
18 higher education institution, as defined in section two, article
19 one, chapter eighteen-b of this code, located within this state,
20 even though he or she is paying including any full-time student of
21 a state institution of higher education, as defined in section two,
22 article one, chapter eighteen-b of this code, who pays a nonresident
23 tuition. shall be considered a resident under the provisions of this
24 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
24 Virginia occurring either in a natural state or in captivity, except

1 house mice or rats.

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

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

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

18 **ARTICLE 2. WILDLIFE RESOURCES.**

19 **§20-2-2a. Interference with hunters, trappers and fishermen.**

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

22 (1) Obstruct or impede the participation of any individual in
23 any lawful activity ~~of~~ incident to hunting, fishing or trapping or
24 the lawful control or possession of lawfully-taken wildlife;

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

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

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

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

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

14 (2) Any constitutionally-protected activity.

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

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

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

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

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

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

19 (A) Hunts raccoon, opossum or skunk by the use of artificial
 20 light; ~~subject to the restrictions set forth in this subdivision:~~
 21 ~~Provided, however, That it is lawful to hunt or take~~

22 (B) Hunts coyotes by the use of amber- or red-colored
 23 artificial light; ~~subject to the restrictions set forth in this~~
 24 ~~subdivision. No person is guilty of a violation of this subdivision~~

1 ~~merely because he or she or~~

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

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

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

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

16 (III) Any other implement or device, other than firearms,
17 suitable for taking, killing or trapping a wild bird or wild animal;
18 or unless the

19 (ii) Uses an artificial light (other than the ~~head lamps~~
20 headlights of an automobile or other land conveyance a motor
21 vehicle) that is attached to, a part of, or used from within or upon
22 an automobile or other land conveyance any motor vehicle;

23 ~~Any person violating the provisions of this subdivision is~~
24 ~~guilty of a misdemeanor and, upon conviction thereof, shall for each~~

1 ~~offense be fined not less than \$100 nor more than \$500 and shall be~~
2 ~~confined in jail for not less than ten days nor more than one~~
3 ~~hundred days;~~

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

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

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

16 (7) Destroy or attempt to destroy needlessly or willfully the
17 nest or eggs of any wild bird or ~~have in his or her possession~~
18 possess the nest or eggs of any wild bird unless ~~authorized to do~~
19 ~~so under rules promulgated by or under~~ the person possesses a permit
20 issued by the director;

21 (8) ~~Except as provided in section six of this article, And~~
22 willfully carry ~~an uncased or loaded gun~~ about his or her person any
23 rifle or shotgun in any of the woods of this state, or in any place
24 where the discharge of a firearm is prohibited by subdivision (4),

1 subsection (a), section fifty-eight of this article, except during
2 the open firearms hunting season for wild animals and nonmigratory
3 wild birds within any county of the state, unless he or she has in
4 his or her possession a permit, in writing, issued to him or her by
5 the Director: *Provided*, That this section does not prohibit when:

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

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

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

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

14 (B) The person:

15 (i) Is lawfully hunting during an open firearms hunting season
16 or lawfully hunting or taking of an unprotected species of wild
17 animals, and wild birds and or migratory wild birds; during the open
18 season in the open fields, open water and open marshes of the state

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

20 (iii) Is licensed to carry concealed weapons pursuant to
21 section four or five, article seven, chapter sixty-one of this code;
22 or

23 (iv) Is authorized by subsection (d), section three, article
24 seven, chapter sixty-one of this code, to carry a concealed weapon

1 without a license;

2 (9) ~~Have in his or her possession a Possess or transport any~~
3 ~~crossbow with a nocked bolt a loaded firearm or a firearm from the~~
4 ~~magazine of which all shells and cartridges have not been removed,~~
5 ~~in or on any motor vehicle, or conveyance, or its attachments,~~
6 ~~within the state, except as may otherwise be provided by law or~~
7 ~~regulation. Except as hereinafter provided, between five o'clock~~
8 ~~postmeridian of one day and seven o'clock antemeridian, eastern~~
9 ~~standard time of the day following, any unloaded firearm or~~
10 ~~crossbow, being lawfully carried in accordance with the foregoing~~
11 ~~provisions, may be so carried only when in a case or taken apart and~~
12 ~~securely wrapped. During the period from July 1 to September 30,~~
13 ~~inclusive, of each year, the foregoing requirements relative to~~
14 ~~carrying certain unloaded firearms are permissible only from~~
15 ~~eight-thirty o'clock postmeridian to five o'clock antemeridian,~~
16 ~~eastern standard time: *Provided*, That the time periods for carrying~~
17 ~~unloaded and uncased firearms are extended for one hour after the~~
18 ~~postmeridian times and one hour before the antemeridian times~~
19 ~~established above if a hunter is preparing to or in the process of~~
20 ~~transporting or transferring the firearms to or from a hunting site,~~
21 ~~campsite, home or other place of abode except when the person~~
22 ~~possesses a Class Q permit issued pursuant to section forty-six-e~~
23 ~~of this article and a Class Y permit issued pursuant to section~~
24 ~~forty-two-w of this article and is lawfully hunting with a crossbow~~

1 from a motor vehicle in accordance with the terms of those permits;

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

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

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

20 (A) The person is:

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

23 (ii) Authorized by subsection (d), section three, article
24 seven, chapter sixty-one of this code, to carry a concealed weapon

1 without a license;

2 (B) The rifle or shotgun is not loaded and is possessed or
3 transported:

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

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

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

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

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

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

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

23 (iv) In a closed case, bag, box or other container that has a
24 lid, a cover or a closing mechanism with a zipper, snap or buckle,

1 which lid, cover or closing mechanism must be opened for a person
2 to gain access to the rifle or shotgun;

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

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

7 (vii) In plain sight with the action open or the weapon
8 stripped or, if the rifle or shotgun is of a type on which the
9 action will not stay open or which cannot easily be stripped, in
10 plain sight; or

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

14 ~~(12)~~ (11) Hunt ~~catch, take, kill, injure or pursue~~ a wild
15 animal or wild bird with ~~the use of~~ a ferret;

16 ~~(13)~~ (12) Buy raw furs, pelts or skins of fur-bearing animals
17 ~~unless licensed to do so~~ without a license issued by the Director
18 pursuant to section forty-nine of this article or, if licensed under
19 a resident county license or an agent's permit issued to an employee
20 of a resident county licensee, buy raw furs, pelts or skins of
21 fur-bearing animals outside the county or counties specified in the
22 resident county license;

23 ~~(14) Catch,~~ (13) Take ~~kill~~ or attempt to ~~catch, take or kill~~
24 ~~any fish at any time~~ by any means other than by rod, line and hooks

1 with natural or artificial lures, ~~unless otherwise authorized by law~~
 2 ~~or rules issued by the Director: Provided, That~~ except when snaring
 3 ~~of~~ any species of suckers, carp, fallfish ~~and~~ or creek chubs; ~~shall~~
 4 ~~at all times be lawful~~

5 ~~(15)~~ (14) Employ or hire, or induce or persuade, by the use of
 6 money or other things of value or ~~by~~ any other means, any person to
 7 hunt ~~take, catch or kill~~ any wild animal or wild bird except those
 8 species on which there is no closed season, or to fish for ~~catch,~~
 9 ~~take or kill~~ any fish, amphibian or aquatic life ~~which~~ that is
 10 protected by the provisions of this chapter or rules of the director
 11 or the sale of which is prohibited;

12 ~~(16)~~ (15) Hunt, ~~catch, take, kill, capture, pursue,~~ transport,
 13 possess or use any migratory ~~game or nongame~~ birds ~~included in the~~
 14 ~~terms of conventions between the United States and Great Britain and~~
 15 ~~between the United States and United Mexican States for the~~
 16 ~~protection of migratory birds and wild mammals concluded,~~
 17 ~~respectively, August 16, 1916, and February 7, 1936,~~ except during
 18 the time and in the manner and numbers prescribed by the federal
 19 Migratory Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and regulations
 20 made thereunder;

21 ~~(17)~~ Kill, (16) Take ~~catch or have in his or her possession,~~
 22 ~~living or dead,~~ possess any wild bird ~~other than a game~~ protected
 23 bird, ~~or~~ expose for sale or transport within or without the state
 24 any protected bird ~~except as aforesaid no part of the plumage, skin~~

1 ~~or body of any protected bird may be sold or sell or had in~~
 2 ~~possession for possess for the purpose of sale any protected bird,~~
 3 except mounted or stuffed plumage, skin, bodies or heads of the
 4 protected birds legally taken and stuffed or mounted, ~~irrespective~~
 5 regardless of whether the protected bird is alive or was captured
 6 within ~~or without~~ this state; ~~except the English or European sparrow~~
 7 ~~(passer domesticus), starling (sturnus vulgaris) and cowbird~~
 8 ~~(molothrus ater), which may not be protected and the killing thereof~~
 9 ~~at any time is lawful~~

10 ~~(18)~~ (17) Use dynamite or any like explosive or poisonous
 11 mixture placed in any waters of the state ~~for the purpose of killing~~
 12 ~~or taking to~~ fish; ~~Any person violating the provisions of this~~
 13 ~~subdivision is guilty of a felony and, upon conviction thereof,~~
 14 ~~shall be fined not more than five hundred dollars, or imprisoned for~~
 15 ~~not less than six months nor more than three years, or both fined~~
 16 ~~and imprisoned~~

17 ~~(19) have a bow and gun, or have a gun and any arrow or arrows,~~
 18 (18) Unless licensed to carry concealed weapons pursuant to
 19 section four or five, article seven, chapter sixty-one of this code
 20 or authorized by subsection (d), section three, article seven,
 21 chapter sixty-one of this code, to carry a concealed weapon without
 22 a license, simultaneously possess in the fields or woods: ~~at the~~
 23 ~~same time~~

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

1 (B) A rifle or shotgun;
2 ~~(20) Have~~ (19) Carry about his or her person a crossbow in the
3 woods or fields or use a crossbow to hunt ~~for, take or attempt to~~
4 ~~take~~ any wildlife, unless the person possesses a Class Y permit
5 issued pursuant to section forty-two-w of this article;
6 ~~(21)~~ (20) Take or attempt to take turkey, bear, elk or deer
7 with any arrow unless the arrow is equipped with a point having at
8 least two sharp cutting edges measuring in excess of three fourths
9 of an inch wide;
10 ~~(22)~~ (21) Take or attempt to take any wildlife with an arrow
11 having an explosive head or shaft, a poisoned arrow or an arrow
12 which would affect wildlife by any chemical action;
13 ~~(23)~~ (22) Shoot an arrow across any public highway or from any
14 aircraft, ~~motor driven watercraft~~ motorboat, ~~motor~~ vehicle or other
15 land conveyance;
16 ~~(24)~~ (23) Permit any dog owned by him or her or under his or
17 her control to chase, pursue or follow upon the track of any wild
18 animal or wild bird, either day or night, between May 1 and ~~the~~
19 August 15 next following: *Provided*, That a person may train dogs
20 ~~may be trained~~ on wild animals and wild birds, except deer and wild
21 turkeys, and hold or conduct field trials ~~may be held or conducted~~
22 on the grounds or lands of the owner or by his or her bona fide
23 tenant or tenants or upon the grounds or lands of another person
24 with his or her written permission or on public lands, at any time:

1 *Provided, however,* That nonresidents may not train dogs in this
 2 state at any time except during the legal small game hunting season:
 3 *Provided further,* That the person training ~~said~~ dogs ~~does~~ may not
 4 ~~have firearms or other implements in his or her possession~~ carry
 5 about his or her person during the closed season on wild animals and
 6 wild birds, (i) any rifle or shotgun unless the person is licensed
 7 to carry concealed weapons pursuant to section four or five, article
 8 seven, chapter sixty-one of this code or authorized by subsection
 9 (d), section three, article seven, chapter sixty-one of this code,
 10 to carry a concealed weapon without a license, or has an affirmative
 11 defense under subsection (b) of this section, or (ii) any implement
 12 of hunting, other than a firearm, whereby wild animals or wild birds
 13 could be taken; ~~or killed~~

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

1 ~~(26) Except as provided in section four of this article,~~
2 (25) Hunt catch, take, kill or attempt to hunt, catch, take or
3 ~~kill~~ any wild animal, wild bird or wild fowl except during the open
4 season for that species established by ~~rule of~~ the director; ~~as~~
5 ~~authorized by subdivision (6), section seven, article one of this~~
6 ~~chapter~~

7 ~~(27) Hunting~~ (26) Hunt any wild animal or wild bird on public
8 lands on Sunday after five o'clock antemeridian, ~~is prohibited; and~~
9 except to tend traps previously and legally set;

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

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

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

1 (B) (i) Paragraph (A) of this subdivision ~~do~~ does not apply in
2 any county until the county commission of the county holds an
3 election on the question of whether the provisions of paragraph (A)
4 of this subdivision prohibiting hunting on Sunday shall apply within
5 the county and the voters ~~approve the allowance~~ of that county
6 prohibit hunting on private lands on Sunday in the county. The
7 election shall be determined by a vote of the resident voters of the
8 county in which the prohibition on hunting on private lands on
9 Sunday is proposed. ~~to be authorized~~ The county commission of the
10 county in which the prohibition on Sunday hunting on private lands
11 is proposed shall give notice to the public of the election by
12 publication of the notice as a Class II-0 legal advertisement in
13 compliance with the provisions of article three, chapter fifty-nine
14 of this code, and the publication area for the publication shall be
15 the county in which the election is to be held. The date of the last
16 publication of the notice shall fall on a date within the period of
17 the fourteen consecutive days next preceding the election.

18 (ii) On the local option election ballot shall be printed the
19 following:

20 Section 20-2-5(a)(26) of the West Virginia Code prohibits
21 hunting on Sunday on all public lands. Section 20-2-5(a)(27)-(28)
22 of the West Virginia Code prohibits hunting on Sunday on private
23 lands if the following Monday is the opening day of a big game
24 (deer, bear, turkey or boar) hunting season or if the hunter does

1 not have the express written permission of the landowner. In
 2 addition to these restrictions, section 20-2-5(a)(29) of the West
 3 Virginia Code authorizes local option elections within each county
 4 to determine whether hunting on Sunday will be completely prohibited
 5 on private lands.

6 The purpose of this local option election is to determine
 7 whether, in addition to the above limitations on Sunday hunting
 8 contained in Section 20-2-5(a)(26)-(29) of the West Virginia Code,
 9 hunting on private lands on Sunday will be completely prohibited in
 10 _____ County.

11 Shall hunting on private lands on Sunday be ~~authorized~~
 12 prohibited in _____ County?

13 [] Yes [] No

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

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

23 (iv) If a majority votes ~~against allowing~~ to prohibit Sunday
 24 hunting on private lands, no election on the issue may be held for

1 a period of one hundred four weeks. If a majority votes "~~yes~~"
2 against prohibiting Sunday hunting on private lands, ~~no~~ an election
3 reconsidering the action may not be held for a period of five years.
4 A local option election may thereafter be held if a written petition
5 of qualified voters residing within the county equal to at least
6 five percent of the number of persons who were registered to vote
7 in the next preceding general election is received by the county
8 commission of the county in which ~~Sunday hunting is authorized~~ a new
9 local option election is proposed. The petition may be in any number
10 of counterparts. The election shall take place at the next primary
11 or general election scheduled more than ninety days following
12 receipt by the county commission of the petition required by this
13 ~~subsection: Provided, That~~ subparagraph. However, the issue may not
14 be placed on the ballot until all statutory notice requirements have
15 been met; ~~No local law or regulation providing any penalty,~~
16 ~~disability, restriction, regulation or prohibition of Sunday hunting~~
17 ~~may be enacted, and the provisions of this article preempt all~~
18 ~~regulations, rules, ordinances and laws of any county or~~
19 ~~municipality in conflict with this subdivision~~

20 (30) While tending traps after the hour of five o'clock
21 antemeridian on Sundays as authorized by subdivisions (26) through
22 (28) of this subsection or paragraph (A), subdivision (29) of this
23 subsection, carry about his or her person any rifle or shotgun other
24 than a twenty-two caliber firearm that is carried for the purpose

1 of humanely dispatching trapped animals, unless the person is
2 licensed to carry concealed weapons pursuant to section four or
3 five, article seven, chapter sixty-one of this code or authorized
4 by subsection (d), section three, article seven, chapter sixty-one
5 of this code, to carry a concealed weapon without a license; or

6 ~~(29)~~ (31) Hunt or conduct hunts for a fee where the hunter is
7 not physically present in the same location as the wildlife being
8 hunted within ~~West Virginia~~ this state.

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

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

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

1 (B) The defendant carried the weapon for defensive purposes
 2 while the actor was engaged in a lawful activity and had reasonable
 3 cause to fear a criminal attack upon the defendant or any person
 4 accompanying the defendant, such as would justify a prudent person
 5 in going armed.

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

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

14 **§20-2-5c. Protection of bald eagles and golden eagles; unlawful**
 15 **acts; criminal penalties; forfeitures; license**
 16 **revocation.**

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

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

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

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

1 ~~(e)~~ Nothing in (d) This section ~~may be construed to prohibit~~
2 does not apply to the taking hunting, possession or transportation
3 of bald eagles or golden eagles ~~legally under~~ as authorized by the
4 ~~current~~ federal Eagle Protection Act, 16 ~~USC §668a~~ U.S.C. §§668
5 through 668d, as amended, and or the current federal regulations
6 promulgated pursuant to the federal Eagle Protection Act, as
7 amended, 50 CFR 22.1 et seq. C.F.R. Part 22.

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

16 ~~(g)~~ (f) Upon conviction of taking, possessing, transporting,
17 importing, exporting or processing, selling or offering for sale,
18 buying, bartering or trading or offering to buy, barter or trade any
19 bald or golden eagle, alive or dead, or any part, nest or egg
20 ~~thereof of the foregoing~~ bald eagles or golden eagles, or of
21 attempting to do any of these acts, the director shall revoke the
22 person's hunting licenses ~~of such person or persons may be revoked~~
23 and ~~such person or persons shall not be issued any~~ issue the person
24 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,~~
 24 ~~article seven, chapter sixty-one of this code who is not prohibited~~

1 ~~at the time from possessing a firearm pursuant to the provisions of~~
2 ~~section seven, article seven, chapter sixty-one of this code or by~~
3 ~~any applicable federal law,~~ may, for self-defense, the defense of
4 other persons, the defense of livestock and domestic animals and
5 other lawful purposes, own, possess, carry, a handgun in a concealed
6 ~~manner for self defense purposes~~ transfer, transport, store and keep
7 handguns and parts, components and ammunition for handguns:

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

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

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

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

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

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

24 (1) The person shall be presumed to be owning, possessing,

1 carrying, transferring, transporting, storing or keeping the handgun
2 and parts, components and ammunition for the handgun for
3 self-defense or another lawful purpose other than hunting; and

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

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

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

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

21 (2) Any future act of the Legislature may not be construed to
22 amend or supersede this section unless the act specifically and
23 expressly amends or repeals this section;

24 (3) This section is supplemental and additional to existing

1 rights to bear arms, and nothing in this section shall impair or
 2 diminish such rights; and

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

5 **§20-2-32. Issuance of licenses; duplicate licenses; confidentiality**
 6 **of personally-identifying information.**

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

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

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

22 (d) Any license-issuing authority may issue a duplicate
 23 license, to replace a lost, destroyed or damaged license, upon
 24 receipt of a verified application duly executed by the original

1 ~~license holder~~ licensee and the payment to the issuing authority of
2 a duplicate license fee of \$1.

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

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

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

13 (C) 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) 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; or

21 (E) A duly authorized representative of a law-enforcement
22 agency or license-issuing authority for any official purpose or any
23 other agency or instrumentality of federal, state or local
24 government seeking the record in the ordinary course of performing

1 its official duties for an official purpose; or

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

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

18 (2) This subsection does not prohibit disclosure or publication
19 of statistical summaries, abstracts or other records containing
20 information in an aggregate or statistical form that does not
21 disclose any personally-identifying information protected from
22 public disclosure under this subsection.

23 (3) (A) The director shall furnish to any nonprofit
24 firearm-related or hunting-related educational or issue-advocacy

1 organization exempt from federal income taxation under §501(c) of
2 the Internal Revenue Code that has not obtained records pursuant to
3 this subdivision within the immediate preceding six months, a
4 current list of the names, mailing addresses, telephone numbers,
5 e-mail addresses and county of residence if a resident of this
6 state, of all persons at least eighteen years of age who hold any
7 license, permit or stamp under this chapter, in a commonly-used
8 electronic database format acceptable to the requesting
9 organization.

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

19 (C) A personally-identifying information other than the
20 information described in paragraph (A) or (B) of this subdivision,
21 as applicable, or any information pertaining to the type of license,
22 permit or stamp, other than whether it is a hunting only, fishing
23 only or combined hunting and fishing license, permit or stamp, may
24 not be disclosed pursuant to this subdivision.

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

10 (E) Before any personally-identifying information of persons
11 who hold any license, permit or stamp under this chapter may be
12 disclosed pursuant to this subdivision, the person obtaining the
13 information shall complete and verify under oath a notarized request
14 form prescribed by the director, which shall be a public record, and
15 file the request form at the director's office in person or by
16 certified mail, return receipt requested. The director shall
17 maintain a record of requests fulfilled under this subdivision for
18 at least five years and not more than seven years. The director
19 shall, upon request of any person who holds or has previously held
20 any license, permit or stamp under this chapter, notify the person
21 of all organizations to which the person's personally-identifying
22 information have been disclosed pursuant to this subdivision during
23 the period for which the director maintains those records and
24 provide a copy of all requests for disclosure made to the director

1 pursuant to this subdivision.

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

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

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

10 (2) Exhibit for inspection:

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

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

15 ~~Nothing in (b)~~ This section ~~may be construed as authorizing~~
 16 does not authorize searches or seizures that violate article three,
 17 section six of the West Virginia Constitution or the Fourth
 18 Amendment to the Constitution of the United States ~~nor~~ and may
 19 ~~anything in this section~~ not be construed as effecting a waiver of
 20 these Constitutional provisions.

21 **§20-2-421. Class A-1 handgun hunting stamp.**

22 ~~Notwithstanding the provisions of section two, article seven,~~
 23 ~~chapter sixty one of this code,~~

24 (a) A Class A-1 stamp is a ~~small arms~~ handgun hunting stamp.

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

17 (b) A holder of a Class A-1 stamp shall purchase the
18 appropriate base license before participating in the activities
19 specified in this section, except as noted. A Class A-1 stamp
20 entitles the licensee to hunt, as otherwise permitted by the
21 provisions of this chapter, but only during small game and big game
22 seasons as established annually by the Director, holder of the stamp
23 to hunt as otherwise permitted by this chapter during the small game
24 and big game hunting seasons established by the director with ~~either~~

1 a ~~revolver or pistol which~~ handgun that has a barrel at least four
2 inches in length. ~~Unless otherwise permitted by the Code of West~~
3 ~~Virginia, a Class A-1 stamp entitles the licensee to carry or have~~
4 ~~in his or her possession only one revolver or pistol when going to~~
5 ~~and from his or her home or residence and a place of hunting and~~
6 ~~while hunting: Provided, That the Class A-1 stamp may not be valid~~
7 ~~unless the licensee has in his or her possession a valid resident~~
8 ~~or nonresident hunting license or is a resident sixty-five years of~~
9 ~~age or older. Provided, however, That at all times, when not~~
10 ~~actually hunting, the revolver or pistol shall be unloaded. While~~
11 ~~hunting, the licensee shall carry the revolver or pistol in an~~
12 ~~unconcealed and easily visible place. The fee for the stamp is eight~~
13 ~~dollars. A lifetime Class A-1 stamp may be issued to anyone~~
14 ~~otherwise qualified and holding a valid Class A-L or AB-L license~~
15 ~~or to a resident sixty-five years of age or older The lifetime Class~~
16 ~~A-1 stamp will be issued in a form prescribed by the Director.~~

17 (c) The fee for a Class A-1 stamp is \$8. The fee for a lifetime
18 Class A-I stamp is \$75. ~~All fees collected for the issuance of the~~
19 ~~Class A-1 and lifetime Class A-1 stamps shall be deposited in the~~
20 ~~State Treasury and credited to the law enforcement section of the~~
21 ~~Division of Natural Resources. The fees collected shall be paid out~~
22 ~~of the State Treasury on order of the Director and used solely for~~
23 ~~law enforcement purposes.~~

24 (d) Before the director may issue, renew or reinstate any Class

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

17 (e) The director shall propose rules for legislative approval
18 in accordance with the provisions of article three, chapter
19 twenty-nine-a of this code to permit a holder of a lifetime Class
20 A-1 stamp to periodically apply for a reissued stamp to permit the
21 holder of the stamp to receive the benefit of an exemption under 18
22 U.S.C. §922(t)(3)(A), 27 C.F.R. §478.102(d)(1) or other applicable
23 federal law, from a background check through the National Instant
24 Criminal Background Check System to purchase or receive a firearm

1 from a licensed firearm dealer in this state.

2 (f) The director shall revoke any Class A-1 stamp or lifetime
3 Class A-1 stamp issued to a person convicted of a misdemeanor
4 associated with the use of firearms or dangerous weapons or
5 convicted of a felony, or any person who becomes legally unable to
6 possess a firearm prohibited by federal law or section seven,
7 article seven, chapter sixty-one of this code, from possessing or
8 transporting firearms. The director shall immediately notify the
9 person of the revocation in writing, delivered either by personal
10 service or certified mail, return receipt requested. The person
11 shall immediately surrender the revoked stamp to the director if
12 served in person with the notice or within five business days if
13 served by certified mail.

14 (g) A holder of a Class A-1 stamp or lifetime Class A-1 stamp
15 who becomes ineligible to continue holding the stamp shall
16 immediately surrender the stamp to the Division of Natural Resources
17 regardless of whether the director discovers the disqualification
18 and initiates revocation proceedings under subsection (f) of this
19 section. A holder of a Class A-1 or lifetime Class A-1 stamp is
20 required to purchase the appropriate base license before
21 participating in the activities specified in this section, except
22 as noted.

23 (h) Any person who knowingly and willfully fails to surrender
24 a revoked Class A-1 stamp or lifetime Class A-1 stamp, as required

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

7 (i) The director shall reinstate Class A-1 stamp or lifetime
 8 Class A-1 stamp that was revoked pursuant to subsection (f) of this
 9 section or surrendered pursuant to subsection (g) of this section
 10 if the person to whom the revoked or surrendered stamp was issued
 11 subsequently ceases to be prohibited by federal law or section
 12 seven, article seven, chapter sixty-one of this code, from
 13 possessing or transporting firearms.

14 **§20-2-42p. Class RG resident and Class RRG nonresident gun firearm**
 15 **deer hunting stamp for an additional deer.**

16 (a) The director ~~has the authority to~~ may issue a Class RG
 17 resident and a Class RRG nonresident gun firearm deer hunting ~~stamp~~
 18 stamps when ~~deemed~~ the director considers the taking of additional
 19 deer essential for the proper management of the wildlife resources.
 20 ~~These~~

21 (b) Class RG and Class RRG stamps ~~allow~~ authorize the licensee
 22 holders of those stamps to hunt and take an additional deer as
 23 designated by the director. A holder of a Class RG or Class RRG
 24 stamp shall purchase the appropriate base license before

1 participating in the activities specified in this section, except
2 as noted.

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

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

23 (e) The director shall revoke any Class RG or Class RRG stamp
24 issued to a person who becomes prohibited by federal law or section

1 seven, article seven, chapter sixty-one of this code, from
2 possessing or transporting firearms. The director shall immediately
3 notify the person of the revocation in writing, delivered either by
4 personal service or certified mail, return receipt requested. The
5 person shall immediately surrender the revoked stamp to the director
6 if served in person with the notice or within five business days if
7 served by certified mail.

8 (f) A holder of a Class RG or Class RRG stamp who becomes
9 prohibited by federal law or section seven, article seven, chapter
10 sixty-one of this code, from possessing or transporting firearms,
11 shall immediately surrender the stamp to the Division of Natural
12 Resources regardless of whether the director discovers the
13 disqualification and initiates revocation proceedings under
14 subsection (e) of this section.

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

23 (h) The director shall reinstate Class RG or Class RRG stamp
24 that was revoked pursuant to subsection (e) of this section or

1 surrendered pursuant to subsection (f) of this section if the person
 2 to whom the revoked or surrendered stamp was issued subsequently
 3 ceases to be prohibited by federal law or section seven, article
 4 seven, chapter sixty-one of this code, from possessing or
 5 transporting firearms.

6 (i) The director may ~~promulgate~~ propose rules for legislative
 7 approval in accordance with article three, chapter twenty-nine-a of
 8 this code governing the issuance, and use and revocation of these
 9 Class RG and a Class RRG stamps. These stamps require that the
 10 licensee purchase the appropriate base license before participating
 11 in the activities specified in this section, except as noted.

12 **§20-2-46e. Class Q special hunting permit for disabled persons.**

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

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

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

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

1 (c) Before the director may issue a Class Q permit, a licensed
2 physician ~~must~~ shall certify the applicant's permanent disability
3 by completing the permit form. When completed, the permit form
4 constitutes a Class Q permit. The Class Q permit and a completed
5 license application shall be submitted to the division, which ~~will~~
6 shall issue ~~a wallet sized card to the permittee~~ a permit card not
7 larger than a driver's license and in a form suitable for carrying
8 in a wallet, similar to a driver's license. ~~The card and all other~~
9 ~~documents and identification required to be carried by this article~~
10 ~~shall be in the permittee's possession when hunting.~~

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

17 (1) The motor vehicle is stationary;

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

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

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

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

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

5 (e) The director may propose legislative rules for legislative
6 approval in accordance with the provisions of article three, chapter
7 twenty-nine-a of this code ~~setting forth~~ specifying the
8 qualifications of applicants and the permitting process.

9 **§20-2-58. Shooting across road or near building or crowd;**
10 **exceptions.**

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

15 (1) Across or in from within any public road street or highway
16 in this state, at any time; or

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

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

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

24 (B) The person discharging the firearm does not knowingly

1 violate any condition of consent specified in any written grant of
2 consent pursuant to paragraph (A) of this subdivision; or on or near

3 (4) Within any state, county, municipal or other public park
4 or other place where persons gather for purposes of pleasure, except
5 in an established firearm shooting range.

6 ~~and any person violating this section is guilty of a~~
7 ~~misdemeanor:—Provided, That~~

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

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

1 of ~~such~~ the gun repair shop ~~be~~ is given an opportunity to protest
 2 the granting of such exemption before the director decides whether
 3 to grant the exemption.

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

5 **§20-7-9. Violations of chapter generally; penalties.**

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

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

1 hundred days. ~~Provided, however, That~~

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

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

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

1 both fined and confined. imprisoned: ~~Provided further, That~~

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

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

22 (h) Any person ~~violating~~ who violates any parking or speeding
23 regulations as promulgated by the director on any state parks, state
24 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
 24 securing payment or performance of an obligation, but ~~the term~~

1 excludes a lessee under a lease not intended as security.

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

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

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

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

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

17 **§24A-7-6. Duty of prosecuting attorneys and law-enforcement**
18 **officers to enforce chapter; regulatory authority of**
19 **commission; qualifications of commission employees**
20 **designated as motor carrier inspectors.**

21 ~~It shall be the duty of the West Virginia State Police and the~~
22 ~~sheriffs of the counties in West Virginia to~~

23 (a) Law-enforcement officers, as defined in section one,
24 article twenty-nine, chapter thirty of this code, shall make arrests

1 or issue citations for and ~~the duty of~~ the prosecuting attorneys of
2 ~~the several counties to~~ shall prosecute all violations of this
3 chapter and of other chapters governing the regulatory authority of
4 the commission.

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

13 ~~Notwithstanding any provision of this code to the contrary,~~
14 ~~such~~

15 **(c)** Motor carrier inspectors designated pursuant to subsection
16 (b) of this section may carry ~~handguns~~ concealed weapons without a
17 license in the course of their official duties after meeting
18 specialized qualifications established by the Governor's Committee
19 on Crime, Delinquency and Correction, which ~~qualifications~~ shall
20 include the successful completion of handgun training, including a
21 minimum of four hours training in handgun safety, paid for by the
22 commission and comparable to the handgun training provided to
23 law-enforcement officers by the West Virginia State Police.
24 ~~Provided, That~~

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

5 **CHAPTER 25. DIVISION OF CORRECTIONS.**

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

7 **§25-1-11c. Hiring of other assistants and employees; duties of**
8 **correctional employees; right to carry weapons;**
9 **powers of correctional peace officers.**

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

20 (b) The commissioner may issue a certificate authorizing any
21 correctional employee who has successfully completed the division's
22 training program for firearms certification, which shall be the
23 equivalent of that required of deputy sheriffs, to carry ~~firearms~~
24 ~~and~~ concealed weapons without a license while on duty. Any

1 correctional employee authorized by the commissioner ~~has the right,~~
2 ~~without a state license, to~~ may carry ~~firearms and~~ concealed weapons
3 without a license while on duty. Each correctional employee,
4 authorized by the commissioner, shall carry with him or her a
5 certificate, authorizing him or her to carry ~~a firearm or~~ concealed
6 ~~weapon~~ weapons without a license when performing his or her official
7 duties as a correctional employee, bearing the official signature of
8 the commissioner and warden or administrator. The ~~right~~ privilege
9 conferred by this subsection is extended to a correctional employee
10 during the time the employee travels from place to place within the
11 state for the purpose of removing prisoners from jails to a
12 correctional institution of the Division of Corrections, and during
13 the time the employee is pursuing and apprehending escaped inmates,
14 and during any other time the employee is performing official duties
15 as a correctional employee. ~~No correctional employee shall have the~~
16 ~~right to carry a firearm or concealed weapon~~ The privilege conferred
17 by this subsection does not apply for any other purpose or during
18 any other time, including when ~~traveling to and from~~ commuting
19 between the employee's residence and a correctional institution.
20 ~~unless the employee has obtained a state license in the manner~~
21 ~~prescribed in article seven, chapter sixty-one of this code~~

22 ~~(b)~~ (c) The Commissioner of Corrections may designate
23 correctional employees as correctional peace officers. ~~who have the~~
24 ~~following powers~~ Correctional peace officers designated pursuant to

1 this subsection may:

2 (1) ~~To~~ Enforce rules and laws necessary for the control and
 3 management of correctional units and the maintenance of public
 4 safety that is within the scope of responsibilities of the Division
 5 of Corrections;

6 ~~(1)~~ (2) ~~To detain~~ Arrest persons for violations of state law
 7 committed on the property of any state correctional institution;

8 ~~(2)~~ (3) ~~To~~ Conduct investigations regarding criminal activity
 9 occurring within a correctional facility, pursue and apprehend
 10 escapees from the custody of the commissioner or any state
 11 correctional institution; and

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

15 **CHAPTER 27. MENTALLY ILL PERSONS.**

16 **ARTICLE 3. CONFIDENTIALITY.**

17 **§27-3-1. Definition of confidential information; disclosure.**

18 (a) (1) Communications and information obtained in the course
 19 of treatment or evaluation of any client or patient are confidential
 20 information. ~~Such~~

21 (2) Confidential information includes:

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

23 (B) Information transmitted by a patient or client or family
 24 ~~thereof~~ of a patient or client, for purposes relating to diagnosis

1 or treatment;

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

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

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

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

11 (3) Confidential information does not include:

12 (A) Information ~~which~~ that does not identify a client or
13 patient;

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

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

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

19 (1) In a proceeding under section four, article five of this
20 chapter to disclose the results of an involuntary examination made
21 pursuant to section two, three or four, ~~of said~~ article five of this
22 chapter;

23 (2) In a proceeding under article six-a of this chapter to
24 disclose the results of an involuntary examination made pursuant

1 ~~thereto~~ to article six-a of this chapter;

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

6 (4) To provide notice to the ~~federal~~ National Instant Criminal
7 Background Check System established pursuant to section 103(d) of
8 the Brady Handgun Violence Prevention Act, Public Law 103-159, §103,
9 107 Stat. 1536 (1993), reprinted in 18 U.S.C. §922 notes, or the
10 central state mental health registry established pursuant to article
11 seven-a, chapter sixty-one of this code, on individuals prohibited
12 by federal law or section seven, article seven, chapter sixty-one of
13 this code, from possessing firearms, in accordance with the
14 provisions of article seven-a, chapter sixty-one of this code;

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

20 ~~(5)~~ (6) To protect against a clear and substantial danger of
21 imminent injury by a patient or client to himself, herself or
22 another;

23 ~~(6)~~ (7) For treatment or internal review purposes, to staff of
24 the mental health facility where the patient is being cared for or

1 to other health professionals involved in treatment of the patient;
 2 ~~and or~~

3 ~~(7)~~ (8) Without the patient's consent as provided ~~for~~ under the
 4 Privacy Rule of the federal Health Insurance Portability and
 5 Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from
 6 the date of admission to a mental health facility, if:

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

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

12 ~~(iii)~~ (C) Prompt notice of the disclosure, the recipient of the
 13 information and the purpose of the disclosure is given to the
 14 patient or the patient's legal representative.

15 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

16 **§27-5-6. Determination of eligibility to lawfully possess firearms**
 17 **in certain proceedings.**

18 (a) The court or mental hygiene commissioner shall, upon
 19 issuing any order described in subsection (b) of this section, enter
 20 findings of fact and conclusions of law as to whether the order
 21 causes the person named in the order to become prohibited from
 22 possessing firearms or ammunition by 18 U.S.C. §922(g)(4) or
 23 subdivision (4), subsection (a), section seven, article seven,
 24 chapter sixty-one of this code. Before the court or mental hygiene

1 commissioner issues its findings of fact and conclusions of law
2 under this section, it shall permit the parties to the proceeding to
3 present evidence, arguments and proposed findings of fact and
4 conclusions of law and may hold a separate hearing on the issue.

5 (b) This section applies to:

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

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

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

12 (4) Adjudication as a mentally incompetent ward subject to
13 article fifteen, chapter forty-four of this code;

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

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

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

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

23 (c) If the court or mental hygiene commissioner finds that the
24 order described in subsection (b) of this section causes the person

1 named in the order to become prohibited from possessing firearms or
2 ammunition by 18 U.S.C. §922(g)(4) or subdivision (4), subsection
3 (a), section seven, article seven, chapter sixty-one of this code,
4 the court or mental hygiene commissioner shall:

5 (1) Enter an order containing its findings of fact and
6 conclusions of law;

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

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

16 (4) Query the State Police concealed weapons license database
17 maintained pursuant to subdivision (2), subsection (1), section
18 four, article seven, chapter sixty-one of this code to determine
19 whether the person is licensed in this state to carry concealed
20 weapons and, if so, order the clerk of the court to notify the
21 sheriff of the order and the licensee's probable disqualification
22 from continued licensure immediately in electronic form and in
23 writing within five business days on a form prescribed by the
24 Attorney General;

1 (5) Determine the appropriate public or private individual or
2 entity to act as conservator for the person's firearms and
3 ammunition; and

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

8 (d) The clerk of the court shall forward a certified copy of
9 any order finding a person to be prohibited from possessing firearms
10 or ammunition by 18 U.S.C. §922(g)(4) or subdivision (4), subsection
11 (a), section seven, article seven, chapter sixty-one of this code,
12 to the Superintendent of the State Police as required by article
13 seven-a, chapter sixty-one of this code.

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

17 (f) The Legislature declares that the purpose of this section
18 is to provide an efficient and uniform mechanism for providing
19 individuals subject to the proceedings described in subsection (b)
20 of this section a fair and adequate notice of the likely
21 implications of the proceedings on the person's eligibility to
22 lawfully possess firearms. A determination by any judge or mental
23 hygiene commissioner under this section that a person is prohibited
24 from possessing firearms and ammunition by 18 U.S.C. §922(g)(4),

1 subdivision (4), subsection (a), section seven, article seven,
2 chapter sixty-one of this code, or a combination thereof, may not be
3 used in any subsequent legal proceeding in which the person's
4 eligibility to lawfully possess firearms under 18 U.S.C. §922(g)(4)
5 or subdivision (4), subsection (a), section seven, article seven,
6 chapter sixty-one of this code, is at issue, to preclude any
7 legitimate argument that the findings of fact and conclusions of law
8 were incorrect and that the named person is not prohibited by
9 applicable federal or state law from possessing firearms.

10 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

11 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

12 **§30-29-11. Certification of law-enforcement officers to carry**
13 **concealed firearms under federal Law-Enforcement**
14 **Officers Safety Act of 2004.**

15 (a) Every qualified law-enforcement officer employed by a West
16 Virginia law-enforcement agency shall receive the qualification and
17 certification required to be considered a qualified law-enforcement
18 officer under 18 U.S.C. §926B to carry a concealed firearm
19 nationwide as provided therein. Each law-enforcement official shall
20 provide to each qualified law-enforcement officer under his or her
21 command the identification prescribed therein. A West Virginia
22 law-enforcement agency shall not charge any officer any fees or
23 costs for issuing the certification. This subsection shall not be
24 construed to require nor prohibit a law-enforcement agency from

1 permitting, requiring or prohibiting a law-enforcement officer to
2 carry his or her agency-owned service weapon off-duty.

3 (b) (1) Every West Virginia law-enforcement agency shall, at
4 least once annually, notify each honorably retired law-enforcement
5 officer who retired from that agency of the provisions of 18 U.S.C.
6 §926C that permit a qualified retired law-enforcement officer to
7 carry a concealed firearm nationwide. Each agency shall permit a
8 retired officer who meets the eligibility requirements of said law to
9 receive the qualification and certification required for the retired
10 officer to qualify as a qualified retired law-enforcement officer as
11 provided in 18 U.S.C. §926C. Each qualifying retired officer shall
12 be offered the required periodic recertification as provided in 18
13 U.S.C. §926C, which shall reasonably accommodate any physical
14 disability of the retired officer.

15 (2) Each retired officer who qualifies under this subsection
16 shall be issued a photo identification that shall be no larger than
17 three and three-eighths inches wide by two and one-eighth inches
18 long, shall be made of a hard, laminated material suitable for
19 carrying in a wallet, similar to a driver's license, and shall
20 contain the qualified retired law-enforcement officer's name,
21 address, signature and full-face color photograph, the signature of
22 the chief law-enforcement official of the issuing agency or a
23 facsimile thereof affixed by any person authorized to act on the
24 chief law-enforcement official's behalf pursuant to section five,

1 article two, chapter two of this code, the dates of issue and
2 expiration, the words "Qualified Retired Law-Enforcement Officer
3 under 18 U.S.C. §926C" in conspicuous type and such other
4 information as the chief law-enforcement official of the issuing
5 agency determines appropriate.

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

22 (4) A West Virginia law-enforcement agency may not charge its
23 retired officers a fee for periodic qualification and certification
24 under this subsection. However, the person who wishes to qualify

1 shall provide, at his or her own expense, a suitable firearm and any
2 ammunition actually expended in the qualification.

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

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

22 (7) Any person who knowingly and willfully fails to surrender
23 a revoked certification, as required by subdivision (5) of this
24 subsection or knowingly and willfully fails to surrender a

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

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

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

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

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

3 (C) The duly qualified personal representative of a deceased
4 person to whom the record pertains or, if a personal representative
5 has not qualified, the next of kin of the deceased person to whom
6 the record pertains;

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

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

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

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

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

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

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

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

17 (B) The custodian of records shall furnish to the state
18 executive committee of any political party, as defined in section
19 eight, article one, chapter three of this code, that has not
20 obtained records pursuant to this subdivision within the immediate
21 preceding six months, a current list of the names, birthdates,
22 mailing addresses, telephone numbers, e-mail addresses and county of
23 residence of all qualified retired law-enforcement officers who
24 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.
24 The custodian of records shall maintain a record of requests

1 fulfilled under this subdivision for at least five years and not
2 more than seven years. The custodian of records shall, upon request
3 of any qualified retired law-enforcement officer who has applied for
4 or been issued a certificate of qualification under this section,
5 notify the qualified retired law-enforcement officer of all
6 organizations to which the person's personally-identifying
7 information has been disclosed pursuant to this subdivision during
8 the period for which the custodian of records maintains those
9 records and provide a copy of all requests for disclosure made to
10 the custodian of records pursuant to this subdivision.

11 (d) A certification as a qualified law-enforcement officer or
12 qualified retired law-enforcement officer under this section is
13 cumulative and supplemental to any license to carry concealed
14 weapons under section four, article seven, chapter sixty-one of this
15 code or authorization under federal law or the laws of this state to
16 carry a concealed weapon without a license. This section is
17 supplemental and additional to existing rights to bear arms, and
18 nothing in this section may be construed to impair or diminish those
19 rights.

20 **CHAPTER 32. UNIFORM SECURITIES ACT.**

21 **ARTICLE 4. GENERAL PROVISIONS.**

22 **§32-4-407. Sworn investigator, investigations and subpoenas.**

23 (a) *Sworn Investigators.* --

24 (1) The commissioner may appoint special investigators to aid

1 in investigations conducted pursuant to chapter thirty-two,
2 thirty-two-a or thirty-two-b of this code.

3 (2) The commissioner, deputy commissioners and each
4 investigator, prior to entering upon the discharge of his or her
5 duties, shall take an oath before any justice of the West Virginia
6 Supreme Court of Appeals, circuit judge or magistrate which is to be
7 in the following form:

8 State of West Virginia

9 County of, to wit: I,

10, do solemnly swear that I will support the
11 Constitution of the United States, the Constitution of the State of
12 West Virginia, and I will honestly and faithfully perform the duties
13 imposed upon me under the provisions of law as a member of the
14 securities commission of West Virginia to the best of my skill and
15 judgment.

16 (Signed).....

17 Taken, subscribed and sworn to before me, this day of
18 2

19 (3) The oaths of the commissioner, deputy commissioner or
20 commissioners and investigators of the West Virginia Securities
21 Commission are to be filed and preserved in the office of the State
22 Auditor.

23 (b) *Investigations and subpoenas.* --

24 (1) The commissioner in his or her discretion: (A) May make

1 such public or private investigations within or outside of this
2 state as he or she considers necessary to determine whether any
3 person has violated or is about to violate any provision of this
4 chapter or any rule or order hereunder, or to aid in the enforcement
5 of this chapter or in the prescribing of rules and forms hereunder;
6 (B) may require or permit any person to file a statement in writing,
7 under oath or otherwise as the commissioner determines, as to all
8 the facts and circumstances concerning the matter to be
9 investigated; and (C) may publish information concerning any
10 violation of this chapter or any rule or order hereunder.

11 (2) For the purpose of any investigation or proceeding under
12 this chapter, the commissioner, deputy commissioner or
13 commissioners, if any, and special investigators appointed pursuant
14 to this section may administer oaths and affirmations, subpoena
15 witnesses, compel attendance of witnesses, take and store evidence
16 in compliance with the policies and procedures of the West Virginia
17 State Police and require the production of any books, papers,
18 correspondence, memoranda, agreements or other documents or records
19 which the commissioner finds relevant or material to the inquiry.

20 (3) In case of contumacy by, or refusal to obey a subpoena
21 issued to, any person, the circuit court of Kanawha County, upon
22 application by the commissioner, may issue to the person an order
23 requiring him or her to appear before the commissioner, or the
24 officer designated by him or her, to produce documentary evidence if

1 so ordered or to give evidence touching the matter under
2 investigation or in question. Failure to obey the order of the court
3 may be punished by the court as a contempt of court.

4 (4) No person is excused from attending and testifying or from
5 producing any document or record before the commissioner, or in
6 obedience to the subpoena of the commissioner or any officer
7 designated by him or her, or in any proceeding instituted by the
8 commissioner on the ground that the testimony or evidence
9 (documentary or otherwise) required of him or her may tend to
10 incriminate him or her or subject him or her to a penalty or
11 forfeiture; but no individual may be prosecuted or subjected to any
12 penalty or forfeiture for or on account of any transaction, matter
13 or thing concerning which he or she is compelled, after claiming his
14 or her privilege against self-incrimination to testify or produce
15 evidence (documentary or otherwise), except that the individual
16 testifying is not exempt from prosecution and punishment for perjury
17 or contempt committed in testifying.

18 (5) Civil and criminal investigations undertaken by the West
19 Virginia Securities Commission are not subject to the requirements
20 of article nine-a, chapter six of this code and chapter
21 twenty-nine-b of this code.

22 (6) Nothing in this chapter may be construed to authorize the
23 commissioner, a deputy commissioner, a special investigator
24 appointed pursuant to this section or any other employee of the

1 State Auditor, to carry ~~or use a hand gun or other firearm in the~~
2 ~~discharge of his or her duties under this article~~ concealed weapon
3 without a license.

4 (7) Nothing in this chapter ~~limits~~ may be construed to limit
5 the power of the state to punish any person for any conduct which
6 constitutes a crime.

7 **CHAPTER 33. INSURANCE.**

8 **ARTICLE 41. PRIVILEGES AND IMMUNITY.**

9 **§33-41-8. Creation of insurance fraud unit; purpose; duties;**
10 **personnel qualifications.**

11 (a) There is established the West Virginia Insurance Fraud Unit
12 within the office of the Insurance Commissioner of West Virginia.
13 The commissioner may employ full-time supervisory, legal and
14 investigative personnel for the unit, who shall be qualified by
15 training and experience in the areas of detection, investigation or
16 prosecution of fraud within and against the insurance industry to
17 perform the duties of their positions. The Director of the Fraud
18 Unit is a full-time position and shall be appointed by the
19 commissioner and serve at his or her will and pleasure. The
20 commissioner shall provide office space, equipment, supplies,
21 clerical and other staff that is necessary for the unit to carry out
22 its duties and responsibilities under this article.

23 (b) The Fraud Unit may in its discretion:

24 (1) Initiate inquiries and conduct investigations when the unit

1 has cause to believe violations of any of the following provisions
2 of this code relating to the business of insurance have been or are
3 being committed: Chapter twenty-three; chapter thirty-three; article
4 three of chapter sixty-one; and section five, article four of
5 chapter sixty-one.

6 (2) Review reports or complaints of alleged fraud related to
7 the business of insurance activities from federal, state and local
8 law-enforcement and regulatory agencies, persons engaged in the
9 business of insurance and the general public to determine whether
10 the reports require further investigation; and

11 (3) Conduct independent examinations of alleged fraudulent
12 activity related to the business of insurance and undertake
13 independent studies to determine the extent of fraudulent insurance
14 acts.

15 (c) The insurance fraud unit may:

16 (1) Employ and train personnel to achieve the purposes of this
17 article and to employ legal counsel, investigators, auditors and
18 clerical support personnel and other personnel as the commissioner
19 determines necessary from time to time to accomplish the purposes of
20 this article;

21 (2) Inspect, copy or collect records and evidence;

22 (3) Serve subpoenas issued by grand juries and trial courts in
23 criminal matters;

24 (4) Share records and evidence with federal, state or local

1 law-enforcement or regulatory agencies, and enter into interagency
2 agreements. For purposes of carrying out investigations under this
3 article, the unit shall be deemed a criminal justice agency under
4 all federal and state laws and regulations and as such shall have
5 access to any information that is available to other criminal
6 justice agencies concerning violations of the insurance laws of West
7 Virginia or related criminal laws;

8 (5) Make criminal referrals to the county prosecutors;

9 (6) Conduct investigations outside this state. If the
10 information the insurance fraud unit seeks to obtain is located
11 outside this state, the person from whom the information is sought
12 may make the information available to the insurance fraud unit to
13 examine at the place where the information is located. The insurance
14 fraud unit may designate representatives, including officials of the
15 state in which the matter is located, to inspect the information on
16 behalf of the insurance fraud unit, and the insurance fraud unit may
17 respond to similar requests from officials of other states;

18 (7) The insurance fraud unit may initiate investigations and
19 participate in the development of, and if necessary, the prosecution
20 of any health care provider, including a provider of rehabilitation
21 services, suspected of fraudulent activity related to the business
22 of insurance;

23 (8) Specific personnel, designated by the commissioner, shall
24 be permitted to operate vehicles owned or leased for the state

1 displaying Class A registration plates;

2 (9) ~~Notwithstanding any provision of this code to the contrary,~~
3 Specific personnel designated by the commissioner may carry ~~firearms~~
4 concealed weapons without a license in the course of their official
5 duties after meeting specialized qualifications established by the
6 Governor's Committee on Crime, Delinquency and Correction, which
7 shall include the successful completion of handgun training provided
8 to law-enforcement officers by the West Virginia State Police.
9 ~~Provided, That~~ However, nothing in this subsection ~~shall~~ may be
10 construed to include any person designated by the commissioner ~~as~~
11 within the definition of a law-enforcement officer as ~~that term is~~
12 ~~defined by the provisions of~~ in section one, article twenty-nine,
13 chapter thirty of this code; and

14 (10) The insurance fraud unit shall not be subject to the
15 provisions of article nine-a, chapter six of this code and the
16 investigations conducted by the insurance fraud unit and the
17 materials placed in the files of the unit as a result of any such
18 investigation are exempt from public disclosure under the provisions
19 of chapter twenty-nine-b of this code.

20 (d) The insurance fraud unit shall perform other duties as may
21 be assigned to it by the commissioner.

22 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP**

23 **AND CONSERVATORSHIP ACT.**

24 **ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

1 **§44A-2-6. Notice of hearing.**

2 (a) Upon the filing of the petition and evaluation report, the
3 court shall promptly issue a notice fixing the date, hour and
4 location for a hearing to take place within sixty days.

5 (b) The ~~alleged protected person~~ petitioner shall be personally
6 ~~served~~ serve the alleged protected person with the notice, a copy of
7 the petition and the evaluation report not less than fourteen days
8 before the hearing. The alleged protected person may not waive
9 notice, and a failure to properly notify the alleged protected
10 person shall be jurisdictional.

11 (c) The petitioner shall, at least fourteen days before the
12 hearing, mail a copy of the notice, together with a copy of the
13 petition, ~~shall be mailed~~ by certified mail, return receipt
14 requested, ~~by the petitioner, at least fourteen days before the~~
15 ~~hearing,~~ to all individuals seven years of age or older and to all
16 entities whose names and post office addresses appear in the
17 petition. In the case of a missing person, the petitioner shall, at
18 least fourteen days before the hearing, mail a copy of the petition
19 for the appointment of a conservator ~~shall be mailed~~ by certified
20 mail, return receipt requested, ~~by the petitioner, at least fourteen~~
21 ~~days before the hearing~~ to the last known address of the missing
22 person. The petitioner shall file a copy of certified mail return
23 receipts ~~shall be filed~~ in the office of the circuit clerk on or
24 before the date of hearing.

1 (d) The notice shall include a brief statement in large print
 2 of the purpose of the proceedings, and shall inform the alleged
 3 protected person of the right to appear at the hearing, the right to
 4 an attorney and the right to object to the proposed appointment.
 5 Additionally, the notice shall include the following statement in
 6 large print:

7 **POSSIBLE CONSEQUENCES OF A COURT FINDING**

8 **THAT YOU ARE INCAPACITATED**

9 At the hearing you may lose many of your rights. A guardian may
 10 be appointed to make personal decisions for you. A conservator may
 11 be appointed to make decisions concerning your property and
 12 finances. The appointment may affect control of how you spend your
 13 money, how your property is managed and controlled, who makes your
 14 medical decisions, where you live, whether you are allowed to vote
 15 and other important rights. If the court enters a final order
 16 appointing a guardian or conservator for you, you may become
 17 prohibited by federal law and state law or both federal law and
 18 state law from possessing firearms and ammunition.

19 (e) ~~No~~ A person may not be appointed a guardian or conservator
 20 without first receiving proper notice and having the opportunity for
 21 a hearing.

22 **CHAPTER 48. DOMESTIC RELATIONS.**

23 **ARTICLE 22. ADOPTION.**

24 **§48-22-804. Prohibited conditions on adoptions--firearms and**

1 **ammunition.**

2 (a) An agency may not:

3 (1) Make a determination that a person is unsuitable to adopt
4 based on the lawful possession, storage or use of a firearm or
5 ammunition by any member of the adoptive home;

6 (2) Require an adoptive parent or prospective adoptive parent
7 to disclose information relating to a person's lawful possession,
8 storage or use of a firearm or ammunition as a condition to adopt;
9 or

10 (3) Restrict the lawful possession, storage or use of a firearm
11 or ammunition as a condition for a person to adopt.

12 (b) In this section, the terms "firearm" and "ammunition" have
13 the same meanings as in section two, article seven, chapter
14 sixty-one of this code.

15 **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

16 **§48-27-403. Emergency protective orders of court; hearings; persons**
17 **present.**

18 (a) Upon the filing of a verified petition under this article,
19 the magistrate court may enter an emergency protective order as it
20 may deem necessary to protect the petitioner or minor children from
21 domestic violence and, upon good cause shown, may do so *ex parte*
22 without the necessity of bond being given by the petitioner. Clear
23 and convincing evidence of immediate and present danger of abuse to
24 the petitioner or minor children shall constitute good cause for the

1 issuance of an emergency protective order pursuant to this section.
2 If the respondent is not present at the proceeding, the petitioner
3 or the petitioner's legal representative shall certify to the court,
4 in writing, the efforts which have been made to give notice to the
5 respondent or just cause why notice should not be required. Copies
6 of medical reports or records may be admitted into evidence to the
7 same extent as though the original thereof. The custodian of such
8 records shall not be required to be present to authenticate such
9 records for any proceeding held pursuant to this subsection. ~~If the
10 magistrate court determines to enter an emergency protective order,
11 the order shall prohibit the respondent from possessing firearms.~~

12 (b) Following the proceeding, the magistrate court shall order
13 a copy of the petition to be served immediately upon the respondent,
14 together with a copy of any emergency protective order entered
15 pursuant to the proceedings, a notice of the final hearing before
16 the family court and a statement of the right of the respondent to
17 appear and participate in the final hearing, as provided in
18 subsection (d) of this section. Copies of any order entered under
19 the provisions of this section, a notice of the final hearing before
20 the family court and a statement of the right of the petitioner to
21 appear and participate in the final hearing, as provided in
22 subsection (d) of this section, shall also be delivered to the
23 petitioner. Copies of any order entered shall also be delivered to
24 any law-enforcement agency having jurisdiction to enforce the order,

1 including municipal police, the county sheriff's office and local
2 office of the State Police, within twenty-four hours of the entry of
3 the order. An emergency protective order is effective until modified
4 by order of the family court upon hearing as provided in subsection
5 (d) of this section. The order is in full force and effect in every
6 county in this state.

7 (c) Subsequent to the entry of the emergency protective order,
8 service on the respondent and the delivery to the petitioner and
9 law-enforcement officers, the court file shall be transferred to the
10 office of the clerk of the circuit court for use by the family
11 court.

12 (d) The family court shall schedule a final hearing on each
13 petition in which an emergency protective order has been entered by
14 a magistrate. The hearing shall be scheduled not later than ten days
15 following the entry of the order by the magistrate. The notice of
16 the final hearing shall be served on the respondent and delivered to
17 the petitioner, as provided in subsection (b) of this section, and
18 ~~must set forth~~ shall specify the hearing date, time and place and
19 include a statement of the right of the parties to appear and
20 participate in the final hearing. The notice ~~must~~ shall also ~~provide~~
21 contain a warning that the petitioner's failure to appear will
22 result in a dismissal of the petition and that the respondent's
23 failure to appear may result in the entry of a protective order
24 against him or her for a period of ninety or one hundred eighty

1 days, as determined by the court. The notice ~~must~~ shall also
2 include the name, mailing address, physical location and telephone
3 number of the family court having jurisdiction over the proceedings.
4 The notice to the respondent shall also include a clear and
5 conspicuous warning that, if the court issues an order, the
6 respondent may become prohibited by federal and state law from
7 possessing firearms while the order is in effect and that if he or
8 she is licensed to carry concealed weapons, the license may be
9 suspended while the order is in effect. To facilitate the
10 preparation of the notice of final hearing required by the
11 provisions of this subsection, the family court ~~must~~ shall provide
12 the magistrate court with a day and time in which final hearings may
13 be scheduled before the family court within the time required by
14 law.

15 (e) Upon final hearing the petitioner ~~must~~ shall prove, by a
16 preponderance of the evidence, the allegation of domestic violence
17 or that he or she reported or witnessed domestic violence against
18 another and has, as a result, been abused, threatened, harassed or
19 has been the subject of other actions to attempt to intimidate him
20 or her, or such petition shall be dismissed by the family court. If
21 the respondent has not been served with notice of the emergency
22 protective order, the hearing may be continued to permit service to
23 be effected. The failure to obtain service upon the respondent does
24 not constitute a basis to dismiss the petition. Copies of medical

1 reports may be admitted into evidence to the same extent as though
2 the original thereof, upon proper authentication, by the custodian
3 of such records.

4 (f) ~~No~~ A person requested by a party to be present during a
5 hearing held under the provisions of this article ~~shall~~ may not be
6 precluded from being present unless ~~such~~ that person is to be a
7 witness in the proceeding and a motion for sequestration has been
8 made and such motion has been granted. A person found by the court
9 to be disruptive may be precluded from being present.

10 (g) Upon hearing, the family court may dismiss the petition or
11 enter a protective order for a period of ninety days or, in the
12 discretion of the court, for a period of one hundred eighty days.
13 The hearing may be continued on motion of the respondent, at the
14 convenience of the court. Otherwise, the hearing may be continued by
15 the court no more than seven days. If a hearing is continued, the
16 family court may modify the emergency protective order as it deems
17 necessary.

18 (h) Notwithstanding any other provision of this code to the
19 contrary, a petition filed pursuant to this section that results in
20 the issuance of an emergency protective order naming a juvenile as
21 the respondent in which the petition for the emergency protective
22 order is filed by or on behalf of the juvenile's parent, guardian or
23 custodian or other person with whom the juvenile resides shall be
24 treated as a petition authorized by section seven, article five,

1 chapter forty-nine of this code, alleging the juvenile is a juvenile
2 delinquent: *Provided*, That the magistrate court shall notify the
3 prosecuting attorney in the county where the emergency protective
4 order is issued within twenty-four hours of the issuance of the
5 emergency protective order and the prosecuting attorney may file an
6 amended verified petition to comply with the provisions of
7 subsection (a) of section seven, article five, chapter forty-nine of
8 this code within two judicial days.

9 **§48-27-502. Mandatory provisions in protective order.**

10 (a) Every protective order shall contain the full legal name
11 and date of birth of the respondent and a clear and conspicuous
12 statement of the order's dates of issue and expiration. A protective
13 order ~~must~~ shall order the respondent to refrain from abusing,
14 harassing, stalking, threatening or otherwise intimidating the
15 petitioner or the minor children, or engaging in other conduct that
16 would place the petitioner or the minor children in reasonable fear
17 of bodily injury.

18 (b) ~~The~~ Every protective order ~~must~~ shall inform the
19 respondent: ~~that he or she is prohibited from possessing any firearm~~
20 ~~or ammunition, notwithstanding the fact that the respondent may have~~
21 ~~a valid license to possess a firearm, and~~

22 (1) Of the provisions of 18 U.S.C. §§922(g) and 924(a)(2) and
23 subdivision (8), subsection (a), section seven, article seven,
24 chapter sixty-one of this code;

1 (2) That possession of a firearm or ammunition while subject to
2 the court's protective order ~~is~~ may constitute a criminal offense
3 under ~~federal law~~ 18 U.S.C. §922(g)(8) and subdivision (8),
4 subsection (a), section seven, article seven, chapter sixty-one of
5 this code;

6 (3) That, if the protective order causes the respondent to
7 become prohibited from possessing firearms by 18 U.S.C. §922(g)(8)
8 or subdivision (8), subsection (a), section seven, article seven,
9 chapter sixty-one of this code, the respondent must immediately
10 surrender any licenses to purchase, possess, carry or transport
11 firearms or concealed weapons issued by this state or any other
12 state to the respective issuing agencies;

13 (4) That a delay or failure of an issuing agency to suspend or
14 revoke any license to purchase, possess, carry or transport firearms
15 or concealed weapons does not constitute a defense to any alleged
16 violation of 18 U.S.C. §922(g)(8) or subdivision (8), subsection
17 (a), section seven, article seven, chapter sixty-one of this code;
18 and

19 (5) That a conviction under 18 U.S.C. §922(g)(8) for unlawfully
20 possessing a firearm or ammunition while under the protective order
21 may result in the respondent being prohibited for life from
22 possessing a firearm or ammunition pursuant to 18 U.S.C. §922(g)(1),
23 notwithstanding any future expiration, revocation or other
24 termination of the protective order.

1 (c) The protective order ~~must~~ shall inform the respondent that
2 the order is in full force and effect in every county of this state.

3 (d) The protective order ~~must~~ shall contain on its face the
4 following statement, printed in bold-faced type or in capital
5 letters:

6 "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE THAT MAY BE
7 PUNISHED BY CONFINEMENT IN A REGIONAL ~~OR COUNTY~~ JAIL FOR AS LONG AS
8 ONE YEAR AND BY A FINE OF AS MUCH AS ~~TWO THOUSAND DOLLARS~~ \$4,000".

9 **§48-27-601. Filing of orders with law-enforcement agency; affidavit**
10 **as to award of possession of real property; service**
11 **of order on respondent.**

12 (a) (1) Upon entry of an order pursuant to section 27-403 or
13 part 27-501, *et seq.*, or an order entered pursuant to part 5-501, *et*
14 *seq.*, granting relief provided ~~for~~ by this article, ~~a copy of the~~
15 ~~order~~ the court or the clerk of the court shall, no later than the
16 close of the next business day, ~~be transmitted by the court or the~~
17 ~~clerk of the court~~ transmit a certified copy of the order to a local
18 office of the municipal police, the county sheriff and the West
19 Virginia State Police, where it shall be placed in a confidential
20 file, with access provided only to the law-enforcement agency and
21 the respondent named on the order.

22 (2) Every court that issues an order described in subdivision
23 (1) of this subsection shall, at the time of issuing the order,
24 enter findings of fact and conclusions of law regarding whether the

1 order results in the respondent becoming prohibited by subdivision
2 (8), subsection (a), section seven, article seven, chapter sixty-one
3 of this code or 18 U.S.C. §922(g) (8) from possessing firearms while
4 the order is in effect. The respondent shall have a reasonable
5 opportunity to be heard and to present evidence and arguments
6 against a proposed finding that the order will cause the respondent
7 to be prohibited by subdivision (8), subsection (a), section seven,
8 article seven, chapter sixty-one of this code or 18 U.S.C.
9 §922(g) (8) from possessing firearms while the order is in effect. If
10 the court finds that the order results in the respondent becoming
11 prohibited by subdivision (8), subsection (a), section seven,
12 article seven, chapter sixty-one of this code or 18 U.S.C.
13 §922(g) (8) from possessing firearms while the order is in effect,
14 the court shall immediately transmit three certified copies of the
15 order to the Superintendent of the State Police for the purposes
16 described in subdivisions (3) through (5) of this subsection.

17 (3) Upon receipt of a certified copy of an order pursuant to
18 subdivision (2) of this subsection by the superintendent of the
19 State Police, the superintendent shall:

20 (A) Transmit a certified copy of the order to the Federal
21 Bureau of Investigation or other federal agency responsible for
22 maintaining the National Instant Criminal Background Check System
23 established pursuant to Section 103(d) of the Brady Handgun Violence
24 Protection Act, Public Law 103-159, §103, 107 Stat. 1536 (1993),

1 reprinted in 18 U.S.C. §922 notes; and

2 (B) Search the state concealed weapons license database
3 maintained pursuant to section four, article seven, chapter
4 sixty-one of this code to determine whether the respondent is
5 currently licensed in this state to carry concealed weapons and, if
6 so, notify the issuing sheriff of record of the licensee's probable
7 disqualification from continued licensure and transmit a certified
8 copy of the order to that sheriff.

9 (4) Upon receipt of a certified copy of an order described in
10 paragraph (B), subdivision (3) of this subsection by a sheriff, the
11 sheriff shall determine whether the respondent is currently licensed
12 to carry concealed weapons pursuant to section four or five, article
13 seven, chapter sixty-one of this code and, if the respondent is so
14 licensed, the sheriff shall:

15 (A) If the sheriff is the issuing sheriff of record, determine,
16 in consultation with the prosecuting attorney, whether the order is
17 an order that results in the respondent becoming prohibited by
18 subdivision (8), subsection (a), section seven, article seven,
19 chapter sixty-one of this code or 18 U.S.C. §922(g)(8) from
20 possessing firearms and, if so, comply with the applicable license
21 suspension provisions of subsection (q), section four, article
22 seven, chapter sixty-one of this code; or

23 (B) If the sheriff is not the issuing sheriff of record,
24 forward a certified copy of the order to the issuing sheriff of

1 record, who shall comply with this subdivision and subdivision (5)
2 of this subsection upon receipt of a certified copy of the order.

3 (5) Before any sheriff may initiate suspension or revocation
4 proceedings against any licensee under section four or five, article
5 seven, chapter sixty-one of this code, the sheriff shall
6 independently verify that the information received by the sheriff
7 pertains to the named licensee and not another person and that the
8 information proves an actual disqualification of the named licensee
9 from continued licensure, as provided by subsection (q), section
10 four, article seven, chapter sixty-one of this code.

11 (b) A sworn affidavit may be executed by a party who has been
12 awarded exclusive possession of the residence or household, pursuant
13 to an order entered pursuant to section 27-503 and shall be
14 delivered to ~~such~~ the appropriate law-enforcement agencies
15 simultaneously with any order giving the party's consent for a
16 law-enforcement officer to enter the residence or household, without
17 a warrant, to enforce the protective order or temporary order.

18 (c) Orders shall be promptly served upon the respondent.
19 Failure to serve a protective order on the respondent does not stay
20 the effect of a valid order if the respondent has actual notice of
21 the existence and contents of the order.

22 (d) Any law-enforcement agency in this state in possession of
23 or with notice of the existence of an order issued pursuant to the
24 provisions of sections 27-403 or 27-501 of this article or the

1 provisions of section 5-509 of this chapter which is in effect or
2 has been expired for thirty days or less that receives a report that
3 a person protected by such an order has been reported to be missing
4 shall immediately follow its procedures for investigating missing
5 persons. ~~No~~ An agency or department policy delaying the beginning of
6 an investigation ~~shall~~ may not have any force or effect.

7 (e) The provisions of subsection (d) of this section shall be
8 applied where a report of a missing person is made which is
9 accompanied by a sworn affidavit that the person alleged to be
10 missing was, at the time of his or her alleged disappearance, being
11 subjected to treatment which meets the definition of domestic
12 battery or assault set forth in section twenty-eight, article two,
13 chapter sixty-one of this code.

14 **§48-27-1002. Arrest in domestic violence matters; conditions.**

15 (a) Notwithstanding any provision of this code to the contrary,
16 if a person is alleged to have committed ~~a violation of the~~
17 ~~provisions of subsection (a) or (b),~~ any offense under section
18 twenty-eight, article two, chapter sixty-one of this code, ~~against~~
19 ~~a family or household member~~ in addition to any other authority to
20 arrest granted by this code, a law-enforcement officer ~~has authority~~
21 ~~to~~ may arrest that person without ~~first obtaining~~ a warrant if:

22 (1) The law-enforcement officer has observed credible
23 corroborative evidence that an offense under section twenty-eight,
24 article two, chapter sixty-one of this code, has occurred; and

1 ~~either:~~

2 (2) (A) The law-enforcement officer has received, from the
3 victim or a witness, an oral or written allegation of facts
4 constituting a violation of section twenty-eight, article two,
5 chapter sixty-one of this code; or

6 ~~(3)~~ (B) The law-enforcement officer has observed credible
7 evidence that the accused committed the offense.

8 (b) For the purposes of this section, credible corroborative
9 evidence means evidence that is worthy of belief and corresponds to
10 the allegations of one or more elements of the offense and may
11 include, but is not limited to, the following:

12 (1) *Condition of the alleged victim.* -- One or more contusions,
13 scratches, cuts, abrasions, or swellings; missing hair; torn
14 clothing or clothing in disarray consistent with a struggle;
15 observable difficulty in breathing or breathlessness consistent with
16 the effects of choking or a body blow; observable difficulty in
17 movement consistent with the effects of a body blow or other
18 unlawful physical contact.

19 (2) *Condition of the accused.* -- Physical injury or other
20 conditions similar to those set out for the condition of the victim
21 which are consistent with the alleged offense or alleged acts of
22 self-defense by the victim.

23 (3) *Condition of the scene.* -- Damaged premises or furnishings;
24 disarray or misplaced objects consistent with the effects of a

1 struggle.

2 (4) *Other conditions.* -- Statements by the accused admitting
3 one or more elements of the offense; threats made by the accused in
4 the presence of an officer; audible evidence of a disturbance heard
5 by the dispatcher or other agent receiving the request for police
6 assistance; written statements by witnesses.

7 (c) Whenever any person is arrested pursuant to subsection (a)
8 of this section, the arrested person shall be taken before a
9 magistrate within the county in which the offense charged is alleged
10 to have been committed in a manner consistent with the provisions of
11 Rule 1 of the Administrative Rules for the Magistrate Courts of West
12 Virginia.

13 (d) If an arrest for a violation of subsection (c), section
14 twenty-eight, article two, chapter sixty-one of this code is
15 authorized pursuant to this section, that fact constitutes prima
16 facie evidence that the accused constitutes a threat or danger to
17 the victim or other family or household members for the purpose of
18 setting conditions of bail pursuant to section seventeen-c, article
19 one-c, chapter sixty-two of this code.

20 (e) Whenever any person is arrested pursuant to the provisions
21 of this article or for a violation of an order issued pursuant to
22 section five hundred nine or subsections (b) and (c) of section six
23 hundred eight, article five of this chapter, the arresting officer,
24 subject to the requirements of the Constitutions of this state and

1 of the United States:

2 (1) Shall seize all weapons that are alleged to have been
3 involved or threatened to be used in the commission of domestic
4 violence;

5 (2) May seize a weapon that is in plain view of the officer or
6 was discovered pursuant to a consensual search, as necessary for the
7 protection of the officer or other persons; and

8 (3) May seize all weapons that are possessed in violation of a
9 ~~valid protective order~~ federal law or article seven, chapter
10 sixty-one of this code.

11 **CHAPTER 49. CHILD WELFARE.**

12 **ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR**
13 **CHILD WELFARE.**

14 **§49-2B-3. Licensure, certification, approval and registration**
15 **requirements.**

16 (a) Any person, corporation or child welfare agency, other than
17 a state agency, which operates a residential child care facility, a
18 child-placing agency or a day care center shall obtain a license
19 from the department.

20 (b) Any residential child care facility, day care center or any
21 child-placing agency operated by the state shall obtain approval of
22 its operations from the secretary. ~~Provided, That this requirement~~
23 ~~does not apply to any juvenile detention facility or juvenile~~
24 ~~correctional facility operated by or under contract with the~~

~~1 Division of Juvenile Services, created pursuant to section two,~~
~~2 article five-e of this chapter, for the secure housing or holding of~~
~~3 juveniles committed to its custody~~ The facilities and placing
4 agencies shall maintain the same standards of care applicable to
5 licensed facilities, centers or placing agencies of the same
6 category.

7 (c) Any family day care facility which operates in this state,
8 including family day care facilities approved by the department for
9 receipt of funding, shall obtain a statement of certification from
10 the department.

11 (d) Every family day care home which operates in this state,
12 including family day care homes approved by the department for
13 receipt of funding, shall obtain a certificate of registration from
14 the department.

15 (e) This section does not apply to:

16 (1) A kindergarten, preschool or school education program which
17 is operated by a public school or which is accredited by the state
18 Department of Education, or any other kindergarten, preschool or
19 school programs which operate with sessions not exceeding four hours
20 per day for any child;

21 (2) An individual or facility which offers occasional care of
22 children for brief periods while parents are shopping, engaging in
23 recreational activities, attending religious services or engaging in
24 other business or personal affairs;

1 (3) Summer recreation camps operated for children attending
2 sessions for periods not exceeding thirty days;

3 (4) Hospitals or other medical facilities which are primarily
4 used for temporary residential care of children for treatment,
5 convalescence or testing;

6 (5) Persons providing family day care solely for children
7 related to them; or

8 (6) Any juvenile detention facility or juvenile correctional
9 facility operated by or under contract with the Division of Juvenile
10 Services, created pursuant to section two, article five-e of this
11 chapter, for the secure housing or holding of juveniles committed to
12 its custody.

13 (f) The secretary ~~is hereby authorized to issue~~ may promulgate
14 an emergency rule relating to conducting a survey of existing
15 facilities in this state in which children reside on a temporary
16 basis in order to ascertain whether they should be subject to
17 licensing under this article or applicable licensing provisions
18 relating to behavioral health treatment providers.

19 (g) Any informal family child care home or relative family
20 child care home may voluntarily register and obtain a certificate of
21 registration from the department.

22 (h) Any child care service that is licensed or receives a
23 certificate of registration shall have a written plan for evacuation
24 in the event of fire, natural disaster or other threatening

1 situation that may pose a health or safety hazard to the children in
2 the child care service.

3 (1) The plan shall include, but not be limited to:

4 (A) A designated relocation site and evacuation;

5 (B) Procedures for notifying parents of the relocation and
6 ensuring family reunification;

7 (C) Procedures to address the needs of individual children
8 including children with special needs;

9 (D) Instructions relating to the training of staff or the
10 reassignment of staff duties, as appropriate;

11 (E) Coordination with local emergency management officials; and

12 (F) A program to ensure that appropriate staff are familiar
13 with the components of the plan.

14 (2) A child care service shall update the evacuation plan by
15 December 31, of each year. If a child care service fails to update
16 the plan, no action shall be taken against the child care service's
17 license or registration until notice is provided and the child care
18 service is given thirty days after the receipt of notice to provide
19 an updated plan.

20 (3) A child care service shall retain an updated copy of the
21 plan for evacuation and shall provide notice of the plan and
22 notification that a copy of the plan will be provided upon request
23 to any parent, custodian or guardian of each child at the time of
24 the child's enrollment in the child care service and when the plan

1 is updated.

2 (4) All child care centers and family child care facilities
3 shall provide the plan and each updated copy of the plan to the
4 Director of the Office of Emergency Services in the county where the
5 center or facility is located.

6 (i) The requirements for the licensure and operation of a
7 child-placing agency shall include compliance with the requirements
8 of section eight hundred four, article twenty-two, chapter
9 forty-eight of this code and sections sixteen and seventeen, article
10 seven, chapter sixty-one of this code.

11 **CHAPTER 50. MAGISTRATE COURTS.**

12 **ARTICLE 1. COURTS AND OFFICERS.**

13 **§50-1-14. Duties of sheriff; service of process; bailiff.**

14 (a) ~~It shall be the duty of~~ Each sheriff ~~to~~ shall execute all
15 civil and criminal process from any magistrate court which may be
16 directed to ~~such~~ the sheriff. Process shall be served in the same
17 manner as provided by law for process from circuit courts.

18 (b) Subject to the supervision of the chief justice of the
19 Supreme Court of Appeals or of the judge of the circuit court, or
20 the chief judge thereof if there is more than one judge of the
21 circuit court, ~~it shall be the duty of~~ the sheriff or his or her
22 designated deputy ~~to~~ shall serve as bailiff of a magistrate court
23 upon the request of the magistrate. ~~Such~~ This service shall also be
24 subject to such administrative rules as may be promulgated by the

1 Supreme Court of Appeals. A writ of mandamus shall lie on behalf of
2 a magistrate to enforce the provisions of this section.

3 ~~(b)~~ (c) The sheriff of any county may employ, by and with the
4 consent of the county commission, one or more persons whose sole
5 duties shall be the service of civil process and the service of
6 subpoenas and subpoenas duces tecum. ~~Any such person~~ A sheriff's
7 process server employed pursuant to this subsection shall not be
8 considered a deputy or deputy sheriff within the meaning of
9 subdivision (2), subsection (a), section two, article fourteen,
10 chapter seven of this code. ~~nor shall any such person be authorized~~
11 ~~to~~

12 (d) A sheriff's process server employed pursuant to subsection
13 (c) of this section may carry ~~deadly~~ concealed weapons without a
14 license in the performance of his or her official duties ~~Provided,~~
15 ~~That the sheriff may authorize an employee whose sole duties involve~~
16 ~~service of civil process to carry a firearm if the employee~~ if:(1)
17 The employee: (A) Has been previously certified as a West Virginia
18 law-enforcement officer; or (B) completes all training requirements
19 otherwise applicable to deputy sheriffs for the use and handling of
20 firearms; ~~Provided, however, That~~ (2) the sheriff may authorize
21 previously certified West Virginia law-enforcement officers
22 authorizes the employee, in writing, to carry a ~~deadly~~ concealed
23 weapons without a license in the performance of ~~the~~ his or
24 her official duties ~~of the officers~~ under ~~the provisions of this~~

1 section; ~~Provided further, That these officers and employees~~
 2 ~~maintain~~ (3) the employee maintains yearly weapons qualifications
 3 otherwise applicable to deputy sheriffs; and ~~are~~ (4) the employee is
 4 bonded through the office of the sheriff. This subsection may not be
 5 construed to diminish the right of a sheriff's process server to
 6 keep and bear arms in the same manner as he or she may lawfully do
 7 so as a private citizen.

8 **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

9 **ARTICLE 18. LIMITATIONS OF ACTIONS REGARDING FIREARMS MANUFACTURE,**
 10 **SALE, INSTRUCTION AND TRAINING.**

11 **§55-18-1. Legislative declarations and purpose.**

12 The Legislature hereby finds and declares:

13 (a) The lawful design, marketing, manufacture or sale of
 14 firearms or ammunition to the public is not an unreasonably
 15 dangerous activity and does not constitute a nuisance per se.

16 (b) To the extent the Constitution of this state and the United
 17 States protect citizens' rights to keep and bear arms, the
 18 Legislature finds and declares that it is within the strict
 19 prerogative of its own authority, and not the authority of any
 20 county or municipality, to determine whether any manufacturer,
 21 dealer or seller of firearms has engaged in any act or omission that
 22 would create a cognizable action for damages, injunction or
 23 otherwise.

24 (c) Providing qualified immunity from civil liability for

1 qualified firearms safety instructors, certifying organizations,
2 course sponsors and course participants, is a reasonable and proper
3 means of promoting and encouraging widespread availability of and
4 participation in instruction and training in reasonable and accepted
5 firearms safety principles and techniques.

6 **§55-18-3. Firearms safety instruction; limitations on civil**
7 **liability.**

8 (a) In this section:

9 (1) "Certifying organization" means a public department, agency
10 or office with responsibility for or oversight of firearms and
11 firearms-related issues, or an established not-for-profit
12 organization with expertise and experience with firearms safety
13 issues.

14 (2) "Firearm" means any firearm, as defined in section two,
15 article seven, chapter sixty-one of this code, and any ammunition
16 and accoutrements attendant to the lawful possession and use of a
17 firearm.

18 (3) "Qualified firearms safety instructor" means the
19 instructor, assistant instructor or acting instructor of a firearms
20 education and safety course or program who has been certified by a
21 certifying organization as a trained, knowledgeable and responsible
22 adult qualified to provide firearms education and safety instruction
23 to youth or adults.

24 (4) "Reasonable and accepted firearms safety principles and

1 techniques" include, but are not limited to, treating a firearm as
2 if it is always loaded, safe handling and transport of a firearm and
3 proper use of the firearm within diverse environmental surroundings.

4 (b) (1) Except as otherwise provided by subdivision (2) of this
5 subsection, a qualified firearms safety instructor is immune from
6 liability in a civil action resulting from:

7 (A) Any death, injury, or damage that occurs during the course
8 of instruction as a result of the reasonable inherent risks of
9 firearms use; or

10 (B) Any firearms-related death, injury, or damage caused by a
11 course participant after completion of the course.

12 (2) Subdivision (1) of this subsection does not apply if:

13 (A) The acts or omissions of the qualified firearms safety
14 instructor during the course of instruction demonstrate a willful or
15 reckless disregard for reasonable and accepted firearms safety
16 principles and techniques; or

17 (B) A claim against the qualified firearms safety instructor is
18 unrelated to the conduction of the firearms safety course.

19 (c) (1) Except as otherwise provided in subdivision (2) of this
20 subsection, a certifying organization or course sponsor, including
21 an organization that permits a course to be conducted within its
22 facility, is immune from liability in a civil action resulting from:

23 (A) Any death, injury, or damage that occurs during the course
24 of instruction as a result of the reasonable inherent risks of

1 firearms use; or

2 (B) Any firearms-related death, injury, or damage caused by a
3 course participant after completion of the course.

4 (2) Subdivision (1) of this subsection does not apply if a
5 claim against the certifying organization or course sponsor
6 resulting from the actions of a participant after completion of a
7 course is unrelated to the conduction of the firearms safety course.

8 (d) (1) Except as otherwise provided by subdivision (2) of this
9 subsection, a student in a firearms safety course taught by a
10 qualified firearms safety instructor is immune from liability in a
11 civil action resulting from any death, injury, or damage that occurs
12 during the course of instruction as a result of the reasonable
13 inherent risks of firearms use.

14 (2) Subdivision (1) of this subsection does not apply if the
15 acts or omissions of the student demonstrate a willful or reckless
16 disregard for reasonable and accepted firearms safety principles and
17 techniques or a willful or reckless disregard for the directions of
18 the course instructor.

19 (e) This section shall be construed only to provide immunity
20 from liability in civil actions for individuals who engage in
21 conduct protected by this section and may not be construed to create
22 any new duty of care or cause of action.

23 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

24 **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

1 **§61-5-8. Aiding escape and other offenses relating to adults and**
2 **juveniles in custody or confinement; penalties.**

3 (a) ~~Where any adult or juvenile is lawfully detained in custody~~
4 ~~or confinement in any jail, state correctional facility, juvenile~~
5 ~~facility or juvenile detention center, if Any other person who~~
6 knowingly and willfully delivers anything into the place of custody
7 or confinement of ~~the adult or juvenile~~ any inmate with the intent
8 to aid or facilitate the ~~adult's or juvenile's~~ inmate's escape or
9 attempted escape ~~therefrom~~ from lawful custody or confinement, or ~~if~~
10 ~~the other person~~ forcibly rescues or attempts to forcibly rescue an
11 ~~adult or a juvenile therefrom~~ inmate from lawful custody or
12 confinement, ~~the other person~~ is guilty of a felony and, upon
13 conviction thereof, shall be ~~confined in a state correctional~~
14 ~~facility~~ imprisoned for not less than one year nor more than ten
15 years.

16 (b) ~~Where any adult or juvenile is lawfully detained in custody~~
17 ~~or confinement in any jail, a state correctional facility or a~~
18 ~~juvenile facility or juvenile detention center, if Any other person~~
19 who, without the express authority and permission of the facility
20 supervisor, knowingly and willfully delivers any money or other
21 thing of value, any written or printed matter, any article of
22 merchandise, food or clothing, any medicine, utensil or instrument
23 of any kind to ~~the adult or juvenile~~ without the ~~express authority~~
24 ~~and permission of the supervising officer~~ and any inmate with

1 knowledge that the ~~adult or juvenile~~ inmate is lawfully detained ~~the~~
2 ~~other person~~ is guilty of a misdemeanor and, upon conviction
3 thereof, shall be fined not less than \$50 nor more than \$500, ~~and~~
4 confined in jail for not less than three months nor more than ~~twelve~~
5 ~~months:~~ ~~Provided, That the provisions of~~ one year, or both.
6 However, this ~~section do~~ subsection does not ~~prohibit~~ apply to an
7 attorney or ~~his or her employees from supplying~~ or any employee or
8 other agent of an attorney who supplies any written or printed
9 material to an ~~adult or juvenile~~ inmate which pertains to ~~that the~~ the
10 attorney's representation of the ~~adult or juvenile~~ inmate.

11 (c) (1) ~~If~~ Any person who, without the express authority and
12 permission of the facility supervisor, knowingly and willfully
13 transports any alcoholic liquor, nonintoxicating beer, poison,
14 implement of escape, dangerous material, weapon or ~~any~~ controlled
15 substance ~~as defined by chapter sixty-a of this code onto~~ into the
16 ~~grounds~~ secure area of any jail, ~~state a~~ correctional facility
17 ~~juvenile facility or juvenile detention center~~ within this state and
18 ~~is unauthorized by law to do so, or is unauthorized by the persons~~
19 ~~supervising the facility, the person~~ is guilty of a felony and, upon
20 conviction thereof, shall be fined not less than \$1,000 nor more
21 than \$5,000, or ~~confined~~ imprisoned in a state correctional facility
22 not less than ~~two years~~ one year nor more than ~~ten~~ five years, or
23 both fined or imprisoned, or, in the discretion of the court, be
24 confined in jail not more than one year and fined not more than

1 \$500. Subsection (e), section fifteen, article seven of this
2 chapter, applies to this subdivision only when the proscribed
3 contraband is a weapon and the defendant is licensed to carry
4 concealed weapons pursuant to section four or five, article seven of
5 this chapter, or authorized to carry a concealed weapon without a
6 license pursuant to subsection (d), section three, article seven of
7 this chapter.

8 (2) ~~If Any person who, without the express authority and~~
9 ~~permission of the facility supervisor, knowingly and willfully and~~
10 ~~knowingly transports or causes to be transported any~~
11 ~~telecommunications device into or upon any portion of any jail,~~
12 ~~state the secure area of a correctional facility, juvenile facility~~
13 ~~or juvenile detention center within this state that is not generally~~
14 ~~open and accessible to members of the public without prior approval~~
15 ~~from the Warden/Administrator or designee, and such person is~~
16 ~~unauthorized by law to do so, or is unauthorized by the persons~~
17 ~~supervising the facility after having been given notice in the form~~
18 ~~required by paragraph (C), subdivision (3) of this subsection, that~~
19 ~~the act is unlawful, the person is guilty of a misdemeanor and, upon~~
20 ~~conviction thereof, shall be fined not less than \$100 nor more than~~
21 ~~\$500, or confined in jail not more than one year, or both fined and~~
22 ~~confined.~~

23 (3) The facility supervisor of each correctional facility
24 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~~
24 ~~persons supervising the facility, the person inmate is guilty of a~~

1 felony and, upon conviction thereof, shall be fined not less than
2 \$1,000 nor more than \$5,000, or ~~confined~~ imprisoned in a state
3 correctional facility not less than ~~one year~~ two years nor more than
4 ~~five~~ ten years, or both fined and imprisoned. Section fifteen,
5 article seven of this chapter, does not apply to this subsection.

6 (e) ~~Whoever~~ Any person who knowingly and willfully purchases,
7 accepts as a gift, or secures by barter, trade or in any other
8 manner, any article or articles manufactured at or belonging to any
9 ~~jail, state correctional facility juvenile facility or juvenile~~
10 ~~detention center~~ from any ~~adult or juvenile~~ inmate detained therein
11 in the correctional facility is guilty of a misdemeanor and, upon
12 conviction thereof, shall be fined not less than \$50 nor more than
13 \$500, ~~and~~ confined in jail not less than three months nor more than
14 ~~twelve months: Provided, That the provisions of one year, or both~~
15 fined and confined. However, this subsection ~~do~~ does not apply to
16 articles specially manufactured in any correctional facility under
17 the authorization of the ~~persons supervising the facility~~ supervisor
18 and which are offered for sale within or outside ~~of~~ the correctional
19 facility.

20 (f) ~~Whoever~~ Any person who knowingly and willfully persuades,
21 induces or entices or attempts to persuade, induce or entice any
22 ~~person who is in custody or confined in any jail, state correctional~~
23 ~~facility, juvenile facility or juvenile detention center~~ inmate to
24 escape ~~therefrom~~ from lawful custody or confinement or to engage or

1 aid in any insubordination to the ~~persons supervising the~~ facility
2 supervisor is guilty of a misdemeanor and, upon conviction thereof,
3 shall be fined not less than \$50 nor more than \$500, ~~and~~ confined in
4 jail not less than three months nor more than ~~twelve months~~ one
5 year, or both fined and confined.

6 (g) (1) An inmate ~~of a jail, state correctional facility,~~
7 ~~juvenile facility or juvenile detention center having in his or her~~
8 ~~possession~~ who, without the express authority and permission of the
9 facility supervisor, knowingly possesses any poison, implement of
10 escape, dangerous material, weapon, telecommunication device or ~~any~~
11 controlled substance ~~as defined by chapter sixty-a of this code~~ is
12 guilty of a felony and, upon conviction thereof, shall be fined not
13 less than \$1,000 nor more than \$5,000, or ~~confined~~ imprisoned in a
14 state correctional facility not less than one year nor more than
15 five years, or both fined and imprisoned, or, in the discretion of
16 the court, be confined in jail for not more than one year, ~~and~~ fined
17 not more than \$500, or both fined and imprisoned.

18 (2) An inmate ~~of a jail, state correctional facility, juvenile~~
19 ~~facility or juvenile detention center having in his or her~~
20 ~~possession~~ who, without the express authority and permission of the
21 facility supervisor, knowingly possesses any alcoholic liquor,
22 nonintoxicating beer, money or other thing of value, any written or
23 printed matter, any article of merchandise, food or clothing, any
24 medicine, utensil or instrument of any kind ~~without the express~~

1 ~~authority and permission of the supervising officer~~ is guilty of a
 2 misdemeanor and, upon conviction thereof, shall be fined not less
 3 than \$50 nor more than \$500, ~~and or~~ or confined in jail for not more
 4 than ~~twelve months~~ one year, or both fined and confined.

5 (3) Section fifteen, article seven of this chapter, does not
 6 apply to this subsection.

7 (h) ~~As used~~ In this section:

8 (1) "Controlled substance" has the same meaning as in chapter
 9 sixty-a of this code.

10 (2) "Correctional facility" means any local jail facility,
 11 regional jail facility, juvenile facility or correctional facility,
 12 as those terms are defined in section two, article twenty, chapter
 13 thirty-one of this code.

14 ~~(1)~~ (3) "Dangerous material" means any incendiary material or
 15 device, highly flammable or caustic liquid, explosive, bullet or
 16 other material readily capable of causing death or serious bodily
 17 injury.

18 ~~(2)~~ (4) "Delivers" means to knowingly and willfully transfer an
 19 item to an ~~adult or juvenile who is detained in custody or~~
 20 ~~confinement in any jail, correctional facility, juvenile facility or~~
 21 ~~juvenile detention center, or a building appurtenant to those~~
 22 ~~places. The term includes bringing~~ inmate, to knowingly and
 23 willfully bring the item into a ~~jail, correctional facility juvenile~~
 24 ~~facility or juvenile detention center~~ or a building appurtenant to

1 ~~those places. The term includes putting~~ the correctional facility
2 with the specific intent of effecting a transfer of that item to an
3 inmate or to knowingly and willfully put an item in a place where it
4 may be obtained by an inmate with the specific intent of effecting
5 a transfer of that item to an inmate.

6 (5) "Facility supervisor" means the warden, administrator or
7 other person in charge of a correctional facility.

8 ~~(3)~~ (6) "Inmate" means an adult or juvenile who is detained in
9 custody or confinement in any ~~jail,~~ correctional facility ~~juvenile~~
10 ~~facility or juvenile detention center,~~ regardless of whether the
11 individual is temporarily absent due to medical treatment,
12 transportation, court appearance or other reason for a temporary
13 absence.

14 ~~(4)~~ (7) "Implement of escape" means a tool, implement, device,
15 equipment or other item which an inmate is not authorized to
16 possess, capable of facilitating, aiding or concealing an escape or
17 attempted escape by an inmate.

18 (8) "Secure area of a correctional facility" means the portions
19 of a correctional facility designated by the facility supervisor as
20 the portions of the correctional facility that house inmates, into
21 which inmates are permitted access as part of the ordinary course of
22 operation of the facility or into which introduction of any of the
23 articles described in subsection (c) of this section would be
24 reasonably expected to threaten the safety or security of inmates,

1 staff or visitors to the facility or the maintenance of general
 2 discipline and order within the inmate population. However, this
 3 term does not include the portions of the grounds of a correctional
 4 facility constituting motor vehicle parking lots or ways of travel
 5 that are outside the areas into which inmates are ordinarily
 6 confined and which are accessible to members of the public without
 7 prior approval from the facility supervisor.

8 ~~(5)~~ (9) "Telecommunication device" means any type of
 9 instrument, device, machine or equipment which is capable of
 10 transmitting telephonic, electronic, digital, cellular or radio
 11 communications or any part of an instrument, device, machine or
 12 equipment which is capable of facilitating the transmission of
 13 telephonic, electronic, digital, cellular or radio communications
 14 regardless of whether the part itself is able to transmit, ~~The term~~
 15 and includes, but is not limited to, cellular phones, digital phones
 16 and modem equipment devices.

17 ~~(6)~~ (10) "Weapon" means ~~an~~ any implement readily capable of
 18 lethal use and includes:

19 (A) Any firearm deadly weapon as defined in section two,
 20 article seven of this chapter;

21 (B) Any knife, dagger, razor, other cutting or stabbing
 22 implement or club; ~~The term includes~~

23 (C) Any item which has been modified or adapted so that it can

1 be used as a ~~firearm, knife, dagger, razor, other cutting or~~
 2 ~~stabbing implement or club. For purposes of this definition, the~~
 3 ~~term "firearm" includes an unloaded firearm~~ weapon; or

4 (D) The unassembled components of ~~a~~ any firearm or other
 5 weapon.

6 **ARTICLE 6. CRIMES AGAINST THE PEACE.**

7 **§61-6-1a. Control of riots and unlawful assemblages.**

8 (a) Members of the ~~department of public safety~~ State Police,
 9 sheriffs and mayors, and those acting under their order, may, when
 10 engaged in suppressing a riot, rout or unlawful assemblage, cordon
 11 off any area or areas threatened by such riot, rout or unlawful
 12 assemblage, and may take all actions which are necessary and
 13 reasonable under the emergency to restore law and order, and such
 14 actions may be, but are not limited to, the following:

15 ~~(a)~~ (1) Prohibit the sale, offering for sale, dispensing,
 16 furnishing or transportation of ~~firearms or other dangerous weapons,~~
 17 ~~ammunition,~~ dynamite or other dangerous explosives in, to or from
 18 such areas.

19 ~~(b)~~ (2) Prohibit the sale, offering for sale, dispensing,
 20 furnishing or consumption of alcoholic beverages or nonintoxicating
 21 beer in a public place in such areas, and prohibit the
 22 transportation of alcoholic beverages or nonintoxicating beer in, to
 23 or from such areas.

1 ~~(c)~~ (3) Impose curfews, as required, to control movement of
2 persons in, to and from such areas.

3 ~~(d)~~ (4) Enter a private dwelling or other building or other
4 private place in such areas when in fresh pursuit of a rioter, when
5 in search of a sniper who has fired upon a person from such a
6 dwelling or other building or place or when in search of ~~firearms,~~
7 ~~other dangerous weapons, ammunition,~~ dynamite or other dangerous
8 explosives when there is reason to believe that such items are
9 stored in the ~~said~~ dwelling, building or place and that they will be
10 removed therefrom before a search warrant could be obtained.

11 ~~No person shall wilfully fail~~ (b) Any person who willfully
12 fails to obey a lawful order of any mayor, sheriff, deputy sheriff,
13 municipal police officer, member of the ~~department of public safety~~
14 State Police, or other officer, given pursuant to subsection (a) of
15 this section, ~~Any person who violates an order given pursuant to the~~
16 ~~authority of this section shall be~~ is guilty of a misdemeanor and,
17 upon conviction thereof, shall be fined not more than \$500, ~~or~~
18 ~~imprisoned~~ confined in the ~~county~~ jail for not more than six months,
19 or both. ~~fined and imprisoned~~

20 (c) Notwithstanding any provision of this section to the
21 contrary, this section does not authorize any prohibition or
22 impairment of the otherwise lawful possession, carrying,
23 transportation or storage of privately owned firearms or ammunition

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

4 **§61-6-19. Willful disruption of governmental processes; offenses**
 5 **occurring at state capitol complex; penalties.**

6 (a) ~~If any~~ No person may willfully ~~interrupts~~ interrupt or
 7 ~~molests~~ molest the orderly and peaceful process of any department,
 8 division, agency or branch of state government or of its political
 9 subdivisions. ~~he or she is guilty of a misdemeanor and, upon~~
 10 ~~conviction thereof, shall be fined not more than one hundred~~
 11 ~~dollars, or imprisoned in the county or regional jail not more than~~
 12 ~~six months, or both fined and imprisoned~~ Provided, That However, any
 13 assembly in a peaceable, lawful and orderly manner for a redress of
 14 grievances ~~shall~~ is not be a violation of this ~~section~~ subsection.

15 (b) ~~It is unlawful for any person to bring upon the State~~
 16 ~~Capitol complex any weapon, as defined by the provisions of section~~
 17 ~~two, article seven of this chapter. It is unlawful for any~~ No person
 18 ~~to~~ may willfully deface any trees, wall, floor, stairs, ceiling,
 19 column, statue, monument, structure, surface, artwork or adornment
 20 in the state capitol complex. ~~It is unlawful for any~~

21 (c) A person ~~or persons to~~ may not knowingly and willfully
 22 block or otherwise knowingly and willfully obstruct any public
 23 access, stair or elevator in the state capitol complex after being

1 asked by a law-enforcement officer acting in his or her official
 2 capacity to desist. ~~Provided, That in order to preserve the~~
 3 ~~Constitutional right of the people to assemble, it is not willful~~
 4 ~~blocking or willful obstruction for~~ This subsection does not apply
 5 to persons gathered in a group or crowd, if the persons move to the
 6 side or part to allow other persons to pass by the group or crowd to
 7 gain ingress or egress. Provided, however, That this subsection
 8 ~~shall not apply to a law-enforcement officer acting in his or her~~
 9 ~~official capacity~~

10 (d) Any person who violates any provision of this subsection
 11 section is guilty of a misdemeanor and, upon conviction thereof,
 12 shall be fined not less than one hundred dollars more than \$1,000,
 13 or confined in the county or regional jail for not more than six
 14 months, or both fined and confined.

15 **ARTICLE 7. DANGEROUS WEAPONS.**

16 **§61-7-1. Legislative findings and intent.**

17 The Legislature finds and declares that: ~~the overwhelming~~
 18 ~~support of the citizens of West Virginia for~~

19 (1) The Second Amendment of the Constitution of the United
 20 States, as incorporated against the states by the Due Process Clause
 21 of the Fourteenth Amendment of the Constitution of the United
 22 States, and article three, section twenty-two of the Constitution of
 23 this state, commonly known as the "Right to Keep and Bear Arms

1 Amendment", ~~combined with the obligation of the state to reasonably~~
2 ~~regulate~~ protect as a fundamental individual right, the right of
3 ~~persons~~ an individual to keep and bear arms for ~~self-defense~~
4 ~~requires~~ the ~~reenactment~~ defense of this article self, family, home
5 and state, and for lawful hunting and recreational use.

6 (2) In Syllabus Point 4, State ex rel. City of Princeton v.
7 Buckner, 377 S.E.2d 139, 180 W. Va. 457 (1988), the Supreme Court of
8 Appeals held that "the West Virginia Legislature may, through the
9 valid exercise of its police power, reasonably regulate the right of
10 a person to keep and bear arms in order to promote the health,
11 safety and welfare of all citizens of this state, provided that the
12 restrictions or regulations imposed do not frustrate the
13 Constitutional freedoms guaranteed by article III, §22 of the West
14 Virginia Constitution, known as the 'Right to Keep and Bear Arms
15 Amendment.'"

16 (3) In Buckner, the Supreme Court of Appeals held
17 unconstitutional a former enactment of this article that generally
18 prohibited the carrying of any deadly weapon openly or concealed
19 without a state license, as an overly broad restriction of the
20 individual's right to keep and bear arms.

21 (4) In response to Buckner, the Legislature revised this
22 article to eliminate the requirement of a state license to openly
23 carry weapons and established a uniform, nondiscretionary system for

1 licensing qualified individuals to carry concealed weapons.

2 (5) Requiring a state license to carry a concealed weapon and
3 providing for a uniform, nondiscretionary system for issuing
4 licenses to carry concealed weapons is a valid exercise of the
5 state's police power that does not violate an individual's right to
6 keep and bear arms.

7 (6) Since the Legislature revised this article in response to
8 Buckner, the overwhelming majority of other states have adopted laws
9 of varying similarity to section four of this article that permit
10 individuals who meet specified, objective licensing criteria to be
11 licensed to carry concealed weapons or certain types of concealed
12 weapons, predominately handguns only, without subjective licensing
13 standards that empower an issuing agency to determine whether an
14 applicant has a "need" or "good cause" for a license to carry
15 concealed weapons.

16 (7) The overwhelming majority of other right-to-carry states
17 have established recognition or reciprocity laws of varying natures
18 that provide procedures for either unilaterally recognizing licenses
19 to carry concealed weapons issued by other states, either with or
20 without further qualifications pertaining to the other state's
21 licensing requirements.

22 (8) The principal qualification for receiving reciprocity from
23 another right-to-carry state is the willingness of a state to honor

1 the licenses to carry concealed weapons issued by the other state.

2 (9) The licensing laws of every right-to-carry state have
3 unique features to the individual state to which the licensing laws
4 of some, many or all other right-to-carry states may fail to
5 conform.

6 (10) Many states that have previously included elements in
7 their reciprocity statutes requiring other states to meet specified
8 licensing standards or meet a statutorily undefined standard of
9 having substantially similar licensing requirements have found these
10 provisions to be unworkable and have repealed them.

11 (11) Licensees under section four of this article should enjoy
12 maximum reciprocity with other states to enable them to exercise
13 their right to provide for their self-defense when visiting other
14 states.

15 (12) Nonresidents who have a license to carry concealed
16 weapons, whether issued by the nonresident's state of residence or
17 another state, should be able to have the same ability to provide
18 for their self-defense while visiting West Virginia as West Virginia
19 licensees.

20 (13) Under the Brady Handgun Violence Prevention Act, Public
21 Law 103-159, 18 U.S.C. §922(t), licensed firearm dealers are
22 generally required to perform a background check on each purchaser
23 or transferee of a firearm through the National Instant Criminal

1 Background Check System prior to completing the transfer.

2 (14) Although most National Instant Criminal Background Check
3 System background checks are completed and approved within a few
4 minutes, National Instant Criminal Background Check System computer
5 breakdowns and mistakes of identity frequently delay lawful firearm
6 purchases and impede the exercise of the right to keep and bear arms
7 by law-abiding gun owners.

8 (15) Under 18 U.S.C. §922(t)(3)(A), one of the exceptions to
9 the requirement for a National Instant Criminal Background Check
10 System background check on a prospective firearm purchaser is "a
11 firearm transfer between a licensee and another person if: (i) Such
12 other person has presented to the licensee a permit that: (I) Allows
13 such other person to possess or acquire a firearm; and (II) was
14 issued not more than five years earlier by the state in which the
15 transfer is to take place; and (ii) the law of the state provides
16 that such a permit is to be issued only after an authorized
17 government official has verified that the information available to
18 such official does not indicate that possession of a firearm by such
19 other person would be in violation of law."

20 (16) Many right-to-carry states have adopted licensing statutes
21 whose background check requirements satisfy the requirements of 18
22 U.S.C. §922(t)(3)(A) and the regulations promulgated thereunder and
23 thus have qualified those states' licensees to acquire firearms

1 through licensed firearm dealers within those states without
2 undergoing a redundant background check at the time of acquiring a
3 firearm and often encountering database errors or delays that
4 unnecessarily impede the lawful acquisition of a firearm by a person
5 who has passed the generally more extensive background checks
6 required for a license to carry concealed weapons.

7 (17) West Virginia licensees should enjoy the same ability to
8 lawfully purchase firearms from licensed firearm dealers within this
9 state without the unnecessary risk of delays arising from the need
10 to complete a redundant background check that can be satisfied
11 through the background check process for a license to carry
12 concealed weapons. Therefore, the Legislature intends that licenses
13 issued under section four of this article, other than licenses
14 extended pursuant to subdivision (2), subsection (g) of that
15 section, be designated as a qualifying alternative pursuant to 18
16 U.S.C. §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and other applicable
17 federal laws.

18 (18) A NICS-exempt license to carry concealed weapons does not
19 exempt a licensed firearm dealer from the requirement of 18 U.S.C.
20 §923(g) (3) to report multiple handgun transfers to one person within
21 a five business day period to state and local law enforcement.

22 (19) The former enactment of section four of this article as it
23 existed prior to the effective date of the amendments to that

1 section enacted during the 2011 Regular Session of the Legislature:

2 (A) Provided for the issuing of licenses to carry concealed
3 pistols and revolvers to residents of this state who met specified,
4 objective licensing standards; and

5 (B) Contained many deficiencies in its provisions governing
6 licensing standards and procedures that:

7 (i) Provided inadequate guidance to sheriffs, applicants and
8 licensees on many licensing issues;

9 (ii) Impeded efforts by the Attorney General to establish
10 reciprocity with other states under former section six-a of this
11 article, as it existed prior to its repeal the effective date of the
12 amendments to section four of this article enacted during the 2011
13 Regular Session of the Legislature; and

14 (iii) Would continue to stand as an impediment to several
15 states recognizing licenses issued under section four of this
16 article unless corrected, notwithstanding the enactment of
17 subdivision (1), subsection (d), section three of this article.

18 (20) The combined deficiencies in the former enactment of
19 section four of this article as it existed prior to the effective
20 date of the amendments to that section enacted during the 2011
21 Regular Session of the Legislature resulted in licensees not
22 receiving many of the legal rights, benefits, privileges and
23 immunities to which licensees under the licensing laws of many other

1 states enjoyed, including broad-based reciprocity with other states
2 and a federal firearm purchase background check exemption under 18
3 U.S.C. §922 (t) (3) (A) .

4 (21) The overwhelming majority of right-to-carry states have
5 closed public access to information concerning applicants and
6 licensees because:

7 (A) Access to information concerning individual applicants and
8 licensees has been used by criminals to facilitate thefts of
9 firearms and to locate intended victims such as current or former
10 judges, corrections officers, law-enforcement officers, adverse
11 witnesses in judicial proceedings, victims of domestic violence and
12 family members of these individuals;

13 (B) Although the former enactment of section four of this
14 article contained some deficiencies, incidents of disqualified
15 individuals receiving licenses to carry concealed weapons in both
16 this state and other states that have similar, nondiscretionary
17 licensing systems are rare;

18 (C) Sufficient public scrutiny of licensing systems can be
19 achieved through comprehensive statistical reporting; and

20 (D) Although the Right to Keep and Bear Arms Amendment does not
21 provide an individual right to carry a concealed weapon without a
22 license, an individual's right to self-defense and effective access
23 to the means of self-defense substantially outweigh all public

1 policy arguments for maintaining public access to records
2 identifying individual applicants for or current or former holders
3 of licenses to carry concealed weapons.

4 (22) As a matter of public policy, it is necessary to provide
5 statewide uniform standards for issuing licenses to carry concealed
6 weapons and to fully occupy and preempt the entire field of
7 regulation of the carrying of concealed weapons to ensure that no
8 person who qualifies under the provisions of section four of this
9 article is denied his or her rights.

10 (23) Section five of this article is enacted to establish a
11 system of temporary emergency licenses to carry concealed weapons
12 pending completion of the required demonstration of competence with
13 a handgun under subsection (d), section four of this article, and
14 the full performance of all required background checks under
15 subsection (b), section four of this article, otherwise required to
16 obtain a license to carry concealed weapons, to provide an adequate
17 means of protection to victims of domestic violence and other
18 serious crimes, witnesses who cooperate with law-enforcement and
19 face the danger of immediate retaliation and other qualified
20 individuals who develop a sudden and emergent need to carry a
21 concealed weapon for personal protection.

22 (24) In *District of Columbia v. Heller*, 554 U.S. ____ (2008),
23 the Supreme Court of the United States held that the Second

1 Amendment of the Constitution of the United States secures, as the
2 right of an individual, the right to keep and bear arms for
3 self-defense.

4 (25) In *McDonald v. Chicago*, 561 U.S. ____ (2010), the Supreme
5 Court of the United States held that the Second Amendment of the
6 Constitution of the United States is incorporated against the states
7 under the Fourteenth Amendment of the Constitution of the United
8 States.

9 (26) In both *Heller* and *McDonald*, the Supreme Court of the
10 United States affirmed that an individual's right to keep and bear
11 arms for self-defense is "deeply rooted in this Nation's history and
12 tradition" and that the Second Amendment applies to handguns because
13 they are "the most preferred firearm in the nation to 'keep' and use
14 for protection of one's home and family." However, the Second
15 Amendment's protections are not limited to handguns or even firearms
16 generally.

17 (27) The *Heller* and *McDonald* decisions mark a beginning, rather
18 than an end, of litigation and legislation that will develop and
19 refine the body of Constitutional law on the full scope, nature, and
20 limits of the Second Amendment's protection of an individual's right
21 to keep and bear arms.

22 (28) An individual's right to keep and bear arms is as
23 fundamental to our nation's system of ordered liberty and as deeply

1 rooted in this nation's history and tradition as other fundamental,
2 individual rights enumerated under the Constitution of the United
3 States, e.g., freedom of speech, freedom of religion, freedom of the
4 press, and freedom of assembly, as protected by the First Amendment
5 of the Constitution of the United States.

6 (29) A consistent, principled application of the extensive body
7 of Constitutional law regarding the protection of fundamental
8 individual rights, particularly those, such as the right to keep and
9 bear arms under the Second Amendment, that are specifically
10 enumerated in the Constitution, requires that all federal, state,
11 and local government policies that implicate an individual's right
12 to keep and bear arms be subjected to strict judicial scrutiny with
13 a presumption of unconstitutionality unless the government can
14 demonstrate that the challenged policy is Constitutional by showing
15 that the policy is necessary to achieve a compelling state interest
16 and that the challenged policy is narrowly-tailored to achieve the
17 intended result and does so by the least restrictive means possible.

18 (30) Almost all regulations of firearms and firearm-related
19 activities can be argued as necessary on some level to protect the
20 public against both criminal and noncriminal, but nevertheless
21 reckless, negligent, or accidental, deaths and injuries. However, as
22 a necessary part of strict scrutiny, the burden must rest with the
23 government to show substantial scientific proof that the challenged

1 policy is actually necessary to achieve the purported compelling
2 state interest.

3 (31) The protection accorded to an individual's right to keep
4 and bear arms under the Second Amendment of the Constitution of the
5 United States, as incorporated against the states by the Due Process
6 Clause of the Fourteenth Amendment of the Constitution of the United
7 States, and Article III, §22 of the Constitution of this state, like
8 the protection accorded to other fundamental individual rights,
9 represents a minimal standard of protection. It does not preclude
10 the Legislature from enacting laws less restrictive than the most
11 restrictive laws that would survive judicial scrutiny.

12 (32) Some public buildings in this state may be subject to
13 special security concerns that may necessitate a prohibition on the
14 possession of weapons in all or parts of a particular public
15 building. However, any concerns about purportedly sensitive
16 locations must balance the applicable security concerns with respect
17 for an individual's right to keep and bear arms for self-defense and
18 the overarching need to protect the safety of all persons within
19 particularly sensitive areas. A mere prohibition on the possession
20 of weapons, without adequate security measures to effectively
21 enforce such prohibition guarantee the safety of the alleged
22 sensitive area, not only creates a false sense of security for the
23 alleged protected persons while actually increasing their exposure

1 to violent crime by signaling to potential criminals that potential
2 victims within a particular area are unarmed and unable to
3 effectively defend themselves, but also would not meet strict
4 judicial scrutiny in light of its empirical ineffectiveness. To
5 effectively balance legitimate public building security concerns
6 with an individual's right to keep and bear arms and to genuinely
7 protect the security of truly sensitive areas of public buildings,
8 the Legislature specifies in section eleven-c of this article,
9 detailed requirements for establishing secure restricted access
10 areas in public buildings into which the possession or conveyance of
11 deadly weapons may be prohibited, that balances the competing
12 interests involved in regulating weapons in public buildings, which
13 shall be the sole and exclusive procedure for establishing
14 location-specific prohibitions on possessing or conveying weapons
15 into public buildings and other public property, except where the
16 Legislature has provided otherwise by section eight, article five of
17 this chapter, and sections eleven-a and eleven-b of this article.

18 (33) Many court proceedings bring together antagonistic
19 litigants, witnesses and their relatives and friends and arouse and
20 agitate personal grievances and passions that tend to trigger
21 personal conflicts and altercations.

22 (34) Some criminal cases involve defendants in custody who pose
23 a flight risk, which must be mitigated by security measures designed

1 to prevent escape and include securing the court facility and other
2 areas to which the defendant in custody may have access from the
3 introduction of weapons or other implements of escape.

4 (35) The tendency of many court proceedings to produce sudden,
5 passionate outbursts and altercations requires the imposition of
6 enhanced security measures, including, but not limited to, the
7 disarming of most individuals in court proceedings and the provision
8 of armed bailiffs and security screening measures to prevent the
9 introduction of weapons into court proceedings.

10 (36) While the state has a legitimate interest in generally
11 prohibiting the possession of weapons in court proceedings, imposing
12 such prohibition throughout the entirety of any courthouse
13 unnecessarily frustrates the right of individuals who are attending
14 to business before the executive or legislative branches of
15 government, which do not conduct the same sensitive proceedings as
16 the judiciary, is unnecessary to adequately protect the security of
17 court proceedings.

18 (37) Each of the state's court facilities are housed in unique
19 courthouses of varying designs and configurations, many of which
20 have implemented enhanced security measures for either the entire
21 courthouse building or the court facilities specifically.

22 (38) Due to the unique and widely-varying designs and
23 configurations of each of the state's courthouses, the Legislature

1 finds impractical the imposition of a uniform rule governing the
2 portions of courthouses in which weapons are prohibited and in which
3 they are not.

4 (39) To address the issues identified in subdivisions (24)
5 through (38) of this section, the Legislature hereby replaces the
6 general prohibition on possessing a deadly weapon within a
7 courthouse with a narrowly-tailored prohibition limited to judges'
8 chambers and courtrooms with an option for the court or local
9 governing body to include the court facility in a more expansive
10 secure restricted access area under section eleven-c of this
11 article.

12 (40) To protect all persons entering and leaving areas in which
13 the possession or conveyance of weapons is prohibited by
14 subdivisions (1) through (4), subsection (b), section three of this
15 article, or section eleven-b or eleven-c of this article, from the
16 heightened danger of being targeted for the commission of a crime
17 because of the general knowledge that persons traveling to and from
18 a restricted area are disarmed, the Legislature directs the
19 establishment of secure weapon storage areas at each place into
20 which the possession or conveyance of weapons is prohibited by
21 subdivisions (1) through (4), subsection (b), section three of this
22 article, or section eleven-b or eleven-c of this article, to provide
23 individuals who exercise their right to keep and bear arms for

1 self-defense as a matter of ordinary course, a legal and safe means
2 of personal protection and compliance with those sections.

3 (41) A list, record or registry of legally-owned firearms,
4 concealable weapons or law-abiding owners thereof is not a law
5 enforcement tool and can become an instrument for profiling,
6 harassing or abusing law-abiding citizens based on their choice to
7 own a firearm or concealable weapon and exercise their individual
8 right to keep and bear arms. Furthermore, such a list, record or
9 registry has the potential to fall into the wrong hands and become
10 a shopping list for thieves.

11 (42) A list, record or registry of legally-owned firearms,
12 concealable weapons or law-abiding owners of firearms or concealable
13 weapons is not a tool for fighting terrorism, but rather is an
14 instrument that can be used as a means to profile innocent citizens
15 and to harass and abuse citizens based solely on their choice to own
16 firearms or concealable weapons and exercise their individual right
17 to keep and bear arms.

18 (43) Lists, records and registries of legally-owned firearms,
19 concealable weapons and law-abiding owners of firearms or
20 concealable weapons have been used in other jurisdictions both
21 domestically and internationally as the foundation for the eventual
22 prohibition and confiscation of firearms or concealable weapons or
23 certain classes of firearms or concealable weapons, in violation of

1 the natural right of free people to keep and bear arms.

2 (44) Law-abiding owners of firearms and concealable weapons
3 whose names have been illegally recorded in a list, record or
4 registry are entitled to redress.

5 (45) There is a need to provide uniform laws throughout the
6 state regulating the ownership, possession, purchase, other
7 acquisition, transport, storage, carrying, sale and other transfer
8 of concealable weapons, firearms and parts, components and
9 ammunition for firearms (including without limitation the possession
10 and carrying thereof in or on any public building or other property
11 owned, leased or controlled by any public agency), and, except as
12 specified in subsection (d), section sixteen of this article, for
13 the Legislature, to the exclusion of all other public agencies in
14 this state, to exercise exclusive occupation of and preempt the
15 field of regulation in these areas.

16 (46) It is the intent of the Legislature that disabilities
17 regarding possession of firearms under subsection (a), section seven
18 of this article, be construed as no more restrictive than 18 U.S.C.
19 §922(g) except to the extent the Legislature has, in sections two
20 and seven of this article, expressly decoupled state law from
21 federal law and established more restrictive provisions under this
22 article with respect to disregarding certain convictions of crimes
23 punishable by imprisonment for a term exceeding one year based upon

1 the restoration of civil rights.

2 (47) The purpose of establishing multiple classes of licenses
3 to carry concealed weapons under section four of this article is to
4 create an efficient and effective mechanism to maximize West
5 Virginia's reciprocity with other states while not subjecting
6 current licensees to fingerprinting or new training requirements or
7 continuing to deny adults between eighteen and twenty years of age
8 the full right to self-defense. The Legislature anticipates that
9 based upon the system of multiple classes of licenses under section
10 four of this article, other states that have more restrictive
11 reciprocity requirements will liberally construe their respective
12 laws to maximize the classes of licenses under section four of this
13 article that they will honor. The Legislature has established the
14 several classes of licenses under section four of this article with
15 the intent of qualifying Class 1 licenses for reciprocity with every
16 other state that has in effect some form of reciprocity law. The
17 Legislature intends for states that require live fire shooting
18 proficiency qualifications under their respective reciprocity laws
19 to honor Class 1 licenses and, depending on their requirements for
20 fingerprinting and minimum licensure age, Class 2 and 4 licenses.
21 The Legislature intends for states that deny reciprocity to states
22 that issue licenses to adults under 21 years of age to honor Class
23 1 licenses and, depending upon their respective requirements for

1 fingerprinting and live fire shooting proficiency qualifications,
2 Class 2 and 4 licenses. For these reasons, except as otherwise
3 required to comply with federal law, all licensees of all classes
4 under sections four and five of this article shall have equal
5 rights, benefits, privileges and immunities under this code.

6 (48) This legislation of the 2011 Regular Session of the
7 Legislature shall be known and may be cited as "The West Virginia
8 Gun Owners' Protection Act of 2011".

9 **§61-7-2. Definitions.**

10 In this article:

11 (1) "Aggravated felony" means any felony crime of violence,
12 felony drug offense or felony sexual offense.

13 (2) "Alien" means any person not a citizen or national of the
14 United States.

15 (3) "Ammunition" means ammunition or cartridge cases, primers,
16 bullets, or propellant powder designed for use in any firearm other
17 than an antique firearm.

18 (4) "Antique firearm" means:

19 (A) Any firearm (including any firearm with a matchlock,
20 flintlock, percussion cap, or similar type of ignition system)
21 manufactured in or before 1898; or

22 (B) Any replica of any firearm described in paragraph (A) of
23 this subdivision if such replica:

1 (i) Is not designed or redesigned for using rimfire or
2 conventional centerfire fixed ammunition; or

3 (ii) Uses rimfire or conventional centerfire fixed ammunition
4 which is no longer manufactured in the United States and which is
5 not readily available in the ordinary channels of commercial trade;
6 or

7 (C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle
8 loading pistol, which is designed to use black powder, or a black
9 powder substitute, and which cannot use fixed ammunition. For
10 purposes of this paragraph, the term "antique firearm" does not
11 include any weapon which incorporates a firearm frame or receiver,
12 any firearm which is converted into a muzzle loading weapon, or any
13 muzzle loading weapon which can be readily converted to fire fixed
14 ammunition by replacing the barrel, bolt, breechblock, or any
15 combination thereof.

16 (5) "Blackjack" means a short bludgeon consisting, at the
17 striking end, of an encased piece of lead or some other heavy
18 substance and, at the handle end, a strap or springy shaft which
19 increases the force of impact when a person or object is struck. The
20 term "blackjack" includes, but is not limited to, a billy, billy
21 club, sand club, sandbag or slapjack.

22 (6) "Ballistic knife" means any knife with a detachable blade
23 that is propelled by a spring-operated mechanism.

1 (7) "Body armor" means any personal protective body covering
2 intended to protect against gunfire, regardless of whether the
3 product is to be worn alone or is sold as a complement to another
4 product or garment.

5 (8) "Club" means an instrument that is specially designed,
6 made, or adapted for the purpose of inflicting serious bodily injury
7 or death by striking a person with the instrument, and includes, but
8 is not limited to, a blackjack, mace, metallic or false knuckles,
9 nightstick, nunchuka or tomahawk.

10 (9) "Concealable weapon" means any club, handgun, offensive
11 knife, spring stick or other deadly weapons of like kind or
12 character that can be easily concealed on the person. For the
13 purposes of sections sixteen through twenty of this article, the
14 term "concealable weapon" also includes any air gun, firearm or
15 knife not otherwise included within this definition.

16 (10) "Concealed weapon" means any deadly weapon that is hidden
17 from ordinary observation so as to prevent disclosure or recognition
18 to the extent that another person in the ordinary course of events
19 would not be placed on notice that the deadly weapon was being
20 carried. For the purposes of section three of this article and
21 subsection (c), section seven of this article, a handgun is not
22 concealed if it is carried in: (i) A manner where any portion of the
23 handgun or holster in which the handgun is carried is visible; (ii)

1 a holster that is wholly or partially visible; or (iii) a scabbard
2 or case designed for carrying one or more handguns that is wholly or
3 partially visible.

4 (11) "Contacted by a law-enforcement officer" means a lawful
5 traffic or criminal investigation, arrest or detention or an
6 investigatory stop by a law-enforcement officer that is based on
7 reasonable suspicion that an offense has been or is about to be
8 committed.

9 (12) "Controlled substance" has the same meaning as in section
10 one hundred one, article one, chapter sixty-a of this code.

11 (13) "Conviction" or "convicted," for the purposes of
12 determining whether a person is eligible to obtain or hold a license
13 to carry concealed weapons or prohibited from possessing firearms,
14 shall be determined in accordance with the law of the jurisdiction
15 in which the proceedings were held, but does not include any
16 conviction which has been expunged, set aside, vacated or for which
17 the person has been pardoned, unless the expungement or pardon
18 expressly provides that the person may not possess firearms.

19 (14) "Court facility" means the courtroom of the Supreme Court
20 of Appeals, a circuit court, a family court, a magistrate court or
21 a municipal court; the chambers of any justice, judge or magistrate;
22 those portions of a courthouse designated as witness rooms, jury
23 deliberation rooms, attorney conference rooms, prisoner holding

1 cells or law library; and offices of the court clerks or other
2 employees of the judicial department of this state; but does not
3 include any common area of ingress or egress to a courthouse that
4 provides access to any area of a courthouse not comprising a court
5 facility.

6 (15) "Courthouse" means any state or local government office
7 facility that houses a court facility.

8 (16) "Crime punishable by imprisonment for a term exceeding one
9 year" does not include:

10 (A) Any federal or state offenses pertaining to antitrust
11 violations, unfair trade practices, restraints of trade, or other
12 similar offenses relating to the regulation of business practices;

13 (B) Any state offense classified by the laws of the state in
14 which the offense was committed as a misdemeanor and, punishable by
15 a term of imprisonment of two years or less;

16 (C) Any conviction whose effect is disregarded pursuant to
17 subdivision (12) of this section;

18 (D) Any offense other than an aggravated felony for which the
19 person has had civil rights restored, unless:

20 (i) The restoration of civil rights expressly provides that the
21 person may not ship, transport, possess or receive firearms; or

22 (ii) Less than five years have elapsed since the completion of
23 any sentence, probation, parole, other supervision and payment in

1 full of all fines, court costs and restitution, whichever last
2 occurs; or

3 (E) Any aggravated felony for which the person has had civil
4 rights restored pursuant to a discretionary process in the
5 jurisdiction in which the offense was committed under which the
6 person was not entitled to restoration of civil rights as a matter
7 of right and the person received restoration of civil rights based
8 upon an individualized determination and review of the person by the
9 officer, agency, board, commission, court or other tribunal granting
10 restoration of civil rights in which the person was granted
11 restoration of civil rights as an expressly, individually-named
12 person and not as a member of any group or class of persons, unless:

13 (i) The restoration of civil rights provides that the person
14 may not ship, transport, possess, carry or receive firearms;

15 (ii) Under the laws of the jurisdiction in which the offense
16 was committed and civil rights were restored, the restoration of
17 civil rights failed to remove all legal disabilities under the laws
18 of that jurisdiction relating to shipping, transporting, possessing,
19 carrying or receiving firearms or concealed weapons that resulted
20 from the conviction;

21 (iii) Less than ten years have elapsed since the completion of
22 any sentence, probation, parole, other supervision and payment in
23 full of all fines, court costs, restitution and civil judgments

1 arising from the acts or omissions to which the conviction
2 pertained, whichever last occurs; or

3 (iv) Subsequent to the person's conviction for any prior
4 aggravated felony whose conviction is not disregarded pursuant to
5 subdivision (12) of this section, the person has been convicted of
6 any aggravated felony whose conviction is not disregarded pursuant
7 to subdivision (12) of this section.

8 (17) "Deadly weapon" means an instrument which is designed to
9 be used to produce serious bodily injury or death or is readily
10 adaptable to such use and includes, but is not limited to, firearms,
11 antique firearms and concealable weapons. For the purposes of
12 section one-a, article five, chapter eighteen-a of this code and
13 sections eleven-a through eleven-d of this article, the term "deadly
14 weapon" also includes explosive, chemical, biological and
15 radiological materials. For the purposes of section one-a, article
16 five, chapter eighteen-a of this code and section eleven-a of this
17 article, the term "deadly weapon" does not include any item or
18 material owned by the school or board of education, intended for
19 curricular use, and used by the defendant at the time of the alleged
20 offense solely for curricular purposes.

21 (18) "Drug" has the same meaning as in section one hundred one,
22 article one, chapter sixty-a of this code.

23 (19) "Family or household member" has the same meaning as in

1 section two hundred four, article twenty-seven, chapter forty-eight
2 of this code.

3 (20) "Felony crime of violence":

4 (A) Means any felony that:

5 (i) Has as an element the use, attempted use, or threatened use
6 of physical force, against another person or the presentment or use
7 of a deadly weapon, or

8 (ii) By its nature, involves a substantial risk that physical
9 force against another person may be used in the course of committing
10 the offense;

11 (B) Includes without limitation, but is not limited to, the
12 following offenses:

13 (i) Treason under section one, article one of this chapter;

14 (ii) Murder under sections one, two or three, article two of
15 this chapter;

16 (iii) Attempt to kill or injure by poison under section seven,
17 article two of this chapter;

18 (iv) Malicious wounding under subsection (a), section nine,
19 article two of this chapter;

20 (v) Assault during the commission of or attempt to commit a
21 felony under section ten, article two of this chapter;

22 (vi) Malicious assault or unlawful assault under section ten-b,
23 article two of this chapter;

- 1 (vii) Robbery or attempted robbery under section twelve,
2 article two of this chapter;
- 3 (viii) Kidnapping or holding a person hostage under section
4 fourteen-a, article two of this chapter;
- 5 (ix) First or second degree arson under sections one or two,
6 article three of this chapter;
- 7 (x) Causing injuries during an arson-related crime under
8 section seven, article three of this chapter, regardless of the
9 degree of the underlying arson offense involved;
- 10 (xi) Any felony under section eight, article five of this
11 chapter not involving a controlled substance;
- 12 (xii) A felony offense of retaliating against a juror or
13 witness for performing his or her official duties in an official
14 proceeding, in violation of section twenty-seven, article five of
15 this chapter, if such offense involved actual violence or threats of
16 violence;
- 17 (xiii) Any sexually violent offense as defined in article
18 twelve, chapter fifteen of this code;
- 19 (xiv) Any attempt or conspiracy to commit any of the offenses
20 described in subparagraphs (i) through (xiii) of this paragraph; but
- 21 (C) Does not include any conviction whose effect is disregarded
22 pursuant to subdivision (12) of this section.
- 23 (21) "Felony drug offense":

1 (A) Means any:

2 (i) Felony under sections four hundred one, four hundred six,
3 four hundred nine or four hundred eleven, article four, chapter
4 sixty-a of this code;

5 (ii) Felony involving a controlled substance under section
6 eight, article five of this chapter; or

7 (iii) Unlawful act committed in violation of federal law or the
8 law of any other state that:

9 (I) Is a felony or crime punishable by imprisonment for a term
10 exceeding one year in the jurisdiction in which the offense was
11 committed; and

12 (II) Would, if committed in this state, based upon the facts
13 determined by the trier of fact beyond a reasonable doubt in the
14 proceedings in which the conviction was had, constitute an offense
15 described in subparagraph (i) or (ii) of this paragraph; but

16 (B) Does not include any conviction whose effect is disregarded
17 pursuant to subdivision (12) of this section.

18 (22) "Felony sexual offense":

19 (A) Means any felony upon conviction of which a person is
20 required to register for any period of time as a sex offender under
21 article twelve, chapter fifteen of this code;

22 (B) Includes, but is not limited to:

23 (i) Any offense under the following provisions of this chapter

1 that, at the time the offense was committed, was punishable as a
2 felony:

3 (I) Section fourteen, article two;

4 (II) Sections six, seven or twelve, article eight of this
5 chapter; or

6 (III) Article eight-b, including the provisions of former
7 section six of said article, relating to the offense of sexual
8 assault of a spouse, which was repealed by Chapter 85, Acts of the
9 Legislature, 2000 Regular Session;

10 (IV) Article eight-c;

11 (V) Sections five or six, article eight-d;

12 (VI) Section fourteen-b, article three-c, as it relates to
13 violations of those provisions of this chapter that are listed in
14 clauses (I) through (IV) of this paragraph; or

15 (ii) Any unlawful act committed in violation of federal law or
16 the law of any other state that:

17 (I) Is a felony or crime punishable by imprisonment for a term
18 exceeding one year in the jurisdiction in which the offense was
19 committed; and

20 (II) Would, if committed in this state, based upon the facts
21 determined by the trier of fact beyond a reasonable doubt in the
22 proceedings in which the conviction was had, constitute an offense
23 described in subparagraph (i) of this paragraph; but

1 (C) Does not include any conviction whose effect is disregarded
2 pursuant to subdivision (12) of this section.

3 (23) "Firearm" means any weapon which will, is designed to or
4 may readily be converted to expel a projectile by action of an
5 explosion. However, for the purposes of section seven of this
6 article and section six, article five, chapter twenty-seven of this
7 code, the term "firearm" does not include an antique firearm. For
8 the purposes of section nine of this article, "firearm" has the same
9 meaning as in 26 U.S.C. §5845(a), as it exists as of January 1,
10 2011. For the purposes of section fourteen-a of this article, in
11 addition to the meaning otherwise given by this subdivision,
12 "firearm" also includes all ammunition and accoutrements attendant
13 to the lawful possession or use of a firearm.

14 (24) "Fugitive from justice" means any person who has fled from
15 any state to avoid prosecution for a crime or to avoid giving
16 testimony in any criminal proceeding.

17 (25) "Gravity knife" means any knife that has a blade released
18 from the handle by the force of gravity or the application of
19 centrifugal force and when so released is locked in place by means
20 of a button, spring, lever or other locking or catching device.

21 (26) "Handgun" means any firearm which has a short stock and is
22 designed to be held and fired by the use of a single hand and
23 includes any pistol or revolver.

1 (27) "Higher education institution" has the same meaning as in
2 section two, article one, chapter eighteen-b of this code.

3 (28) "Indictment" includes an indictment or information in any
4 court under which a crime punishable by imprisonment for a term
5 exceeding one year may be prosecuted.

6 (29) "Intimate partner" means, with respect to a person, the
7 spouse of the person, a former spouse of the person, an individual
8 who is a parent of a child of the person, and an individual who
9 cohabitates or has cohabited with the person.

10 (30) "Intoxication-related offense":

11 (A) Means any criminal offense:

12 (i) That includes an element that the person:

13 (I) Be under the influence of alcohol;

14 (II) Be under the influence of a controlled substance or other
15 drug;

16 (III) Be under the combined influence of alcohol, a controlled
17 substance or any other drug; or

18 (IV) Have a blood alcoholic concentration of eight hundredths
19 of one percent or more, by weight; and

20 (ii) For which the person was convicted was pursuant to one or
21 more of the elements described in clauses (I) through (IV),
22 subparagraph (i) of this paragraph; and

23 (B) Includes:

1 (i) Any offense under section two, article five, chapter
2 seventeen-c of this code other than the acts of (I) driving a
3 vehicle while under the age of 21 years with an alcohol
4 concentration in the person's blood of two hundredths of one percent
5 or more, by weight, but less than eight hundredths of one percent,
6 by weight and (II) knowingly permitting the person's vehicle to be
7 driven in violation of that section;

8 (ii) Any offense under section eighteen-b, article seven,
9 chapter twenty of this code other than the acts of (I) operating a
10 motorboat, jet ski or other motorized vessel while under the age of
11 21 years with an alcohol concentration in the person's blood of two
12 hundredths of one percent or more, by weight, but less than eight
13 hundredths of one percent, by weight and (II) knowingly permitting
14 the person's motorboat, jet ski or other motorized vessel to be
15 operated in this state in violation of that section;

16 (iii) Any offense under section eleven, article two-a, chapter
17 twenty-nine of this code other than knowingly permitting the
18 person's aircraft to be operated in this state in violation of that
19 section;

20 (iv) Public intoxication in violation of subdivision (1),
21 subsection (a), section nine, article six, chapter sixty of this
22 code; or

23 (v) Any offense under any municipal ordinance or law of any

1 other state or political subdivision thereof or of the United States
2 that has the same elements as any offense described in subparagraphs
3 (i) through (iv) of this paragraph.

4 (31) "Knife" means an instrument, intended to be used or
5 readily adaptable to be used as a weapon, consisting of a
6 sharp-edged or sharp-pointed blade, usually made of steel, attached
7 to a handle which is capable of inflicting cutting, stabbing or
8 tearing wounds. The term "knife" includes, but is not limited to,
9 any offensive knife or any other instrument capable of inflicting
10 cutting, stabbing or tearing wounds. A pocket knife with a blade
11 three and one-half inches or less in length, a hunting or fishing
12 knife carried for hunting, fishing, sports or other recreational
13 uses, or a knife designed for use as a tool or household implement
14 shall not be included within the term "knife" as defined in this
15 subdivision and shall not be considered an offensive knife,
16 concealable weapon or deadly weapon unless such knife is knowingly
17 used or intended to be used to produce serious bodily injury or
18 death.

19 (32) "Law-enforcement officer" means:

20 (A) Any law-enforcement officer or law-enforcement official, as
21 those terms are defined in section one, article twenty-nine, chapter
22 thirty of this code;

23 (B) Law-enforcement agents of the Armed Forces of the United

1 States, the Naval Criminal Investigative Service and federal agents
2 who are otherwise authorized by federal law to carry firearms in the
3 performance of their duties, including without limitation the
4 officers described in subsection (b), section five, article ten,
5 chapter fifteen of this code; or

6 (C) Any law-enforcement officer or law-enforcement official of
7 any state or other political subdivision of the United States whose
8 duties are similar to those of a law-enforcement officer or
9 law-enforcement official of this state and who is authorized to
10 carry firearms in the performance of his or her duties.

11 (33) "Licensed firearm dealer" means any person licensed as a
12 dealer under 18 U.S.C. Chapter 44 (18 U.S.C. §§921 *et seq.*).

13 (34) "Loaded," with respect to a firearm, means that the
14 firearm:

15 (A) Has live, unexpended ammunition in the firing position or
16 a position whereby the manual operation of any mechanism once would
17 cause live, unexpended ammunition to be fired;

18 (B) Has live, unexpended ammunition in a magazine that is
19 locked in place in the firearm;

20 (C) Has live, unexpended ammunition anywhere in the cylinder,
21 if the firearm is a revolver; or

22 (D) Is capped or primed and has a powder charge and ball or
23 shot in the barrel or cylinders, if the firearm is a muzzle-loader.

1 (35) "Metallic or false knuckles" means a set of finger rings
2 attached to a transverse piece to be worn over the front of the hand
3 for use as a weapon and constructed in such a manner that, when
4 striking another person with the fist or closed hand, considerable
5 physical damage may be inflicted upon the person struck, without
6 regard to the metal or other substance or substances from which the
7 metallic or false knuckles are made.

8 (36) (A) Except as otherwise provided in this subdivision,
9 "misdemeanor crime of violence":

10 (i) Means any offense other than a crime punishable by
11 imprisonment for a term exceeding one year or a traffic offense
12 under chapter seventeen-c of this code or a similar municipal
13 ordinance or law of another state, that has, as an element of the
14 offense, the intentional or knowing commission of an act involving:

15 (I) The use or attempted use of physical force against another
16 person;

17 (II) The threatened immediate use of a deadly weapon against
18 another person; or

19 (III) Any other act done with intent to cause fear in another
20 person of such other person suffering immediate bodily harm or
21 death; and

22 (ii) Includes, without limitation, any offense under sections
23 nine, nine-a, ten-b, eleven, fifteen, fifteen-a, sixteen-a,

1 twenty-eight or twenty-nine, article two of this chapter or section
2 eleven of this article, other than any offense that is a crime
3 punishable by imprisonment for a term exceeding one year, or any
4 offense under federal law or the laws of another state or political
5 subdivision thereof, other than an offense that is a crime
6 punishable by imprisonment for a term exceeding one year, that, if
7 committed within this state, would constitute an offense under
8 sections nine, nine-a, ten-b, eleven, fifteen, fifteen-a, sixteen-a,
9 twenty-eight or twenty-nine, article two of this chapter or section
10 eleven of this article.

11 (B) A person shall not be considered to have been convicted of
12 such an offense for purposes of this article, unless:

13 (i) The person was represented by counsel in the case, or
14 knowingly and intelligently waived the right to counsel in the case;
15 and

16 (ii) In the case of a prosecution for an offense described in
17 this paragraph for which a person was entitled to a jury trial in
18 the jurisdiction in which the case was tried, either:

19 (I) The case was tried by a jury, or

20 (II) The person knowingly and intelligently waived the right to
21 have the case tried by a jury, by guilty plea or otherwise.

22 (C) A person shall not be considered to have been convicted of
23 such an offense for purposes of this article if the conviction's

1 effect is disregarded pursuant to subdivision (12) of this section.

2 (37) (A) Except as otherwise provided in this subdivision,
3 "misdemeanor drug offense" means any misdemeanor offense under
4 section four hundred one, four hundred three-a or four hundred nine,
5 article four, chapter sixty-a of this code or an offense under
6 federal law or the law of any other state, other than a felony or a
7 crime punishable by imprisonment for a term exceeding one year,
8 that, if committed in this state, would constitute a misdemeanor
9 offense under section four hundred one, four hundred three-a or four
10 hundred nine, article four, chapter sixty-a of this code.

11 (B) A person shall not be considered to have been convicted of
12 such an offense for purposes of this article, unless:

13 (i) The person was represented by counsel in the case, or
14 knowingly and intelligently waived the right to counsel in the case;
15 and

16 (ii) In the case of a prosecution for an offense described in
17 this paragraph for which a person was entitled to a jury trial in
18 the jurisdiction in which the case was tried, either:

19 (I) The case was tried by a jury, or

20 (II) The person knowingly and intelligently waived the right to
21 have the case tried by a jury, by guilty plea or otherwise.

22 (C) A person shall not be considered to have been convicted of
23 such an offense for purposes of this article if the conviction's

1 effect is disregarded pursuant to subdivision (12) of this section.

2 (38) "Motor vehicle" has the same meaning as in section one,
3 article one, chapter seventeen-a of this code.

4 (39) "Nonresident" has the same meaning as in section one,
5 article one, chapter seventeen-b of this code.

6 (40) "Nunchuka" means a flailing instrument consisting of two
7 or more rigid parts, connected by a chain, cable, rope or other
8 nonrigid, flexible or springy material, constructed in such a manner
9 as to allow the rigid parts to swing freely so that one rigid part
10 may be used as a handle and the other rigid part may be used as the
11 striking end.

12 (41) "Offensive knife" means a:

13 (A) Knife with a blade over three and one-half inches;

14 (B) Hand instrument designed to cut or stab another by being
15 thrown, including, but not limited to, any throwing star or oriental
16 dart;

17 (C) Ballistic knife;

18 (D) Dagger, including, but not limited to, a dirk, stiletto or
19 poniard;

20 (E) Bowie knife;

21 (F) Gravity knife;

22 (G) Switchblade knife;

23 (H) Sword; or

1 (I) Spear, but does not include any pocket knife with a blade
2 three and one-half inches or less in length, a hunting or fishing
3 knife carried for hunting, fishing, sports or other recreational
4 uses, or a knife designed for use as a tool or household implement.

5 (42) "Personal knowledge" means knowledge of a fact that a
6 person has himself or herself gained through his or her own senses,
7 or knowledge that was gained by a law-enforcement officer or
8 prosecutor through the performance of his or her official duties.

9 (43) "Personally-identifying information" includes, but is not
10 limited to, the name, date of birth, Social Security number,
11 residence address, mailing address, telephone number or e-mail
12 address of any person.

13 (44) "Pistol" means a short firearm having a chamber which is
14 integral with the barrel, designed to be aimed and fired by the use
15 of a single hand.

16 (45) "Place of instruction" includes, but is not limited to,
17 any hunting club, rifle club, rifle range, pistol range, shooting
18 range, the premises of a licensed firearm dealer or a lawful gun
19 show or meet.

20 (46) "Private property" does not include any real or personal
21 property owned, leased or controlled, in whole or in part, by any
22 public agency, regardless of whether the property is generally open
23 to the public or subject to access restrictions.

1 (47) "Private property owner" means any property owner other
2 than:

3 (A) The United States;

4 (B) A public agency; or

5 (C) A lessee or other person charged with the care, custody or
6 control of any property owned, leased or controlled by a public
7 agency, except where the person is a lessee of a residential
8 premises or is exercising temporary control over other premises the
9 person exclusively occupies as a temporary place of lodging.

10 (48) "Property owner" means an owner, lessee or other person
11 charged with the care, custody and control of real property. For
12 the purposes of this definition, "person" means an individual or any
13 entity which may acquire title to real property.

14 (49) "Prosecutor" means any prosecuting attorney or assistant
15 prosecuting attorney of this state, any United States attorney or
16 assistant United States attorney, any officer, employee or agent of
17 another state or political subdivision thereof who exercises powers
18 substantially similar to those of a prosecuting attorney or
19 assistant prosecuting attorney of this state, or any special
20 prosecutor of this state, the United States or another state or
21 political subdivision of another state.

22 (50) "Public agency" means:

23 (A) This state or any political subdivision of this state;

1 (B) Any department, agency, authority, board, commission,
2 council, state institution of higher education, airport operator as
3 defined in section two, article twenty-nine-b, chapter eight of this
4 code, government corporation or other entity or instrumentality of
5 this state or any political subdivision of this state;

6 (C) Any public agency within the meaning of section two,
7 article nine-a, chapter six of this code;

8 (D) Any public body within the meaning of section two, article
9 one, chapter twenty-nine-b of this code;

10 (E) Any other entity or instrumentality:

11 (i) Whose chief executive or administrative officer or a
12 majority of whose board of directors or substantially similar
13 governing body, is elected, appointed or subject to the confirmation
14 of or removal by one or more entities described in paragraphs (A),
15 (B), (C) or (D) of this subdivision;

16 (ii) That receives a majority of its annual operating revenue
17 from one or more entities described in paragraphs (A), (B), (C) or
18 (D) of this subdivision; or

19 (iii) For the purposes of subdivisions (46) and (47) of this
20 section and sections four, five, eleven-c, eleven-d, fourteen,
21 fourteen-a, sixteen, seventeen and twenty of this article, that is
22 a recipient of any form of financial assistance, direct or indirect,
23 from any entity described in paragraphs (A), (B), (C) or (D) of this

1 subdivision, for any program or activity. For the purposes of this
2 subparagraph, the term "program or activity" includes all of the
3 operations of:

4 (I) A higher education institution, primary or secondary school
5 or other school system, whether public or private, any part of which
6 is extended financial assistance, direct or indirect, from any
7 entity described in paragraphs (A), (B), (C) or (D) of this
8 subdivision;

9 (II) An entire corporation, partnership, limited liability
10 company or other private organization or legal entity, any part of
11 which is extended financial assistance, direct or indirect, from any
12 entity described in paragraphs (A), (B), (C) or (D) of this
13 subdivision; or

14 (III) Any agency, as defined by section one hundred four,
15 article twenty-two, chapter forty-eight of this code, or
16 child-placing agency, as defined in section two, article two-b,
17 chapter forty-nine of this code; or

18 (F) Any officer, director, employee or other agent of any
19 entity described in paragraphs (A) through (E) of this subdivision,
20 when acting in his or her representative capacity.

21 (51) "Public building" means any building that is owned by a
22 public agency or those portions of any building that is not owned by
23 a public agency that is leased or controlled by a public agency.

1 (52) "Public event" means a specifically named or sponsored
2 event of limited duration that is conducted by:

3 (A) A public agency;

4 (B) A higher education institution; or

5 (C) A private entity with a permit or license granted by any
6 public agency, but does not include any unsponsored gathering of
7 people in any public place.

8 (53) "Qualified out-of-state license or permit to carry
9 concealed weapons" means any license or permit that:

10 (A) Authorizes the licensee or permittee to carry:

11 (i) Concealed weapons generally; or

12 (ii) Any one or more handguns in a concealed manner, regardless
13 of whether the license or permit contains restrictions that limit
14 the scope of the license or permit to:

15 (I) Only handguns or similar classification of firearms, to the
16 exclusion of other types or classes of firearms or concealable
17 weapons, or to specific, listed handguns or types, classes or
18 calibers of handguns or similar classifications of firearms; or

19 (II) Times, places or purposes for which the licensee or
20 permittee may lawfully carry the licensed or permitted weapons; and

21 (B) Under the laws of the issuing state, throughout the issuing
22 state and all of its political subdivisions, the license:

23 (i) Is current, valid and unexpired; or

1 (ii) Is extended beyond the expiration date printed on the
2 license pursuant to any law of the issuing state, including, but not
3 limited to, any extension for a deployed servicemember or any
4 licensee who has applied for a renewal of the license.

5 (54) "Qualified out-of-state licensee" means any person who is:

6 (A) A licensee or permittee pursuant to a qualified
7 out-of-state license or permit to carry concealed weapons;

8 (B) Not less than the minimum age specified in section four of
9 this article as the minimum age to apply for licensure under section
10 four of this article;

11 (C) Not prohibited by federal law, including without limitation
12 18 U.S.C. §922(g) and (n), as they exist as of January 1, 2011, from
13 possessing or transporting firearms;

14 (D) Not prohibited by section seven of this article from
15 possessing firearms or carrying a concealed weapon in a public
16 place; and

17 (E) (i) A nonresident;

18 (ii) A new resident of this state who has established residence
19 in this state within the immediate preceding ninety days unless,
20 during such period and subsequent to the establishment of residence
21 in this state:

22 (I) The person applied for a license under section four of this
23 article; and

1 (II) The sheriff to whom the person applied for a license under
2 section four of this article, made a final decision to deny a
3 license, unless the denial was based primarily upon the applicant's
4 failure to meet the requirements of subdivision (2), subsection (a),
5 section four of this article, the applicant's failure to have a
6 driver's license or nondriver state photo identification issued by
7 this state or a combination thereof;

8 (iii) A new resident of this state who has established
9 residence in this state for a period greater than the period
10 specified in subparagraph (ii) of this paragraph if, prior to the
11 expiration of the period specified in subparagraph (ii) of this
12 paragraph:

13 (I) The person applied for a license under section four of this
14 article and possesses an application receipt issued by the sheriff
15 pursuant to subdivision (1), subsection (f), section four of this
16 article; and

17 (II) The sheriff to whom the person applied for a license under
18 section four of this article, has not made a final decision on
19 granting or denying the license; or

20 (iv) A servicemember whose permanent duty station is located
21 outside this state or the spouse of a servicemember whose permanent
22 duty station is located outside this state. Nothing contained in
23 this subparagraph may be deemed to disqualify a person described in

1 this subparagraph from obtaining a license under section four or
2 five of this article upon the basis of place of residence or to deem
3 any person described in this subparagraph a nonresident for any
4 other purpose.

5 (55) "Readily accessible for immediate use" or "about the
6 person" means that a deadly weapon or ammunition for a firearm is
7 carried on the person or within such close proximity and in such a
8 manner that it can be retrieved and used as easily and quickly as if
9 carried on the person.

10 (56) "Revolver" means a short firearm having a cylinder of
11 several chambers that are brought successively into line with the
12 barrel to be discharged, designed to be aimed and fired by the use
13 of a single hand.

14 (57) "School bus" has the same meaning as in section one,
15 article one, chapter seventeen-a of this code.

16 (58) "School safety zone" means:

17 (A) Any public or private primary or secondary school building
18 and its improved grounds, whether leased or owned by the school,
19 including any vocational education building, structure, facility or
20 grounds thereof where secondary vocational education programs are
21 conducted;

22 (B) The interior of a school bus while that school bus is
23 actually in use by any school described in paragraph (A) of this

1 subdivision for the purpose of transporting one or more primary or
2 secondary school students to or from school or school-related
3 activities, including curricular, cocurricular, extracurricular or
4 supplementary activities; or

5 (C) That portion of any property not described in paragraph (A)
6 of this subdivision that is open to the public and then used
7 exclusively for a school-sponsored function or curricular,
8 cocurricular, extracurricular or supplementary activity, while that
9 function or activity is occurring.

10 (59) "Secure restricted access area":

11 (A) Means a secure area beyond a security perimeter and
12 security checkpoints where all visitors are screened for weapons
13 prohibited within the area, a secure weapon storage area is provided
14 and in which the safety of all occupants of the area is protected by
15 the security perimeter and the significant presence of
16 law-enforcement officers or professional security guards; and

17 (B) Does not include common areas of ingress and egress open to
18 the general public outside the security perimeter and checkpoints.

19 (60) "Secure weapon storage area" means a facility maintained
20 in conjunction with any area within which the possession or carrying
21 of firearms or other deadly weapons is restricted or prohibited
22 that:

23 (A) Provides free storage of any deadly weapon otherwise lawful

1 for the depositor to possess whose possession within the area within
2 which the possession or carrying of deadly weapons or firearms is
3 restricted or prohibited;

4 (B) (i) Provides, free of charge, self-service storage lockers
5 consisting of individual stationary locked boxes not less than one
6 foot wide by one foot high by two feet deep when the locker is
7 closed, resulting in an interior capacity of not less than two cubic
8 feet, into which a person can secure his or her weapons, ammunition
9 and other personal effects, lock the box, retain the key during his
10 or her presence in the area within which the possession or carrying
11 of firearms or other deadly weapons is restricted or prohibited and
12 personally unlock the box and retrieve the items stored in it upon
13 leaving the area within which the possession or carrying of firearms
14 or other deadly weapons is restricted or prohibited; or

15 (ii) Designates an official to receive weapons for safekeeping,
16 free of charge, during the depositor's visit to restricted areas of
17 the building, who tags each weapon stored and issues a corresponding
18 receipt that protects the weapon from misplacement or erroneous
19 transfer and enables the depositor to retrieve the weapon upon
20 exiting the area within which the possession or carrying of deadly
21 weapons or firearms is restricted or prohibited; and

22 (C) Which is open for retrieval at all times the area within
23 which the possession or carrying of deadly weapons or firearms is

1 restricted or prohibited is occupied plus a reasonable amount of
2 time thereafter for a depositor who has lawfully entered and
3 remained in the area within which the possession or carrying of
4 deadly weapons or firearms is restricted or prohibited to retrieve
5 the weapon and not be unduly denied restoration of his or her lawful
6 possession of the weapon upon leaving the area within which the
7 possession or carrying of deadly weapons or firearms is restricted
8 or prohibited.

9 (61) "Securely encased" means in a glove compartment, whether
10 or not locked; snapped in a holster; in a gun case, whether or not
11 locked; in a zippered gun case; or in a closed box or container
12 which requires a lid or cover to be opened for access.

13 (62) "Servicemember" means a member of the uniformed services,
14 as that term is defined in 10 U.S.C. §101(a) (5) as it exists as of
15 January 1, 2011, and any member of the National Guard while on
16 active service, as that term is defined in 10 U.S.C. §101(d) (3) as
17 it exists as of January 1, 2011.

18 (63) "Spring stick" means a spring-loaded metal stick activated
19 by pushing a button which rapidly and forcefully telescopes the
20 weapon to several times its original length.

21 (64) "State institution of higher education" has the same
22 meaning as in section two, article one, chapter eighteen-b of this
23 code.

1 (65) "State or local government office facility" means any
2 public building in which employees of a public agency regularly are
3 present for the purpose of performing their official duties as
4 employees of the public agency, but excludes: (i) Any public
5 building that is used primarily as a shelter, restroom or rest
6 facility; (ii) any public building or portion of a public building
7 that is used as a parking facility for motor vehicles; or (iii) any
8 portion of any other public building accessible only from the
9 exterior of the public building that is used as a restroom.

10 (66) "Superintendent" means the Superintendent of the State
11 Police.

12 (67) "Switchblade knife" means any knife having a
13 spring-operated blade which opens automatically upon pressure being
14 applied to a button, catch or other releasing device in its handle.

15 (68) "The military forces of this state" means the military
16 forces of the state, as defined in section one, article one, chapter
17 fifteen of this code.

18 (69) "Unloaded," with respect to a firearm, means that a
19 firearm is not loaded, as defined in subdivision (34) of this
20 section.

21 (70) "West Virginia law-enforcement agency" has the same
22 meaning as in section one, article twenty-nine, chapter thirty of
23 this code.

1 **§61-7-3. Carrying concealed weapon; prohibited acts; exceptions;**
2 **penalties.**

3 (a) Any Except as otherwise provided by subsections (c) and (d)
4 of this section, any person who lawfully carries a about his or her
5 person any concealed deadly weapon without a state license or other
6 lawful authorization established under the provisions issued
7 pursuant to section four or five of this code article shall, be
8 whenever he or she is contacted by a law-enforcement officer:

9 (1) Immediately disclose to the law-enforcement officer that he
10 or she is lawfully carrying one or more concealed weapons without a
11 license;

12 (2) Completely and truthfully answer all inquiries by the
13 law-enforcement officer concerning the description, location and
14 number of concealed weapons the person is lawfully carrying;

15 (3) Completely and truthfully answer all requests by the
16 law-enforcement officer for the person to state his or her full
17 legal name, any aliases by which he or she has ever been known, date
18 and place of birth, current home address and any other
19 personally-identifying information or personal biographical history
20 information that may be reasonably necessary for the law-enforcement
21 officer to ascertain the person's true identity and determine
22 whether the person is prohibited by federal law or the laws of this
23 state from carrying the concealed weapon; and

1 (4) Submit to any lawful request of a law-enforcement officer
2 to:

3 (A) Permit the law-enforcement officer to take temporary
4 custody of and secure all deadly weapons in the person's possession
5 during the duration of the contact. Unless the law-enforcement
6 officer arrests the person, the law-enforcement officer shall, upon
7 termination of the contact, return all weapons to the person in the
8 same condition and configuration as they were taken; or

9 (B) Secure all deadly weapons in the person's possession at the
10 direction of the law-enforcement officer during the duration of the
11 contact.

12 (b) Except as otherwise provided by subsections (c) through (e)
13 of this section, a person may not knowingly carry about his or her
14 person any concealed weapon without a state license issued pursuant
15 to section four or five of this article when the person is
16 knowingly:

17 (1) Within any state or local government office facility, or
18 any portion thereof, in which the public agency in control of the
19 state or local government office facility, or portion thereof, has:

20 (A) Posted at every entrance to the state or local government
21 office facility, or portion thereof, signs conforming to the
22 specifications of section fifteen of this article that include the
23 following text: "Pursuant to WV Code §61-7-3(b)(1), carrying a

1 concealed weapon without a license beyond this point is prohibited
2 by law. This facility provides free, secure weapon storage for
3 individuals to check their weapons while in these premises.”; and

4 (B) Established at every entrance to the state or local
5 government office facility, or portion thereof, a secure weapon
6 storage area for any person to check and store any weapons the
7 person is carrying while the person is within the posted area and
8 immediately retrieve the same upon leaving the posted area;

9 (2) In any room in which a meeting of either house of the
10 Legislature or any governing body, as defined in section two,
11 article nine-a, chapter six of this code, is occurring, if the
12 applicable body has:

13 (A) Posted at every entrance to the meeting room or gallery,
14 signs conforming to the specifications of section fifteen of this
15 article that include the following text: “Pursuant to WV Code
16 §61-7-3(b) (2), carrying a concealed weapon without a license beyond
17 this point is prohibited by law. This facility provides free, secure
18 weapon storage for individuals to check their weapons while in these
19 premises.”; and

20 (B) Established at every entrance to the meeting room or
21 gallery, a secure weapon storage area for any person to check and
22 store any weapons the person is carrying while the person is within
23 the posted area and immediately retrieve the same upon leaving the

1 posted area;

2 (3) Attending any public event where the sponsor, organizer,
3 promoter or other person in charge of the public event, or an agent
4 thereof, has:

5 (A) Posted at every entrance to the public event, signs
6 conforming to the specifications of section fifteen of this article
7 that include the following text: "Pursuant to WV Code §61-7-3(b) (3),
8 carrying a concealed weapon without a license at this event is
9 prohibited by law. Free, secure weapon storage is available for
10 individuals to check their weapons while attending this event."; and

11 (B) Established at every entrance to the public event, a secure
12 weapon storage area for any person to check and store weapons while
13 the person is attending the public event and immediately retrieve
14 the same upon leaving the public event;

15 (4) Within any building owned or leased by a higher education
16 institution, or any portion thereof, if:

17 (A) Signs conforming to the specifications of section fifteen
18 of this article are posted at every entrance to the building, or
19 portion thereof, that include the following text: "Pursuant to WV
20 Code §61-7-3(b) (4), carrying a concealed weapon without a license
21 beyond this point is prohibited by law." If the building is subject
22 to the provisions of paragraph (B) of this subdivision, the signs
23 shall also state: "This facility provides free, secure weapon

1 storage for individuals to check their weapons while in these
2 premises.”; and

3 (B) If the higher education institution is a public agency for
4 the purposes of section sixteen of this article, the institution
5 provides a secure weapon storage area for any person to check and
6 store any weapons the person is carrying while the person is within
7 the posted area and immediately retrieve the same upon leaving the
8 posted area;

9 (5) On any private property where the private property owner
10 has posted signs conforming to the specifications of section fifteen
11 of this article that include the following text: “Pursuant to WV
12 Code §61-7-3(b) (5), carrying a concealed weapon without a license on
13 these premises is prohibited by law.”; or

14 (6) In the private residence or dwelling place of another
15 person or the curtilage thereof.

16 (c) Subsections (a) and (b) of this section do not apply to:

17 (1) Any person who is in his or her residence, temporary place
18 of abode or fixed place of business or in or on any private property
19 the person or any family or household member of the person possesses
20 or controls as an owner, lessee, tenant or licensee;

21 (2) Any person who is not prohibited from possessing firearms
22 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
23 subsection (a), section seven of this article, and is carrying any

1 concealed weapon in a place not described in subdivision (1), (2),
2 (3), (4) or (5), subsection (b) of this section:

3 (A) When the concealed weapon is a firearm that is unloaded
4 and:

5 (i) Broken down in a nonfunctioning state;

6 (ii) Securely encased;

7 (iii) Enclosed in a case, firearm carrying box, shipping box or
8 other container, other than as described in subparagraph (ii) of
9 this paragraph; or

10 (iv) The firearm and ammunition capable of being discharged
11 from that firearm are not both readily accessible for immediate use;
12 or

13 (B) When the concealed weapon is not a firearm and is securely
14 encased in a locked container that renders the concealed weapon not
15 readily accessible for immediate use;

16 (3) When the concealed weapon is securely encased within or
17 upon any vehicle, vessel or other means of transportation or
18 conveyance on land or water; or

19 (4) When the person is:

20 (A) Engaged in lawful hunting, trapping or fishing or traveling
21 to or from a place of lawful hunting, trapping or fishing;

22 (B) Camping, hiking, backpacking, farming, ranching or engaged
23 in any other lawful outdoor activity in which weapons are often

1 carried for recreation or protection;
2 (C) Engaged in lawful target practice; or
3 (D) Engaged in instruction at a place of instruction intended
4 to teach the safe handling, maintenance or use of the concealed
5 weapon.
6 (d) Subsections (a) and (b) of this section and any provisions
7 of this code from which licensees under section four or five of this
8 article are exempt do not apply to:
9 (1) A qualified out-of-state licensee;
10 (2) Any law-enforcement officer;
11 (3) Any person who is not prohibited from possessing firearms
12 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
13 prohibited by section seven of this article from possessing firearms
14 or carrying a concealed weapon in a public place, who is a
15 prosecutor or a duly appointed investigator employed by a
16 prosecutor;
17 (4) Any person who is not prohibited from possessing firearms
18 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
19 prohibited by section seven of this article from possessing firearms
20 or carrying a concealed weapon in a public place, who is a justice,
21 judge or magistrate, or a senior status justice or judge, who
22 exercises the judicial power of this state under Article VIII of the
23 Constitution of this state or the judicial power of the United

1 States under Article III of the United States Constitution;

2 (5) Any member of the Armed Forces of the United States or the
3 military forces of this state, who is on duty;

4 (6) Any person who is not prohibited from possessing firearms
5 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
6 subsection (a), section seven of this article, who is an officer,
7 agent or employee of this state, any political subdivision of this
8 state, the United States or any other state or political subdivision
9 thereof, who is authorized by the laws of his or her jurisdiction to
10 possess or carry firearms or other weapons in the course of
11 performance of his or her official duties, while he or she is
12 conducting official business;

13 (7) Any person who is not prohibited from possessing firearms
14 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, or
15 subsection (a), section seven of this article, and has been summoned
16 to the aid of any officer or agent of the United States, this state
17 or any political subdivision of this state pursuant to any federal
18 law or law of this state requiring the person to aid such officer or
19 agent, while the person is acting in the course of performance of
20 the aid he or she has been summoned to render;

21 (8) Any person who is not prohibited from possessing firearms
22 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, not
23 prohibited by section seven of this article from possessing firearms

1 or carrying a concealed weapon in a public place, possesses an
2 expired license that was previously issued pursuant to section four
3 of this article and is eligible to obtain a new license under
4 section four of this article; or

5 (9) Any person who has specific statutory authorization under
6 federal law or another provision of this code to carry firearms or
7 concealed weapons, subject to any conditions or limitations
8 contained in such authorization.

9 (e) Subsection (b) of this section does not apply to any person
10 who is not prohibited from possessing firearms by 18 U.S.C. §922(g),
11 as it exists as of January 1, 2011, and not prohibited by section
12 seven of this article from possessing firearms or carrying a
13 concealed weapon in a public place, when the person is:

14 (1) Carrying the weapon to or from any courtroom, judge's
15 chambers or court proceeding as authorized by section eleven-b of
16 this article;

17 (2) In a public building and is expressly authorized by the
18 officer or agency that controls the public building to carry a
19 concealed weapon without a license in that public building;

20 (3) In a place described in subdivision (2), subsection (b) of
21 this section, and is expressly authorized by the applicable house of
22 the Legislature or governing body to carry a concealed weapon
23 without a license in a meeting of that house of the Legislature or

1 governing body;

2 (4) In a place described in subdivision (3) or (4), subsection
3 (b) of this section, and is expressly authorized by the authorities
4 in charge of the public event or higher education institution to
5 carry a concealed weapon without a license;

6 (5) On private property and has the express permission of the
7 private property owner to carry a concealed weapon without a license
8 on the premises;

9 (6) In or on any parking garage, parking lot or other motor
10 vehicle parking facility; or

11 (7) Carrying a concealed weapon to the extent reasonably
12 necessary to convey the weapon to a secure weapon storage area
13 established pursuant to subdivision (1), (2), (3) or (4), subsection
14 (b) of this section upon entering a place described in subdivision
15 (1), (2), (3) or (4), subsection (b) of this section, check and
16 store the weapon in the secure weapon storage area during the
17 person's presence in a place described in subdivision (1), (2), (3)
18 or (4), subsection (b) of this section and remove the weapon from
19 the secure weapon storage area and convey the weapon outside a place
20 described in subdivision (1), (2), (3) or (4), subsection (b) of
21 this section upon the person's departure from a place described in
22 subdivision (1), (2), (3) or (4), subsection (b) of this section.

23 (f) A licensee under section four or five of this article or

1 person described in subdivision (1) or (8), subsection (d) of this
2 section shall, whenever he or she is carrying a concealed weapon
3 under the authority of that license or engaging in any other
4 activity that, under the laws of this state, would be unlawful in
5 the absence of such license:

6 (1) Carry his or her license on or about his or her person or
7 in a place from which the person may retrieve it within a reasonable
8 amount of time;

9 (2) If the license does not contain the licensee's photograph,
10 carry a driver's license or a photo identification issued by the
11 licensee's state of residence or the United States that contains the
12 licensee's photograph, on or about his or her person or in a place
13 from which the licensee may retrieve it within a reasonable amount
14 of time; and

15 (3) When contacted by a law-enforcement officer, display the
16 license and, if subdivision (2) of this subsection is applicable,
17 the photo identification required by subdivision (2) of this
18 subsection, if the law-enforcement officer requests the person
19 display the license.

20 (g) A licensee under section four or five of this article or
21 any person who is authorized by subsection (c) or (d) of this
22 section to carry a concealed weapon without a license shall,
23 whenever he or she is carrying about his or her person a concealed

1 weapon under the authority of that license or engaging in any other
2 activity that, under the laws of this state, would be unlawful in
3 the absence of a license or other lawful authorization to carry a
4 concealed weapon, shall:

5 (1) When contacted by a law-enforcement officer, accurately and
6 completely answer any inquiries by a law-enforcement officer
7 regarding whether the person is lawfully carrying any concealed
8 weapons and the locations and description of all concealed weapons
9 the person is lawfully carrying about his or her person; and

10 (2) When contacted by a law-enforcement officer, submit to a
11 lawful request of a law-enforcement officer to permit the
12 law-enforcement officer to take temporary custody of and secure all
13 deadly weapons in the person's possession or secure the weapons at
14 the direction of the law-enforcement officer, during the duration of
15 the contact if the law-enforcement officer clearly and expressly
16 informs the person that the officer reasonably believes temporarily
17 disarming the person is necessary for the protection of the person,
18 the officer or another individual. Unless the law-enforcement
19 officer arrests the person, the law-enforcement officer shall, upon
20 termination of the contact, return all weapons to the person in the
21 same condition and configuration as they were taken. This
22 subdivision applies only when a law-enforcement officer is
23 authorized under the laws of this state to disarm a person and may

1 not be construed to create any independent legal authority for any
2 law-enforcement officer to disarm any person who is lawfully
3 carrying any deadly weapon, whether openly or concealed.

4 (h) Any person who violates subsection (f) of this section is
5 guilty of a misdemeanor and, upon conviction thereof, may be fined
6 not more than \$25 for a first offense; and, upon conviction for a
7 second or subsequent offense occurring within five years, fined not
8 less than \$25 nor more than \$250. However, a charge of violating
9 subsection (f) of this section shall be dismissed and a person may
10 not be convicted of violating subsection (f) of this section if the
11 person produces in court or in the office of the arresting officer
12 a license and, if required by subdivision (2), subsection (f) of
13 this section, secondary photo identification, that was valid at the
14 time of the alleged offense.

15 (i) Any person who violates subsection (a), (b) or (g) of this
16 section is guilty of a misdemeanor and, upon conviction thereof,
17 shall be fined not less than one hundred dollars nor more than
18 \$1,000, and may be imprisoned confined in the county jail for not
19 more than ~~twelve~~ six months, or both fined and confined. ~~for the~~
20 first offense; but upon conviction of a second or subsequent offense
21 he or she shall be guilty of a felony and, upon conviction thereof,
22 shall be imprisoned in the penitentiary not less than one nor more
23 than five years, and fined not less than one thousand dollars nor

1 ~~more than five thousand dollars.~~

2 ~~(b) It shall be the duty of the prosecuting attorney in all~~
3 ~~cases to ascertain whether or not the charge made by the grand jury~~
4 ~~is a first offense or is a second or subsequent offense and, if it~~
5 ~~shall be a second or subsequent offense, it shall be so stated in~~
6 ~~the indictment returned, and the prosecuting attorney shall~~
7 ~~introduce the record evidence before the trial court of such second~~
8 ~~or subsequent offense, and shall not be permitted to use discretion~~
9 ~~in introducing evidence to prove the same on the trial.~~

10 (j) (1) For the purposes of applying the provisions of the
11 federal Law-Enforcement Officers Safety Act of 2004, 18 U.S.C.
12 §§926B and 926C, as amended, to this article, any qualified
13 law-enforcement officer under 18 U.S.C. §926B or qualified retired
14 law-enforcement officer under 18 U.S.C. §926C, is authorized to
15 carry concealed weapons in this state without a license pursuant to
16 subdivision (9), subsection (d) of this section.

17 (2) For the purposes of applying the provisions of 18 U.S.C.
18 §926B(b) (2) and 18 U.S.C. §926C(b) (2) to the laws of this state, the
19 Legislature expressly declares and provides that, as a matter of
20 state law, all qualified law-enforcement officers under 18 U.S.C.
21 §926B and all qualified retired law-enforcement officers under 18
22 U.S.C. §926C, are equally entitled to any exemption under the laws
23 of this state from any prohibition or restriction on the possession

1 of firearms on any state or local government property, installation,
2 building, base or park, that is applicable to any person who is
3 licensed to carry concealed weapons pursuant to section four of this
4 article.

5 (k) When any person is charged with any offense under
6 subsection (a) or (b) of this section:

7 (1) The state shall negate the existence of a license under
8 section four or five of this article valid at the time of the
9 alleged offense in the accusation charging commission of the offense
10 and prove beyond a reasonable doubt as part of its case in chief
11 that the defendant had not been issued a license under section four
12 or five of this article that was valid at the time of the alleged
13 offense.

14 (2) When a person asserts any exemption under subsection (c),
15 (d) or (e) of this subsection, except as otherwise provided by
16 subdivision (3) of this subsection, the exemption shall be a defense
17 that the state is not required to negate in the accusation charging
18 commission of the offense or as part of its case in chief at trial.
19 However, once evidence is admitted by the defendant at trial
20 supporting the existence of an exemption, that person shall be
21 required to prove beyond a reasonable doubt that the asserted
22 exemption did not apply to the defendant.

23 (3) When a person asserts an exemption as a qualified

1 out-of-state licensee but did not exhibit at the time of the alleged
2 offense a facially valid license issued by another state and did not
3 claim to be licensed by an issuing authority that provides the means
4 for instantaneous verification of the validity of all such licenses,
5 accessible twenty-four hours a day, the person's status as a
6 qualified out-of-state licensee shall be an affirmative defense that
7 the defendant shall prove by a preponderance of evidence.

8 (1) When any person carries a concealed weapon in a location
9 described in subsection (b) of this section, possesses a deadly
10 weapon in a school safety zone under subdivision (1), subsection
11 (b), section eleven-a of this article, or engages in any activity
12 that, under the laws of this state, would be unlawful in the absence
13 of a license to carry concealed weapons under section four or five
14 of this article or other lawful authorization to carry a concealed
15 weapon, and:

16 (1) Fails to present to a law-enforcement officer for
17 inspection a license to carry concealed weapons under section four
18 or five of this article or evidence of the person's lawful
19 authorization to carry a concealed weapon, the law-enforcement
20 officer shall ask the person whether he or she is licensed under
21 section four or five of this article or possesses any evidence of
22 qualification to lawfully carry a concealed weapon without a
23 license.

1 (2) Claims to be licensed under section four or five of this
2 article, the law-enforcement officer shall query the concealed
3 weapons license verification service established pursuant to
4 subdivision (2), subsection (1), section four of this article. If
5 the inquiry shows the person is licensed, there is a rebuttable
6 presumption the person is licensed but the law-enforcement officer
7 may, at his or her discretion, issue the person a citation for
8 violating subsection (g) of this section. If the inquiry does not
9 indicate the person is licensed under section four or five of this
10 article, there is a rebuttable presumption the person is not
11 licensed under section four or five of this article and the
12 law-enforcement officer shall ask the person whether he or she is
13 lawfully authorized to carry a concealed weapon without a license
14 and possesses evidence of such authorization.

15 (3) Is not licensed under section four or five of this article
16 claims to be a qualified out-of-state licensee and presents a
17 facially valid qualified out-of-state license to carry concealed
18 weapons, the law-enforcement officer may attempt to verify the
19 validity of the qualified out-of-state license to carry concealed
20 weapons and the person's eligibility under subdivision (1),
21 subsection (d) of this section. If the issuing authority provides
22 the means for instantaneous verification of the validity of all such
23 licenses, accessible twenty-four hours a day, the law-enforcement

1 officer shall immediately contact the issuing authority to verify
2 the validity of the license. If the issuing authority verifies the
3 validity of the license and the law-enforcement officer does not
4 have credible information showing the person is not qualified as a
5 qualified out-of-state licensee, there is a rebuttable presumption
6 the person is a qualified out-of-state licensee.

7 (4) Claims to be a qualified out-of-state licensee, does not
8 have in his or her physical possession a facially valid qualified
9 out-of-state license to carry concealed weapons and the issuing
10 authority provides the means for instantaneous verification of the
11 validity of all such licenses, accessible twenty-four hours a day,
12 the law-enforcement officer shall contact the issuing authority
13 claimed by the person to verify whether the person is licensed. If
14 the issuing authority verifies that the person is currently licensed
15 and the law-enforcement officer does not have credible information
16 showing the person is not qualified as a qualified out-of-state
17 licensee, there is a rebuttable presumption the person is a
18 qualified out-of-state licensee but the law-enforcement officer may
19 issue the person a citation for violating subsection (h) of this
20 section. If the issuing authority responds that its records do not
21 show that the named person is currently licensed, there is a
22 rebuttable presumption that the person is not currently licensed by
23 the issuing authority claimed.

1 (5) Claims to be a qualified out-of-state licensee, does not
2 have in his or her physical possession a facially valid qualified
3 out-of-state license to carry concealed weapons and the issuing
4 authority does not provide the means for instantaneous verification
5 of the validity of all such licenses, accessible twenty-four hours
6 a day, there is a rebuttable presumption that the person is not
7 licensed by the issuing authority by which the person claims to be
8 licensed.

9 (6) Claims to be a qualified out-of-state licensee but is
10 registered to vote in this state, has a child of which the person
11 has primary legal custody enrolled in a public elementary or
12 secondary school in this state, receives any form of public
13 assistance from this state, receives a homestead tax exemption on
14 property in this state, has an application pending for a homestead
15 tax exemption on property in this state, is a student at a state
16 institution of higher education who is not charged nonresident
17 tuition or holds a current, valid West Virginia driver's license,
18 instruction permit or nondriver photo identification card issued by
19 the Division of Motor Vehicles showing a residence address in this
20 state, there is a rebuttable presumption that the person is a
21 resident of this state and disqualified as a qualified out-of-state
22 licensee unless the person produces to the court satisfactory
23 evidence of qualification under paragraph (E), subdivision (54),

1 section two of this article.

2 **§61-7-4. Licenses to carry concealed weapons.**

3 (a) Except as otherwise provided in subsection ~~(h)~~ (y) of this
4 section, any ~~person desiring~~ resident of this state who desires to
5 obtain a state license to carry ~~a concealed deadly weapon~~ weapons
6 shall apply to the sheriff of ~~his or her~~ the county ~~for such~~
7 ~~license, and shall pay to the sheriff, at the time of application,~~
8 ~~a fee of seventy five dollars, of which fifteen dollars of that~~
9 ~~amount shall be deposited in the courthouse facilities improvement~~
10 ~~fund created by section six, article twenty-six, chapter twenty-nine~~
11 ~~of this code. Concealed weapons permits may only be issued for~~
12 ~~pistols or revolvers.~~ in which he or she resides. Except as
13 otherwise provided in subdivision (2) of this subsection or
14 subsection (y) of this section, any nonresident who desires to
15 obtain a state license to carry concealed weapons may apply to the
16 sheriff of any county. Each applicant shall, at the time of
17 application, pay the sheriff a nonrefundable license fee computed
18 pursuant to subsection (n) of this section. Each applicant shall
19 file with the sheriff, a complete application, ~~as~~ in writing,
20 verified under oath and notarized as provided in subsection (e) of
21 this section, on the uniform application form prepared by the
22 ~~superintendent of the West Virginia state police, in writing, duly~~
23 ~~verified~~ Attorney General pursuant to subsection (i) of this

1 section, which ~~sets forth~~ shall specify only the following licensing
2 requirements:

3 (1) A complete description by the applicant of the applicant's:

4 (A) Full name;

5 (B) All prior legal names and aliases;

6 (C) Date and place of birth;

7 (D) Country of citizenship;

8 (E) Social Security number, and a description of the
9 applicant's whose submission by the applicant shall be optional;

10 (F) If the applicant has established a Voluntary Appeal File
11 with the Federal Bureau of Investigation pursuant to 28 C.F.R.
12 §25.10(g), the applicant's Voluntary Appeal File unique personal
13 identification number, whose submission by the applicant shall be
14 optional;

15 (G) If the applicant is a naturalized citizen of the United
16 States, the applicant's United States naturalization number;

17 (H) If the applicant is an alien, the applicant's United
18 States-issued alien or admission number and any other information
19 designated by the Attorney General on the application form necessary
20 to determine the applicant's immigration status and whether the
21 applicant is prohibited by federal law from possessing,
22 transporting, shipping or receiving firearms on the basis of
23 immigration status;

1 (I) Driver's license, commercial driver's license, instruction
2 permit or nondriver state photo identification number and the
3 issuing state;

4 (J) Residence address, which, unless the applicant is subject
5 to the provisions of subsection (s) of this section, shall be
6 consistent with the residence address listed by the applicant with
7 the issuing agency of the driver's license or nondriver state
8 identification card the applicant stated pursuant to paragraph (I)
9 of this subdivision;

10 (K) Mailing address if different from the residence address
11 specified pursuant to paragraph (J) of this subdivision;

12 (L) Telephone numbers and e-mail address, if available, at
13 which the applicant desires to be contacted about any questions
14 pertaining to the application or to receive notice of the
15 disposition of the application, whose submission by the applicant
16 shall be optional;

17 (M) Sex;

18 (N) Race;

19 (O) Height;

20 (P) Weight as of the date of the application or any time within
21 the thirty days preceding the date of the application;

22 (Q) Natural hair color;

23 (R) Natural eye color;

1 (S) Other physical features of and descriptive information
2 about the applicant necessary to determine the applicant's
3 eligibility for licensure and performance of the investigation and
4 background checks required by subsection (b) of this section, as
5 specified by the Attorney General on the uniform application form;

6 (T) Desired license class; and

7 (U) If the applicant holds a current, valid license under this
8 section, the class and expiration date of the licensee's current
9 license, the county in which the licensee's current license was
10 issued, if different from the county in which the licensee is
11 applying for renewal or modification, and, if the current license
12 has a unique license number assigned pursuant to subdivision (5),
13 subsection (h) of this section, the licensee's current license
14 number;

15 (2) That, on the date the application is made, the applicant
16 is:

17 (A) A bona fide resident of this state and of the county in
18 which the application is made and, unless the applicant is subject
19 to subsection (s) of this section, has a valid driver's license,
20 commercial driver's license, instruction permit or other
21 state-issued nondriver photo identification issued by the Division
22 of Motor Vehicles showing such the applicant's residence address in
23 this state;

1 (B) A servicemember:

2 (i) Who is domiciled in this state and the county in which the
3 application is made but whose permanent duty station is located
4 outside this state; or

5 (ii) Who is domiciled outside this state, whose permanent duty
6 station is located within this state or an adjoining state and who
7 maintains a place of abode in this state and the county in which the
8 application is made;

9 (C) A nonresident who:

10 (i) Resides within the United States or is a citizen of the
11 United States;

12 (ii) Unless the applicant is a citizen of the United States who
13 resides outside the United States, has a valid driver's license or
14 other photo identification issued by the applicant's state of
15 residence, showing the applicant's residence address; and

16 (iii) If the applicant is a resident of a state the Attorney
17 General has determined, pursuant to paragraph (A), subdivision (3),
18 subsection (u) of this section, grants full faith and credit to
19 licenses issued under this section:

20 (I) The Attorney General has listed the state in which the
21 applicant resides as a state that clearly bars the applicant from
22 lawfully using a license issued pursuant to this section for the
23 purpose of carrying a handgun or concealed weapon in the applicant's

1 state of residence, pursuant to any licensing law of the applicant's
2 state of residence, as an alternative to licensure by the
3 applicant's state of residence. The Attorney General shall, not less
4 than once annually, review the statutory and case law of every state
5 listed pursuant to paragraph (A), subdivision (3), subsection (u) of
6 this section and publish in the State Register a list of all states
7 in which the Attorney General does not find either clear statutory
8 language or an on-point holding of a statewide appellate court in a
9 published opinion of mandatory precedential value that bars a
10 resident of that state other than persons similarly situated to
11 persons described in subparagraphs (ii) through (iv), paragraph (E),
12 subdivision (54), section two of this article, from using a license
13 issued by another state as an alternative to licensure within that
14 state, and publish a list of these states in the State Register and
15 distribute copies of this list to the superintendent and each
16 sheriff;

17 (II) The applicant holds a current, valid qualified
18 out-of-state license or permit to carry concealed weapons, issued by
19 the applicant's state of residence, and encloses a full-color
20 photocopy of it with the application;

21 (III) The applicant is a full-time student at any higher
22 education institution located in this state and presents proof of
23 his or her full-time student status to the sheriff;

1 (IV) The applicant regularly conducts a lawful trade or
2 business within this state in which the applicant devotes
3 significant time, attention and labor to that trade or business with
4 the principal objective of livelihood and profit and presents
5 satisfactory evidence thereof to the sheriff;

6 (V) The applicant is regularly employed in a position in which
7 the applicant is required to carry a concealable weapon in this
8 state in the course of employment and presents satisfactory evidence
9 of such employment to the sheriff; or

10 (VI) The applicant or a family or household member of the
11 applicant owns real property in the county in which the applicant
12 applies for licensure on which the applicant maintains a seasonal or
13 temporary residence and includes with the application a current,
14 certified document from the assessor of that county, on a form
15 prescribed by the Attorney General, verifying the ownership of the
16 real property; or

17 (D) Is the spouse of any person described in paragraph (B) of
18 this subdivision or clauses (III) through (VI), subparagraph (iii),
19 paragraph (C) of this subdivision, who is licensed under this
20 section or has an application for licensure under this section
21 pending before the sheriff, and applies for licensure in the county
22 in which his or her spouse applied or has been licensed;

23 (3) That the applicant is at least twenty-one years of age ~~or~~

~~1 older: Provided, That any individual who is less than 21 years of
2 age and possesses a properly issued concealed weapons license as of
3 the effective date of this article shall be licensed to maintain his
4 or her concealed weapons license notwithstanding the provisions of
5 this section requiring new applicants to be at least twenty one
6 years of age: Provided, however, That upon a showing of any
7 applicant who is eighteen years of age or older, that he or she is
8 required to carry a concealed weapon as a condition for employment,
9 and presents satisfactory proof to the sheriff thereof, then he or
10 she shall be issued a license upon meeting all other conditions of
11 this section. Upon discontinuance of employment that requires the
12 concealed weapons license, if the individual issued the license is
13 not yet twenty-one years of age, then the individual issued the
14 license is no longer eligible and must return his or her license to
15 the issuing sheriff if he or she is applying for a Class 1, 2 or 3
16 license or at least eighteen years of age and, on the date the
17 application is made, less than twenty-one years of age, if he or she
18 is applying for a Class 4 or 5 license;~~

19 (4) That the applicant is not addicted to alcohol, a controlled
20 substance or a drug and is not an unlawful user thereof prohibited
21 by federal law, including without limitation 18 U.S.C. §922(g) or
22 (n), from possessing, transporting, shipping or receiving firearms;

23 (5) That the applicant ~~has~~ is not been convicted of a felony or

1 ~~of an act of violence involving the misuse of a deadly weapon~~
2 ~~prohibited by section seven of this article from possessing~~
3 ~~firearms;~~

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

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

22 ~~(8) That the applicant is physically and mentally competent to~~
23 ~~carry such weapon;~~

1 ~~(9) That the applicant has not, been adjudicated to be mentally~~
2 ~~incompetent;~~

3 (6) That the applicant is not prohibited by subsection (a),
4 section seven of this article from carrying a concealed weapon
5 outside his or her residence, temporary place of abode, fixed place
6 of business or other real property owned, leased or lawfully
7 possessed by the person;

8 (7) That the applicant is not prohibited by subdivision (1),
9 subsection (c), section seven of this article from carrying a
10 concealed weapon in a public place. For the purposes of this
11 subdivision, the exceptions specified in paragraphs (A) and (B),
12 subdivision (2), subsection (c), section seven of this article, do
13 not apply to the determination of whether a person fulfills the
14 requirements of this subdivision;

15 (8) That the applicant does not suffer a physical infirmity
16 which prevents the safe handling of a handgun;

17 (9) That, on the date of application, the applicant has:

18 (A) Proof of actual or corrected vision rated at 20/40 or
19 better, as demonstrated by:

20 (i) An original or photocopy of an affidavit of an
21 ophthalmologist or optometrist licensed and practicing in either
22 this state or the applicant's state of residence, issued upon the
23 basis of an examination of the applicant conducted within one year

1 immediately preceding the date of application, attesting to the
2 applicant's actual or corrected vision, which the applicant shall
3 enclose with the application; or

4 (ii) Any acceptable means prescribed by the West Virginia
5 Sheriffs' Bureau or, if the West Virginia Sheriffs' Bureau has made
6 no designation pursuant to this subparagraph, the Attorney General,
7 that provides reasonable assurance that the applicant has actual or
8 corrected vision rated at 20/40 or better;

9 (iii) Any other means acceptable to the sheriff that provides
10 reasonable assurance that the applicant has actual or corrected
11 vision rated at 20/40 or better;

12 (B) A current, valid instruction permit or driver's license
13 issued under chapter seventeen-b of this code, other than a Class G
14 driver's license or instruction permit issued pursuant to article
15 two-b, chapter seventeen-b of this code or a bioptic telescopic lens
16 driver's license issued under prior law, or a current, valid
17 commercial driver's license issued under chapter seventeen-e of this
18 code; or

19 (C) A current, valid license to drive or operate motor
20 vehicles, issued by a state listed by the West Virginia Sheriffs'
21 Bureau or, if the West Virginia Sheriffs' Bureau has not promulgated
22 a list of qualifying states pursuant to this paragraph, the Attorney
23 General, as a state that; (i) Has vision standards that, in all

1 material respects, are greater than or equal to the vision
2 requirements to obtain a driver's license in this state; and (ii)
3 has substantially similar requirements for vision screenings of all
4 renewal driver's license applicants, unless the license is a bioptic
5 telescopic lens license similar to a Class G driver's license issued
6 by this state pursuant to article two-b, chapter seventeen-b of this
7 code. The Attorney General shall research the laws, administrative
8 rules or regulations, policies and practices of the licensing
9 agencies of other states and make preliminary recommendations to the
10 West Virginia Sheriffs' Bureau regarding which states qualify under
11 this paragraph. Not less than once annually, the West Virginia
12 Sheriff's Bureau shall, taking into account the research and
13 recommendations of the Attorney General, determine which states'
14 licenses to drive or operate motor vehicles, if any, qualify under
15 this paragraph. The Attorney General shall publish the list of
16 qualifying states in the State Register, distribute copies of the
17 list of qualifying states to the superintendent and each sheriff and
18 make the list of qualifying states available to the public on the
19 Internet and in printed form upon request;

20 (10) That the applicant has qualified under the minimum
21 requirements ~~set forth~~ specified in subsection (d) of this section
22 ~~for handling and firing the weapon: Provided, That this requirement~~
23 ~~shall be waived in the case of a renewal applicant who has~~

1 ~~previously qualified~~ demonstrating competence with a handgun based
2 upon the class of license sought by the applicant;

3 (11) That, as of the date the application is made, the
4 applicant has been furnished a copy of the current compendium of
5 West Virginia weapons and self-defense laws described in subsection
6 (w) of this section and has read and is knowledgeable of its
7 contents. However, this subdivision does not apply to any
8 application made prior to the publication of the initial compendium
9 of West Virginia weapons and self-defense laws described in
10 subsection (w) of this section;

11 ~~(11)~~ (12) That the applicant authorizes the sheriff of the
12 county, or his or her designee, to whom the application is made to
13 conduct an investigation relative to the information contained in
14 the application;

15 (13) That the applicant authorizes the sheriff to whom the
16 application is made and the superintendent to examine any records,
17 including mental health records, substance abuse treatment records,
18 military service records and judicial records kept under seal,
19 pertaining to the applicant's eligibility for a license to carry
20 concealed weapons;

21 (14) That, except as otherwise restricted by federal law, the
22 applicant waives any right or privilege to maintain the secrecy of
23 mental health or substance abuse treatment records or any right to

1 conceal any fact the applicant may have the right or privilege of
2 concealing resulting from any law pertaining to the confidentiality
3 of such records, which waiver is limited to the background
4 investigation for determining the applicant's eligibility to receive
5 a license to carry concealed weapons and expires upon completion of
6 the background checks required by subsection (b) of this section and
7 the decision of the sheriff to issue or deny a license;

8 (15) Full-color photocopies of:

9 (A) The driver's license or nondriver state identification card
10 the applicant stated pursuant to paragraph (I), subdivision (1) of
11 this subsection;

12 (B) Documentation of the applicant's fulfillment of the
13 requirements of subdivision (3) of this subsection if the applicant
14 fulfills subdivision (3) of this subsection other than by paragraph
15 (A) of that subdivision;

16 (C) If the applicant is an alien:

17 (i) The applicant's:

18 (I) United States government-issued Permanent Resident Card
19 I-551 or its equivalent successor identification; or

20 (II) Other United States government-issued evidence of lawful
21 admission to the United States, which shall include the applicant's
22 category of admission, if the applicant has not been lawfully
23 admitted for permanent residence; and

1 (ii) If the applicant is an alien who has not been lawfully
2 admitted for permanent residence, evidence of compliance with the
3 provisions of 18 U.S.C. §922 (g) (5) and (y) (2), 27 C.F.R. §478.32
4 and any other applicable federal law or regulation regulating the
5 possession, transportation, shipment or receipt of a firearm by an
6 alien; and

7 (D) If the applicant is otherwise ineligible for licensure due
8 to a criminal conviction but the conviction has been expunged, set
9 aside or vacated or the person has been pardoned or otherwise had
10 firearm rights restored, a copy of the relevant pardon, expungement
11 or other order restoring firearm rights, unless the applicant is a
12 renewal applicant who previously provided the required documentation
13 under this paragraph in connection with a prior application under
14 this section made on or after the effective date of the amendments
15 to this section enacted during the 2011 Regular Session of the
16 Legislature;

17 (16) (A) Two passport-regulation color photographs of the
18 applicant taken within thirty days of the date of the application,
19 if the applicant applies by mail; or

20 (B) A digital photograph of the applicant taken by the sheriff
21 at the time of application, if the applicant applies in person; and

22 (17) If the applicant is applying for a Class 1 license, does
23 not hold a current, valid Class 1 license under this section and

1 does not possess a Class 1 license that, including any extension
2 pursuant to subdivision (2), subsection (g) of this section, expired
3 within six months prior to the date of a renewal application, a full
4 set of the applicant's fingerprints, which shall be administered by
5 electronic fingerprint imaging by any West Virginia law-enforcement
6 agency or any private contractor designated by the West Virginia
7 Sheriff's Bureau or by fingerprint card by any law-enforcement
8 agency in the United States or any private contractor designated by
9 the West Virginia Sheriff's Bureau.

10 (b) (1) The sheriff to whom an application is made under this
11 section shall conduct an investigation ~~including a nationwide~~
12 ~~criminal background check, in order to verify that to determine~~
13 ~~whether~~ the information required in subdivisions (1), (2), (3), (5),
14 ~~(6), (8), and (9),~~ statements made by the applicant in the
15 application relative to the criteria specified in subsection (a) of
16 this section ~~is~~ are, in all material respects, true and correct, and
17 whether the applicant is qualified for licensure under this section.

18 (2) The sheriff shall, as part of the investigation required by
19 subdivision (1) of this subsection:

20 (A) Conduct a state and national criminal history records
21 check, domestic violence protective order check, immigration records
22 check and mental health records check of each applicant to determine
23 whether the applicant is qualified for licensure under this section;

1 and

2 (B) Investigate and make a reasonable effort to verify that
3 each applicant has met the applicable requirements of subsection (d)
4 of this section for demonstrating competence with a handgun based
5 upon the class of license sought by the applicant. As part of any
6 investigation of a Class 1, 2 or 4 applicant required by this
7 paragraph, the sheriff shall attempt to verify that the instructor
8 of any course of instruction subject to the documentation
9 requirements of paragraph (D), subdivision (4), subsection (d) of
10 this section, complied with those requirements.

11 (3) The sheriff shall, as part of the background checks
12 required by paragraph (A), subdivision (2) of this subsection,
13 conduct on each applicant:

14 (A) A state criminal history records check through the State
15 Police Criminal Identification Bureau established pursuant to
16 section twenty-four, article two, chapter fifteen of this code;

17 (B) A state mental health records check through the central
18 state mental health registry established pursuant to article seven-a
19 of this chapter;

20 (C) A query of the domestic violence database established
21 pursuant to section twenty-one, article one, chapter fifty-one of
22 this code;

23 (D) A national criminal history records check by obtaining

1 reports on each applicant from:

2 (i) The National Crime Information Center; and

3 (ii) The Interstate Identification Index maintained by the
4 Federal Bureau of Investigation;

5 (E) If the applicant is an alien, a federal Immigration Alien
6 Query. If the applicant is an alien who has not been lawfully
7 admitted for permanent residence, in addition to the Immigration
8 Alien Query, the sheriff shall, if any doubt exists relating to
9 whether the alien may lawfully purchase a firearm under federal law,
10 consult with the United States Department of Homeland Security,
11 United States Department of Justice, United States Department of
12 State or other federal agency to confirm whether, under federal law,
13 the alien may lawfully purchase or possess a firearm in the United
14 States;

15 (F) A query of the National Instant Criminal Background Check
16 System established pursuant to Section 103 of the Brady Handgun
17 Violence Protection Act, Public Law 103-159, §103, 107 Stat. 1536
18 (1993), reprinted in 18 U.S.C. §922 notes, to determine whether the
19 applicant is prohibited from possessing or transporting firearms by
20 federal law, including without limitation 18 U.S.C. §922(g) or (n),
21 or section seven of this article;

22 (G) If the applicant is an applicant for a Class 1 license who
23 is required to submit fingerprints pursuant to subdivision (17),

1 subsection (a) of this section, fingerprint-based state and national
2 criminal and mental health background checks, including a
3 fingerprint-based national criminal background check report from the
4 Federal Bureau of Investigation; and

5 (H) Any other records checks determined by the West Virginia
6 Sheriffs' Bureau or, if the West Virginia Sheriffs' Bureau has made
7 no designation pursuant to this paragraph or a change in federal law
8 has rendered the most recent designation inadequate, the Attorney
9 General, necessary to preserve the designation of licenses issued
10 under this section on or after the effective date of the amendments
11 to this section enacted during the 2011 Regular Session of the
12 Legislature, other than licenses extended pursuant to subdivision
13 (2), subsection (g) of this section, as a qualifying alternative
14 under 18 U.S.C. §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and other
15 applicable federal laws governing background checks on purchasers of
16 firearms from licensed dealers, as they may be amended from time to
17 time, and to maximize the eligibility of each class of license for
18 reciprocal recognition by the greatest number of other states.

19 (4) The background check requirements of this subsection, other
20 than fingerprinting of Class 1 applicants, are equal for all
21 applicants, regardless of whether the applicant is applying as a
22 renewal or nonrenewal applicant.

23 (5) The Attorney General shall petition the United States

1 Bureau of Alcohol, Tobacco, Firearms and Explosives or its successor
2 to list licenses issued under this section on or after the effective
3 date of the amendments to this section enacted during the 2011
4 Regular Session of the Legislature, other than licenses extended
5 pursuant to subdivision (2), subsection (g) of this section, as a
6 qualifying alternative pursuant to 18 U.S.C. §922(t)(3)(A) and 27
7 C.F.R. §478.102(d)(1) and seek to maintain this listing.

8 (c) (1) There is hereby created in the State Treasury a special
9 revenue revolving fund account known as the State Police Concealed
10 Weapons License Background Check Administration Fund, which shall be
11 an interest-bearing account. This fund shall consist of twenty-five
12 percent of each license fee collected by the sheriffs pursuant to
13 subsection (a) of this section and subsection (b), section five of
14 this article, any funds appropriated into the fund by the
15 Legislature and any interest accrued to the fund. The balance
16 remaining in this fund at the end of each fiscal year shall remain
17 in the fund and shall not revert to the state General Revenue Fund.
18 The sheriff shall forward twenty-five percent of each license fee
19 the sheriff collects pursuant to subsection (a) of this section and
20 subsection (b), section five of this article, excluding any
21 fingerprinting fees for Class 1 applicants under subdivision (10),
22 subsection (n) of this section, to the State Treasurer, not later
23 than the tenth day of the month following the month of collection,

1 and indicate that the remittance is for deposit into the State
2 Police Concealed Weapons License Background Check Administration
3 Fund. The State Treasurer shall deposit all remittances received
4 from sheriffs pursuant to under this subdivision into the State
5 Police Concealed Weapons License Background Check Administration
6 Fund. The State Police Concealed Weapons License Background Check
7 Administration Fund shall be expended from collections rather than
8 appropriations by the Legislature on order of the superintendent
9 solely for the purpose of defraying the costs incurred by the State
10 Police in the performance of state criminal and mental health
11 background checks, as provided in subsection (b) of this section, on
12 applicants for licenses under this section or section five of this
13 article. Sixty dollars of the application fee and any fees for
14 replacement of lost or stolen licenses received by the sheriff shall
15 be deposited by

16 (2) The sheriff shall deposit the remainder of each license fee
17 the sheriff collects pursuant to subsection (a) of this section and
18 subsection (b), section five of this article, after making the
19 required remittances under subdivision (1) of this subsection, and
20 the whole amount of all other fees the sheriff collects in relation
21 to licenses to carry concealed weapons, into a Concealed Weapons
22 License Administration Fund. Such The sheriff shall administer the
23 Concealed Weapons License Administration Fund, which shall be

1 ~~administered by the sheriff and shall take the form of an interest~~
2 ~~bearing~~ interest-bearing account with any interest earned to be
3 compounded to the fund. ~~Any funds deposited in this concealed weapon~~
4 ~~license administration~~ Each county's Concealed Weapons License
5 Administration Fund shall be a perpetual, revolving fund ~~are to that~~
6 ~~be expended by the sheriff~~ may expend only to pay for the costs
7 incurred by the sheriff associated with ~~issuing concealed weapons~~
8 ~~licenses~~ administering this section and section five of this
9 article. Any surplus in the fund on hand at the end of each fiscal
10 year ~~may be expended for other law-enforcement purposes or operating~~
11 ~~needs of the sheriff's office, as the sheriff may consider~~
12 appropriate shall remain in the fund, shall not revert to the
13 General Fund of any county or county sheriff and shall be used only
14 to pay future costs payable from the fund as provided by this
15 section.

16 (d) (1) All persons applying for a license ~~must complete a~~
17 ~~training course in handling and firing~~ to carry concealed weapons
18 shall demonstrate competence with a handgun ~~The successful~~
19 ~~completion of any of the following courses fulfills this training~~
20 ~~requirement~~ as prescribed by this subsection based upon the class of
21 license the applicant seeks. An applicant for a Class 3 or 5
22 license shall demonstrate basic competence with a handgun under
23 subdivision (2) of this subsection. An applicant for a Class 1, 2 or

1 4 license shall demonstrate basic competence with a handgun under
2 subdivision (2) of this subsection and demonstrate competence in
3 handling and firing a handgun as prescribed by subdivision (4) of
4 this subsection.

5 (2) A person may fulfill the requirement of demonstrating basic
6 competence with a handgun by any one of the following:

7 ~~(1)~~ (A) Completion of any official National Rifle Association
8 handgun safety or training course;

9 ~~(2)~~ (B) Completion of any handgun safety or training course or
10 class available to the general public offered by an official
11 law-enforcement organization, community college, junior college,
12 college or private or public institution or organization or handgun
13 training school utilizing instructors duly certified by such
14 institution;

15 ~~(3)~~ (C) Completion of any handgun training or safety course or
16 class conducted by a handgun instructor certified ~~as such~~ by any
17 branch of the Armed Forces of the United States, the military forces
18 of this state, any federal, state or local law-enforcement agency,
19 the state in which the course or class was conducted or ~~by~~ the
20 National Rifle Association;

21 ~~(4)~~ (D) Completion of any handgun training or safety course or
22 class conducted by any branch of the Armed Forces of the United
23 States or the military reserve or National Guard forces of this

1 state;

2 (E) Evidence of qualification prior to March 8, 1996, under the
3 minimum standards for demonstrating competence with a handgun in
4 effect at the time of qualification, prescribed by the Department of
5 Natural Resources pursuant to the former enactment of subdivision
6 (8), subsection (a) of this section, as it existed at any time
7 between July 7, 1989, and March 8, 1996, the former enactment of
8 subdivision (5), subsection (b), section two of this article, as it
9 existed between June 6, 1988, and July 6, 1989, or the former
10 enactment of subsection (e), section two of this article, as it
11 existed between June 6, 1975, and June 5, 1988;

12 (F) Completion of any law-enforcement handgun safety or
13 training course or class offered for security guards, investigators,
14 special deputies or any division or subdivision of law-enforcement
15 or security enforcement;

16 (G) Experience in organized handgun shooting competition;

17 (H) Proof of current service in or an honorable discharge or a
18 general discharge under honorable conditions from any branch of the
19 Armed Forces of the United States or the military forces of this
20 state;

21 (I) Evidence the applicant currently holds or was previously
22 issued any license pursuant to this section or any former enactment
23 of section two of this article as it existed at any time between

1 June 6, 1975, and July 6, 1989;

2 (J) Evidence the applicant currently holds or was previously
3 issued a qualified out-of-state license or permit to carry concealed
4 weapons, by a state listed by the West Virginia Sheriffs' Bureau
5 pursuant to this paragraph as having requirements for demonstrating
6 competence with a handgun that are substantially similar to the
7 requirements of this subsection for the class of license being
8 sought, unless the license was a temporary or emergency license not
9 subject to the issuing state's demonstration of competence
10 requirement and the applicant was not subsequently issued a regular
11 license subject to the applicable demonstration of competence
12 requirement. The Attorney General shall research the laws,
13 administrative rules or regulations, policies and practices of the
14 licensing agencies of other states and make preliminary
15 recommendations to the West Virginia Sheriffs' Bureau regarding each
16 state's qualifications under this paragraph. Not less than once
17 annually, the West Virginia Sheriff's Bureau shall, taking into
18 consideration the research and recommendations of the Attorney
19 General, determine which states have requirements for demonstrating
20 competence with a handgun as a prerequisite for the issuance of a
21 qualified out-of-state license or permit to carry concealed weapons
22 that are substantially similar to the requirements of this
23 subdivision for each class of license and publish a list of

1 qualifying states for each class of license. The Attorney General
2 shall publish each list in the State Register, distribute copies of
3 each list to the superintendent and each sheriff and make each list
4 available to the public on the Internet and in printed form upon
5 request;

6 (K) Evidence the applicant is an honorably retired
7 law-enforcement officer exempt from payment of licensing fees
8 pursuant to subdivision (5), subsection (n) of this section;

9 (L) Completion of any law-enforcement agency handgun training
10 course and qualifying to carry a handgun in the course of normal
11 law-enforcement duties;

12 (M) Completion of any handgun safety or training course or
13 class approved by the West Virginia Sheriffs' Bureau; or

14 (N) Completion of any handgun safety or training course or
15 class that the sheriff considers adequate.

16 (3) Evidence of qualification under subdivision (2) of this
17 subsection may be documented by:

18 (A) A photocopy of a certificate of completion of any of the
19 courses or classes ~~or~~ specified in subdivision (2) of this
20 subsection;

21 (B) An affidavit from the instructor, school, club,
22 organization or group that conducted or taught ~~said~~ a course or
23 class specified in subdivision (2) of this subsection, attesting to

1 the successful completion of the course or class by the applicant;
2 ~~or a~~

3 (C) An original or a copy of any document indicating
4 participation in any firearms shooting competition;

5 (D) An original or a copy of a United States Department of
6 Defense Form 214 (DD-214) indicating an honorable discharge or
7 general discharge under honorable conditions, a certificate of
8 completion of basic training or any other document demonstrating
9 proof of the applicant's current status in the Armed Forces of the
10 United States or an honorable discharge or a general discharge under
11 honorable conditions, as prescribed by paragraph (H), subdivision
12 (2) of this subsection;

13 (E) An original or a full-color copy of any license described
14 in paragraph (I) or (J), subdivision (2) of this subsection;

15 (F) A copy of any document which shows successful completion of
16 the a course or class shall constitute described in subdivision (2)
17 of this subsection; or

18 (G) Any other reasonable, competent and credible evidence of
19 qualification under subdivision (2) of this section subsection.

20 (4) (A) An applicant for a Class 1, 2 or 4 license shall
21 demonstrate competence in handling and live firing a handgun by
22 including with any application for a Class 1, 2 or 4 license:

23 (i) A copy of a current or expired Class 1, 2 or 4 license

1 under this section;

2 (ii) Documentation of having been previously issued a Class 1,
3 2 or 4 license under this section;

4 (iii) An original or photocopy of a notarized affidavit by a
5 certified handgun instructor eligible to offer any course or class
6 described in paragraph (A), (B), (C), (D), (F), (L), (M) or (N),
7 subdivision (2) of this subsection, on a form prescribed by the
8 Attorney General, attesting that the applicant successfully
9 completed the live fire shooting exercises and passed the live fire
10 shooting proficiency test specified in paragraph (B) of this
11 subdivision; or

12 (iv) Any other evidence of demonstrated competence in handling
13 and live firing a handgun prescribed by the West Virginia Sheriffs'
14 Bureau. Before the West Virginia Sheriffs' Bureau may authorize any
15 alternative forms of demonstrated competence in handling and live
16 firing a handgun under this subparagraph, it shall, in consultation
17 with the Attorney General and any individuals or organizations in
18 regular communication with the Attorney General about concealed
19 weapons license issues, consult the Attorney General or other agency
20 responsible for administering the concealed weapons license
21 reciprocity laws of states in which reciprocal recognition of
22 licenses issued under this section is conditioned on the nature of
23 this state's requirements for demonstrating competence in handling

1 and firing a handgun. The West Virginia Sheriffs' Bureau may
2 authorize any alternative forms of demonstrated competence in
3 handling and live firing a handgun under this subparagraph only if
4 the West Virginia Sheriffs' Bureau, in consultation with the
5 Attorney General, determines that the proposed alternative will not
6 impair the reciprocal recognition of any Class 1, 2 or 4 license
7 under this section in any other state. This subparagraph shall be
8 narrowly construed in light of the Legislature's intent expressed in
9 subdivision (47), section one of this article.

10 (B) A certified handgun instructor eligible to offer any course
11 or class described in paragraph (A), (B), (C), (D), (F), (L), (M) or
12 (N), subdivision (2) of this subsection, may issue an affidavit, on
13 a form prescribed by the Attorney General, certifying that a person
14 who has met the requirements of subdivision (2) of this subsection
15 for demonstrating basic competence with a handgun has:

16 (i) Spent at least two hours on a handgun shooting range within
17 this state;

18 (ii) In the course of the shooting proficiency test described
19 in subparagraph (iii) of this paragraph and preparatory shooting
20 exercises held at the shooting range during the same day as the
21 testing, shot at least one hundred rounds of live, factory-loaded
22 ammunition of a caliber not less than .380 from a semiautomatic
23 pistol at one or more B-27 silhouette targets or equivalent targets;

1 and

2 (iii) In the course of a shooting proficiency test administered
3 by the instructor while the applicant was in the actual physical
4 presence of and under the direct personal supervision of the
5 instructor, successfully fired twenty rounds of live, factory-loaded
6 ammunition of a caliber not less than .380 from a semiautomatic
7 pistol, from a distance of not less than twenty-one feet, at a B-27
8 silhouette target or an equivalent target and hit the silhouette
9 portion of the target with at least 15 of the 20 rounds of
10 ammunition. An applicant who fails to hit the silhouette portion of
11 the target with at least fifteen of the twenty rounds of ammunition
12 fired during a test may retake the test an unlimited number of times
13 until the applicant hits the silhouette portion of the target with
14 at least fifteen of the twenty rounds of ammunition expended in a
15 single test.

16 (C) During each session of live fire shooting exercises and
17 testing under paragraph (B) of this subdivision, an instructor may
18 not have more than five students per range officer engaged in live
19 firing exercises.

20 (D) Any instructor who attests to the successful completion of
21 a live fire shooting exercise and proficiency test pursuant to
22 paragraph (B) of this subdivision shall maintain records certifying
23 that, in his or her actual physical presence and under his or her

1 direct personal supervision, he or she observed the student safely
2 handle a handgun and complete the live fire shooting exercises and
3 pass the live fire shooting proficiency test prescribed in paragraph
4 (B) of this subdivision.

5 (5) A sheriff may not require an applicant to demonstrate
6 competence with a handgun other than as provided in subdivisions (2)
7 through (4) of this subsection. Any demonstration of competence
8 under subdivision (2) or (4) of this subsection does not expire.

9 (6) All courses of instruction under subdivision (2) of this
10 subsection and live fire shooting exercises and testing under
11 subdivision (4) of this subsection shall reasonably accommodate any
12 physical disability of any trainee who is mentally and physically
13 capable of safely handling and firing a handgun with at least one
14 hand.

15 (7) The Attorney General shall compile and make available to
16 the public on the Attorney General's website searchable databases of
17 firearm training schools or instructors who regularly offer to the
18 public handgun safety or training courses that fulfill the
19 requirements of subdivision (2) or (4) of this subsection.
20 Participation in these databases shall be voluntary and without
21 charge. These databases shall be geographically indexed by county
22 in which qualifying courses are offered and shall permit
23 participating programs and instructors to list their names,

1 addresses, telephone numbers, e-mail addresses, websites and
2 locations where instruction is offered. Before listing any program
3 or instructor, the Attorney General shall verify the certification
4 and eligibility of the program or instructor to offer instruction
5 that fulfills the requirements of subdivision (2) or (4) of this
6 subsection.

7 ~~(e) All concealed weapons license applications must be~~
8 ~~notarized by~~ An applicant for a license to carry concealed weapons
9 shall, before filing the application with the sheriff, appear before
10 ~~a notary public duly licensed under article four, chapter~~
11 ~~twenty-nine of this code~~ commissioned pursuant to the laws of this
12 state or, if the applicant is a nonresident who applies by mail, the
13 state from which the nonresident applicant submits the application,
14 and subscribe to an acknowledgement of the application and an oath
15 verifying the truthfulness of the applicant's statements in the
16 application. Falsification of any portion of the application
17 constitutes false swearing and is punishable under the provisions of
18 section two, article five ~~chapter sixty-one of this code~~ chapter.

19 ~~(f) If the information in the application is found to be true~~
20 ~~and correct,~~

21 (f)(1) The sheriff shall date and time-stamp each complete
22 application received and issue to the applicant a receipt for the
23 application on a form prescribed by the Attorney General,

1 immediately in person if the applicant submitted the application in
2 person or by first-class mail to the applicant's mailing address
3 stated in the application if the applicant submitted the application
4 by mail, which shall contain the signature of the issuing sheriff or
5 a facsimile thereof affixed by any person authorized to act on the
6 sheriff's behalf pursuant to section five, article two, chapter two
7 of this code, the seal of the issuing sheriff, the date and time the
8 sheriff received the application and a statement of the time limits
9 for the sheriff to act on the application and the date on which the
10 applicant will become entitled to a temporary license under
11 subdivision (6) of this subsection in the absence of a final
12 decision by the sheriff on granting or denying a license.

13 (2) Upon receiving a complete application and issuing a receipt
14 as provided by subdivision (1) of this subsection, the sheriff
15 shall, except as otherwise authorized by the succeeding sentence of
16 this subdivision or required by subdivision (6) of this subsection,
17 commence the background investigation described in subdivision (1),
18 subsection (c) of this section, including an initiation of all
19 background checks required by subdivisions (2) and (3), subsection
20 (c) of this section, not later than the next business day following
21 the date of receipt stamped on the completed application and
22 diligently pursue that investigation in good faith until its
23 completion and the sheriff's decision on granting or denying a

1 license. The sheriff may delay pursuit of the investigation and
2 background checks for not more than twenty-one days during the
3 proclamation of a state of emergency pursuant to section six,
4 article five, chapter fifteen of this code, if the sheriff
5 determines that the enemy attack or natural or man-made disaster
6 cited in the proclamation of the state of emergency is or may
7 reasonably be anticipated to require the temporary suspension of
8 prompt background check processing otherwise required by this
9 subdivision to reasonably and temporarily reallocate resources of
10 the sheriff's office to respond to the declared emergency or
11 disaster. However, a delay in the prompt and diligent pursuit of
12 background checks authorized by the preceding sentence does not
13 alter the time limits specified by subdivision (4) of this
14 subsection for acting upon the application or the sheriff's duties
15 under subdivision (6) of this subsection.

16 (3) The sheriff shall issue a license unless, based upon the
17 results of the investigation and background checks required by
18 subsection (b) of this section, the sheriff finds that the
19 applicant made a materially false statement in the application, is
20 prohibited by federal law or section seven of this article from
21 possessing or transporting firearms or carrying a concealed weapon
22 in a public place or is not qualified for licensure under the
23 criteria specified in this section. The sheriff shall deny a license

1 if the sheriff finds that the applicant made a materially false
2 statement in the application, 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 or fails
5 to qualify under the licensing criteria listed in subsection (a) of
6 this section.

7 (4) The sheriff shall either issue ~~reissue~~ or deny ~~the~~ a
8 license, as provided in this subsection:

9 (A) Except as otherwise provided by paragraph (B) of this
10 subdivision, on the earlier of (i) ~~within~~ 45 days after the date
11 stamped on the application ~~is filed if all required background~~
12 checks authorized by this section are completed as the date on which
13 the sheriff received the completed application pursuant to
14 subdivision (1) of this subsection or (ii) completion of the
15 investigation and background checks required by subsection (b) of
16 this section; or

17 (B) If the applicant was issued a temporary license or
18 temporary renewal license pursuant to subdivision (6) of this
19 subsection, on the expiration date of the temporary license or
20 temporary renewal license, or, if the expiration date of the
21 temporary license or temporary renewal license is a Saturday,
22 Sunday, legal holiday or designated day off, the last preceding
23 business day before the expiration date of the temporary license or

1 temporary renewal license, which, if granted, shall be the date of
2 issue printed on the license and the date from which the license's
3 expiration date shall be calculated pursuant to subdivision (2),
4 subsection (g) of this section.

5 (5) Except as provided by subdivision (6) of this subsection,
6 the sheriff may suspend the time limitations prescribed by
7 subdivision (4) of this subsection until receipt of the final
8 disposition or proof of restoration of civil and firearm rights if
9 the sheriff receives criminal history information with no final
10 disposition of any criminal charge for which a conviction would
11 disqualify the applicant.

12 (6) Unless the sheriff has previously issued a temporary
13 license or temporary renewal license pursuant to this subdivision in
14 connection with the application, the sheriff shall certify on the
15 application that applicable time limit specified in paragraph (A),
16 subdivision (4) of this subsection has expired, that the sheriff has
17 performed the background checks specified in paragraphs (E) through
18 (G), subdivision (3), subsection (b) of this section to determine
19 whether the applicant is prohibited by federal law or section seven
20 of this article from possessing or transporting firearms or carrying
21 a concealed weapon in a public place and initiated the remainder of
22 the background investigation required by subsection (b) of this
23 section and that the information available to the sheriff does not

1 indicate that the applicant is prohibited by federal law or section
2 seven of this article from possessing or transporting firearms or
3 carrying a concealed weapon in a public place, and issue the
4 applicant a temporary license if, for any reason, the sheriff has
5 not issued or denied a regular license as provided in subdivision
6 (3) of this subsection after the expiration of the applicable time
7 limit specified in paragraph (A), subdivision (4) of this
8 subsection. The sheriff may issue a temporary license prior to the
9 expiration of the applicable time limit specified in paragraph (A),
10 subdivision (4) of this subsection, if all the conditions for
11 issuing a temporary license, other than the expiration of the
12 applicable time limit, have been fulfilled. Upon receiving an
13 application from a licensee who is applying for renewal of a license
14 issued under this section prior to the current license's expiration
15 date or is an emergency licensee under section five of this article
16 who is applying for a regular license under this section prior to
17 the emergency license's expiration date, the sheriff shall
18 immediately perform the background checks specified in paragraphs
19 (E) through (G), subdivision (3), subsection (b) of this section to
20 determine whether the applicant is prohibited by federal law or
21 section seven of this article from possessing or transporting
22 firearms or carrying a concealed weapon in a public place and, if
23 the information available to the sheriff does not show that the

1 applicant is prohibited by federal law or section seven of this
2 article from possessing or transporting firearms or carrying a
3 concealed weapon in a public place, immediately issue the licensee
4 a temporary renewal license. A temporary license or temporary
5 renewal license issued pursuant to this subdivision shall not
6 contain the licensee's photograph, shall be clearly marked as a
7 temporary or temporary renewal license and is valid for all intents
8 and purposes throughout this state when presented with a valid
9 government-issued photo identification pursuant to subdivision (2),
10 subsection (g), section three of this article, until the expiration
11 date provided by subdivision (3), subsection (g) of this section,
12 unless it is sooner suspended, revoked or voluntarily surrendered.
13 The sheriff shall immediately notify the superintendent by
14 electronic or facsimile communication of the issuance of a temporary
15 or temporary renewal license pursuant to this subdivision and send
16 the superintendent a certified copy of the application indicating
17 the issuance of a temporary or temporary renewal license by mail
18 within seven days, and the superintendent shall cause the concealed
19 weapons license database maintained pursuant to subdivision (2),
20 subsection (l) of this section to be updated accordingly. The
21 sheriff shall fulfill the requirements of this subdivision
22 regardless of whether the applicant prompts the sheriff to do so.
23 Failure of the sheriff to notify the applicant of the denial of the

1 application in accordance with subsection (j) of this section by the
2 expiration date of the temporary license or temporary renewal
3 license, constitutes issuance of a license by default and the
4 sheriff shall immediately fulfill the requirements of this section
5 as in any other case in which the sheriff issues a license.

6 (7) If the sheriff finds an applicant to be qualified for
7 licensure except for adequate evidence of demonstrated competence
8 with a handgun as required by subsection (d) of this section for the
9 class of license sought, the sheriff shall provisionally deny the
10 license and notify the applicant as required by this section in the
11 case of any other denial. If an applicant whose application is
12 provisionally denied for inadequate evidence of demonstrated
13 competence with a handgun required by subsection (d) of this
14 section, presents to the sheriff satisfactory evidence of
15 demonstrated competence with a handgun as required by subsection (d)
16 of this section for the class of license sought, the sheriff shall
17 reopen and reconsider the application and act upon the application
18 within seven days of receipt of the applicant's new evidence of
19 demonstrated competence with a handgun. If an applicant for a Class
20 1, 2 or 4 license fulfills the basic demonstration of competence
21 with a handgun under subdivision (2), subsection (d) of this
22 section, but did not present adequate evidence of competence in
23 handling and firing a handgun pursuant to subdivision (4),

1 subsection (d) of this section, and otherwise fulfills the
2 requirements for a Class 3 or 5 license, the sheriff shall issue a
3 Class 3 license if the applicant sought a Class 1 or 2 license or a
4 Class 5 license if the applicant sought a Class 4 license and
5 provisionally deny the Class 1, 2 or 4 license sought and the
6 licensee may seek a reconsideration of or appeal the sheriff's
7 decision on granting the higher class of license and maintain the
8 lower class of license granted until qualifying for the higher class
9 of license originally sought or succeeding in a reconsideration or
10 appeal of the original decision on denying the license originally
11 sought and granting a lower license classification.

12 (g) ~~Before any approved license shall be issued or become~~
13 ~~effective, the applicant shall pay to the sheriff a fee in the~~
14 ~~amount of fifteen dollars which the sheriff shall forward to the~~
15 ~~superintendent of the West Virginia state police within thirty days~~
16 ~~of receipt. Any such license shall be valid for five years~~
17 ~~throughout the state~~ All licenses issued under this section are
18 state licenses to carry concealed weapons that shall, unless sooner
19 suspended or revoked as provided in this section or voluntarily
20 surrendered, be valid throughout this state until the expiration
21 date determined as follows:

22 (1) Except as otherwise provided by subdivisions (2) and (4) of
23 this subsection:

1 (A) All Class 1, 2 and 3 licenses other than temporary licenses
2 and temporary renewal licenses issued pursuant to subdivision (6),
3 subsection (f) of this section, issued on or after the effective
4 date of the amendments to this section enacted during the 2011
5 Regular Session of the Legislature, shall expire on the licensee's
6 first birthday occurring more than four years but not more than five
7 years from the date of issue or, if the licensee is a renewal
8 applicant whose prior license's expiration date was on the
9 licensee's birthday, the licensee's first birthday following the
10 expiration date of the prior license on which the licensee's age
11 becomes evenly divisible by five.

12 (B) All Class 4 and 5 licenses, other than temporary licenses
13 and temporary renewal licenses issued pursuant to subdivision (6),
14 subsection (f) of this section, issued on or after the effective
15 date of the amendments to this section enacted during the 2011
16 Regular Session of the Legislature, shall expire on the licensee's
17 twenty-second birthday.

18 (2) Except as otherwise provided by subdivision (4) of this
19 subsection, the license, other than a temporary or temporary renewal
20 license issued pursuant to subdivision (6), subsection (f) of this
21 section, of any service member that expires during an active-duty
22 military deployment away from the licensee's place of residence or
23 permanent duty station, shall be extended for one hundred eighty

1 days following the end date of the deployment. In order to establish
2 proof of continued validity of a license extended by this
3 subdivision, the licensee shall carry and display in the same manner
4 as required of the license by this article, a copy of the licensee's
5 deployment orders or other documentation from the licensee's
6 commanding officer that orders the licensee to travel away from his
7 place of residence or permanent duty station and indicates the start
8 and end dates of the deployment.

9 (3) Except as otherwise provided by subdivision (4) of this
10 subsection, a temporary license issued pursuant to subdivision (6),
11 subsection (f) of this section, shall expire one hundred eighty days
12 from the date of issue. A temporary renewal license issued pursuant
13 to subdivision (6), subsection (f) of this section, shall expire one
14 hundred eighty days after the expiration date of the licensee's
15 current license under this section or the expiration date of the
16 emergency license issued pursuant to section five of this article
17 when the emergency licensee applies for a regular license under this
18 section prior to the emergency license's expiration date.

19 (4) Any license issued to an alien who has not been lawfully
20 admitted for permanent residence shall expire on the earlier of the
21 expiration date otherwise applicable under this subsection or the
22 last day the applicant or licensee has demonstrated to the sheriff
23 he or she is legally authorized to be in the United States.

1 ~~(h) All persons holding a current and valid concealed weapons~~
2 ~~license as of the sixteenth day of December, one thousand nine~~
3 ~~hundred ninety five, shall continue to hold a valid concealed~~
4 ~~weapons license until his or her license expires or is revoked as~~
5 ~~provided in this article: *Provided, That all reapplication fees*~~
6 ~~shall be waived for applications received by the first day of~~
7 ~~January, one thousand nine hundred ninety seven, for any person~~
8 ~~holding a current and valid concealed weapons license as of the~~
9 ~~sixteenth day of December, one thousand nine hundred ninety five,~~
10 ~~which contains use restrictions placed upon the license as a~~
11 ~~condition of issuance by the issuing circuit court. Any licenses~~
12 ~~reissued pursuant to this subsection will be issued for the time~~
13 ~~period of the original license.~~

14 ~~(i)~~ (h) (1) Each license shall be no larger than three and
15 three-eighths inches wide by two and one-eighth inches long and
16 shall be made of a hard, laminated material suitable for carrying in
17 a wallet, similar to a driver's license.

18 (2) The face of each license shall contain:

19 (A) The licensee's:

20 (i) Full name;

21 (ii) Date of birth;

22 (iii) Sex;

23 (iv) Race;

- 1 (v) Height;
- 2 (vi) Weight;
- 3 (vii) Natural hair color;
- 4 (viii) Natural eye color; and
- 5 (ix) Residence address of the licensee, and a space upon which
6 ~~the signature of the licensee shall be signed with pen and ink. The~~
7 ~~issuing sheriff shall sign and attach his or her seal to all license~~
8 ~~cards. The sheriff shall provide to each new licensee a duplicate~~
9 ~~license card, in size similar to other state identification cards~~
10 ~~and licenses, suitable for carrying in a wallet, and such license~~
11 ~~card is deemed a license for the purposes of this section. or an~~
12 alternate address determined pursuant to subsection (s) of this
13 section;
- 14 (x) Signature; and
- 15 (xi) Full-face color photograph, unless the license is a
16 temporary or temporary renewal license issued pursuant to
17 subdivision (6), subsection (f) of this section;
- 18 (B) The license's dates of issue and expiration;
- 19 (C) The unique license number assigned pursuant to subdivision
20 (5) of this subsection;
- 21 (D) Whether the license is duplicate or replacement license;
- 22 (E) The class of the license;
- 23 (F) The signature of the issuing sheriff or a facsimile thereof

1 affixed by any person authorized to act on the sheriff's behalf
2 pursuant to section five, article two, chapter two of this code;

3 (G) The seal of the issuing sheriff; and

4 (H) If the license does not entitle the licensee to an
5 exemption under 18 U.S.C. §922(t)(3)(A) within this state, the
6 phrase "NOT NICS EXEMPT" in red, all-capital letters in not less
7 than 12-point type.

8 (3) The reverse of each license shall contain:

9 (A) The telephone number of the concealed weapons license
10 verification service established pursuant to subdivision (2),
11 subsection (1) of this section and a statement that any
12 law-enforcement officer or other employee or agent of any criminal
13 justice agency within the United States or licensed firearm dealer
14 or any employee or agent thereof may use the concealed weapons
15 license verification service to instantaneously validate the license
16 twenty-four hours a day, seven days a week; and

17 (B) The name, county, office address and nonemergency daytime
18 office telephone number of the issuing sheriff.

19 (4) Each license application shall solicit the applicant for a
20 designation, in writing, of whether the applicant desires to claim
21 the license in person at the sheriff's office or receive delivery of
22 the license by mail. The sheriff shall deliver the license to the
23 licensee by mail to the mailing address specified in the application

1 unless the licensee elected to claim the license in person at the
2 sheriff's office. The sheriff shall contact the licensee by
3 telephone and e-mail at the daytime telephone number and e-mail
4 address, if any, listed in the application or, if the licensee
5 cannot be contacted by telephone or e-mail after two business days
6 or did not provide a daytime telephone number or e-mail address in
7 the application, by letter sent by first-class mail to the
8 licensee's mailing address listed in the application, and advise the
9 licensee that the sheriff has issued the license and specify the
10 place and hours when the licensee may claim the license in person,
11 if the licensee elected to claim the license in person at the
12 sheriff's office.

13 (5) The Superintendent shall assign to each valid license in
14 effect on the effective date of the amendments to this section
15 enacted during the 2011 Regular Session of the Legislature, a unique
16 license number. Before issuing any license on or after the
17 effective date of the amendments to this section enacted during the
18 2011 Regular Session of the Legislature, other than a renewal or
19 replacement license for which a unique license number has been
20 previously assigned pursuant to this subdivision, the sheriff shall
21 obtain from the superintendent a unique license number for the
22 licensee. The superintendent shall, in consultations with the West
23 Virginia Sheriffs' Bureau, develop a unique license number

1 assignment system that permits sheriffs to instantaneously obtain a
2 unique license number for the purpose of indexing all licenses
3 issued throughout the state to enable law-enforcement verification
4 of licenses, preventing duplicate licensing files for an individual
5 applicant or licensee, facilitating the transfer of a license to
6 another county when a resident licensee moves to another county or
7 when a nonresident licensee becomes a resident of this state and a
8 county other than the county in which the license was issued and
9 ensuring efficient administration of the licensing program. The
10 superintendent shall design the license numbering system to number
11 licenses serially and not base any license number on the licensee's
12 Social Security number, date of birth, Zip code or other number that
13 otherwise correlates with any personally-identifying information of
14 the licensee.

15 (6) For the purposes of implementing the 5-class licensing
16 system created by the amendments to this section enacted during the
17 2011 Regular Session of the Legislature, any current, valid license
18 issued under any prior enactment of this section that is in effect
19 on the effective date of the amendments to this section enacted
20 during the 2011 Regular Session of the Legislature, shall become a
21 Class 3 license if the licensee is at least twenty-one years of age
22 or a Class 5 license if the licensee is less than twenty-one years
23 of age.

1 ~~(j)~~ (i) (1) The Attorney General shall, in consultation with the
2 superintendent of and the West Virginia state police shall Sheriffs'
3 Bureau, prepare uniform applications for licenses and license cards
4 showing that such a license has been granted and shall do any other
5 act required to be done to protect the state and see to the
6 enforcement of this section.

7 (2) The Attorney General shall design each application form to
8 include a detailed checklist for each required part of the
9 background checks specified in subdivisions (2) and (3), subsection
10 (b) of this section. The sheriff shall, before issuing any license,
11 certify in writing on the approved application that the sheriff
12 performed all background checks required by this section and that
13 the results of the background checks did not show that the applicant
14 was disqualified from licensure and record on the application the
15 unique approval number issued by the National Instant Criminal
16 Background Check System as part of the background check required by
17 paragraph (F), subdivision (3), subsection (b) of this section.

18 (3) The Attorney General shall design each application or other
19 form promulgated pursuant to this section to comply with Section 7
20 of the Privacy Act of 1974, Public Law 93-579, §7, 88 Stat. 1896,
21 1909 (1974), reprinted in 5 U.S.C. §552a notes.

22 (4) The Attorney General shall design license applications and
23 other forms promulgated pursuant to this section to comply with any

1 applicable requirements of 42 C.F.R. §§2.31 to 2.35, with respect to
2 consent to disclosure of alcohol or drug abuse patient records.

3 (5) The Attorney General shall prepare and distribute a form
4 for affidavit under subparagraph (i), paragraph (A), subdivision
5 (9), subsection (a) of this section and instructions for the
6 affidavit form that fulfill the requirements of subparagraph (i),
7 paragraph (A), subdivision (9), subsection (a) of this section,
8 nonexclusive of any other form of affidavit that fulfills the
9 requirements of subparagraph (i), paragraph (A), subdivision (9),
10 subsection (a) of this section.

11 (6) The Attorney General shall design forms of license cards
12 that (A) differentiate between (i) Class 1, 2 and 3 licenses and
13 (ii) Class 4 and 5 licenses and (B) differentiate between regular
14 licenses and temporary, temporary renewal and emergency licenses.
15 All temporary, temporary renewal and emergency licenses shall
16 contain the words "valid without photo-secondary photo ID required"
17 in the location of the licensee's photograph.

18 (7) All sheriffs shall procure and maintain the means of
19 digitally photographing all applicants or licensees who apply for a
20 license or replacement license in person, taking by electronic
21 fingerprint imaging the fingerprints of Class 1 applicants who apply
22 in person and providing the required digital photography and
23 fingerprinting services at no additional charge to each applicant.

1 (8) The West Virginia Sheriffs' Bureau and the Commissioner of
2 Motor Vehicles shall annually enter into a statewide contract for
3 the production of license cards by the Division of Motor Vehicles on
4 behalf of sheriffs electing to participate under the contract. The
5 contract shall provide that the Commissioner of Motor Vehicles shall
6 produce the license cards for licenses issued under this section by
7 any sheriff electing to use the services of the Division of Motor
8 Vehicles under the contract shall pay the division a uniform fee for
9 each license card produced, which shall reflect only the actual
10 marginal cost of each license card produced without inclusion of any
11 overhead or fixed costs the Division of Motor Vehicles incurs
12 regardless of whether it produces license cards for sheriffs, agreed
13 upon by the West Virginia Sheriffs' Bureau and the Commissioner of
14 Motor Vehicles and the sheriff shall pay the required license card
15 production fee from the concealed weapons license administration
16 fund and that any sheriff may elect to begin or cease participation
17 under the contract at any time. A sheriff may not have license
18 cards produced by the Division of Motor Vehicles except pursuant to
19 the current statewide contract adopted pursuant to this subdivision.

20 (9) Each sheriff shall use only the current, uniform forms
21 prescribed by the Attorney General for the purposes of administering
22 this section and section five of this article. If the Attorney
23 General promulgates a new application form, license card or other

1 form used for the purposes of this section or section five of this
2 article, each sheriff shall immediately destroy all old versions of
3 those forms possessed by his or her office upon receiving a copy of
4 the applicable new form from the Attorney General.

5 (10) The uniform application form, forms for affidavits and
6 other forms for which this section requires an oath, affirmation, or
7 notarization shall conclude with the form for a written oath
8 specified in subsection (a), section one hundred two, article five,
9 chapter twenty-nine-c of this code and an adequate space for a
10 notary public's stamp or seal.

11 ~~(k) In the event~~ (j) (1) If the sheriff denies an application is
12 denied or suspends or revokes a license, the sheriff shall prepare
13 the documents specified in subdivision (2) of this subsection and
14 provide the applicant or licensee, by personal service or certified
15 mail, return receipt requested, written notice of the denial,
16 suspension or revocation and the supporting documentation required
17 by subdivision (2) of this subsection.

18 (2) A sheriff who denies, suspends or revokes any license
19 shall:

20 (A) State in writing:

21 (i) An enumeration of each specific subdivision of subsection
22 (a) of this section and, if applicable, subsection (a) or (c),
23 section seven of this article, or 18 U.S.C. §922(g) or (n), under

1 which the sheriff finds the applicant or licensee disqualified;

2 (ii) All specific ~~reasons for~~ and articulable facts upon which
3 the sheriff based the denial, shall be stated by the sheriff denying
4 the application suspension or revocation, including all sources of
5 information upon which the sheriff based his findings of fact; and

6 (iii) A brief statement of law and fact explaining to the
7 applicant or licensee the sheriff's reasons for the denial,
8 suspension or revocation, based upon the legal authority cited by
9 the sheriff pursuant to subparagraph (i) of this paragraph and the
10 facts identified by the sheriff pursuant to subparagraph (ii) of
11 this paragraph;

12 (B) Provide the applicant or licensee:

13 (i) A copy of the documents prepared by the sheriff pursuant to
14 paragraph (A) of this subdivision;

15 (ii) Photocopies of all writings, photographs, records or other
16 documentary evidence upon which the sheriff based the findings of
17 fact described in subparagraph (ii), paragraph (A) of this
18 subdivision;

19 (iii) A written notice of the procedure for requesting
20 reconsideration of the denial, suspension or revocation and, if the
21 applicant or licensee elects, submitting additional documentation
22 relating to the reasons for the denial, suspension or revocation for
23 the sheriff to consider as part of the applicant's or licensee's

1 request for reconsideration;

2 (iv) A written notice of the procedure for appealing the
3 denial, suspension or revocation directly to the circuit court
4 without requesting reconsideration by the sheriff;

5 (v) A written notice of the applicant's rights under
6 subdivision (7), subsection (f) of this section, if the denial is a
7 provisional denial based upon inadequate evidence of demonstrated
8 competence with a handgun as required by subsection (d) of this
9 section; and

10 (vi) A written notice of the right of the applicant or licensee
11 to seek review by the circuit court if the applicant or licensee
12 elects to seek reconsideration by the sheriff of the denial,
13 suspension or revocation and the sheriff affirms the initial denial,
14 suspension or revocation; and

15 (C) Maintain copies of the documents required by this
16 subdivision in the application or license file for not less than two
17 years.

18 (3) Any applicant whom the sheriff denies a license or licensee
19 whose license is suspended or revoked may file, within thirty days
20 of the denial, suspension or revocation, a petition for
21 reconsideration, which may include arguments for reversal of the
22 initial denial, suspension or revocation, with or without additional
23 documentation relating to the reasons for the denial, suspension or

1 revocation. The sheriff shall reconsider the denial, suspension or
2 revocation if the applicant or licensee requests reconsideration as
3 provided in this subdivision. The sheriff shall, within twenty-one
4 days of receiving a request for reconsideration, inform the
5 applicant or licensee of the sheriff's decision after
6 reconsideration. If the sheriff affirms the initial denial,
7 suspension or revocation after reconsideration, the sheriff shall
8 issue the applicant or licensee a notice of the sheriff's action in
9 the same form and substance as the initial notice of denial,
10 suspension or revocation, specifically address any continued
11 deficiencies in light of any arguments or additional documentation
12 submitted by the applicant or licensee and provide a notice of the
13 right of the applicant or licensee to petition the circuit court for
14 review of the sheriff's decision.

15 (4) Any person denied a license or whose license is suspended
16 or revoked may file, in the circuit court of the county in which the
17 application was made or the license was suspended or revoked,
18 without regard to whether the person has petitioned the sheriff for
19 reconsideration under subdivision (3) of this subsection, a petition
20 seeking review of the denial, suspension or revocation. ~~Such~~ The
21 petitioner shall file the petition ~~shall be filed~~ for review within
22 thirty ~~sixty~~ days of the later of: (i) The date of the original
23 denial, suspension or revocation; or (ii) the date of the

1 affirmation of the denial, suspension or revocation upon
2 reconsideration if the person requested reconsideration following
3 the initial notice of denial, suspension or revocation pursuant to
4 subdivision (3) of this subsection. The petition shall name the
5 sheriff who denied, suspended or revoked the license as the
6 respondent. The court shall, except when otherwise requested by the
7 petitioner, assign the petition a high priority on its civil docket
8 and hear the petition on an expedited basis. The court shall then
9 determine whether the ~~applicant~~ petitioner is entitled to the
10 issuance or reinstatement of a license under the criteria ~~set forth~~
11 specified in this section. ~~The applicant may be represented by~~
12 ~~counsel, but in no case shall the court be required to appoint~~
13 ~~counsel for an applicant. The final order of the court shall include~~
14 ~~the court's findings of fact and conclusions of law. If the final~~
15 ~~order upholds the denial, the applicant may file an appeal in~~
16 ~~accordance with the Rules of Appellate Procedure of the Supreme~~
17 ~~Court of Appeals. The court shall review de novo all matters within~~
18 ~~the scope of its review, but shall presume the petitioner to meet~~
19 ~~all specific qualifications for licensure not identified by the~~
20 ~~sheriff pursuant to subparagraph (i), paragraph (A), subdivision (2)~~
21 ~~of this subsection, as the basis for the denial of the application~~
22 ~~or suspension or revocation of the license, and shall limit its~~
23 ~~scope of review to whether the petitioner was disqualified from~~

1 licensure for the reasons stated by the sheriff pursuant to
2 subparagraph (i), paragraph (A), subdivision (2) of this subsection.
3 The court shall order the sheriff to issue or reinstate a license
4 and grant the petitioner any other relief to which he or she may be
5 entitled, unless the sheriff proves by clear and convincing evidence
6 that the petitioner is not qualified for licensure under the
7 criteria specified in subsection (a) of this section.

8 (5) Notwithstanding any provision of this code to the contrary,
9 a court may not charge a filing fee or other court costs at the time
10 any person files any petition for review of a denial, suspension or
11 revocation of a license to carry concealed weapons pursuant to
12 subdivision (4) of this subsection. The court shall assess all court
13 costs on the losing party at the conclusion of the proceedings as
14 part of its final judgment.

15 (6) All judicial proceedings under this subsection shall be
16 closed and the record sealed unless the petitioner requests, in
17 writing, that the proceedings and record be opened. A petitioner
18 who elects open proceedings pursuant to this subdivision may, at any
19 time, in writing, subsequently revoke the election.

20 (7) A licensee whose license is suspended or revoked shall
21 comply with subdivision (8), subsection (q) of this section before
22 he or she may petition the sheriff for reconsideration pursuant to
23 subdivision (3) of this subsection or file a petition for review

1 with the circuit court pursuant to subdivision (4) of this
2 subsection, and a failure to comply with subdivision (8), subsection
3 (q) of this section is jurisdictional.

4 ~~(i)~~ (k) (1) In the event A licensee may notify the issuing
5 sheriff and obtain a replacement license as provided by subdivision
6 (2) of this subsection if the license is lost, stolen or destroyed,
7 ~~the person to whom the license was issued may obtain a duplicate or~~
8 ~~substitute license for a fee of five dollars by filing a notarized~~
9 ~~statement with the sheriff indicating that the license has been lost~~
10 ~~or destroyed~~ the licensee's residence address changes or the
11 licensee changes his or her name.

12 (2) A licensee described in subdivision (1) of this subsection
13 who elects to obtain a replacement license shall:

14 (A) File with the issuing sheriff or, if the licensee becomes
15 a resident of a county in this state other than the county in which
16 the license was issued, the sheriff of the licensee's new county of
17 residence, an affidavit declaring, as appropriate, that:

18 (i) The license has been lost, stolen or destroyed;

19 (ii) The licensee has changed his or her legal name and
20 attaches a certified copy of a marriage license or court decree or
21 other evidence of the name change; or

22 (iii) The licensee's residence address has changed. The
23 licensee shall, unless otherwise provided by subsection (s) of this

1 section, list the licensee's new residence address and mailing
2 address, if different. If the licensee has become a resident of a
3 county in this state other than the county in which the license was
4 issued, the licensee shall specify the county in which the license
5 was issued;

6 (B) Pay the sheriff the replacement license fee specified in
7 subdivision (2), subsection (n) of this section; and

8 (C) Unless the license for which a replacement is sought is a
9 temporary, temporary renewal or emergency license:

10 (i) Submit two passport-regulation color photographs of the
11 licensee taken within thirty days of the date of the application for
12 a replacement license, if the licensee files the documents specified
13 in this subdivision and applies for the replacement license by mail;
14 or

15 (ii) Have the sheriff take a digital photograph of the licensee
16 at the time the licensee files the application for a replacement
17 license, if the licensee files the documents specified in this
18 subdivision and applies for the replacement license in person.

19 (3) The sheriff shall, upon receiving the items specified in
20 subdivision (2) of this subsection:

21 (A) Issue the licensee a replacement license that contains the
22 information required by subsection (h) of this section, including,
23 if applicable, the licensee's new name or address; and

1 (B) Notify the superintendent of any change of the licensee's
2 name or address if the licensee obtained the replacement license as
3 the result of a change of the licensee's name or residence address.

4 (4) The sheriff may not require a licensee who applies for a
5 replacement license pursuant to this subsection to surrender the
6 current license until after the licensee takes actual physical
7 possession of the replacement license. A licensee who obtains a
8 replacement license pursuant to this subsection shall, after
9 receiving actual physical possession of a replacement license,
10 surrender the old license to the sheriff that issued the replacement
11 license unless the licensee declared the replaced license lost,
12 stolen or destroyed pursuant to subparagraph (i), paragraph (A),
13 subdivision (2) of this subsection.

14 (5) Any licensee may, at any time, without charge or payment of
15 any fee, obtain a replacement license card if:

16 (A) The licensee is an existing licensee as of the effective
17 date of the amendments to this section enacted during the 2011
18 Regular Session of the Legislature, has not changed his or her name
19 or address and desires a new license card for the purpose of having
20 a license card that shows the licensee's new class of license under
21 the 5-class licensing system created as part of the amendments to
22 this section enacted during the 2011 Regular Session of the
23 Legislature, or which does not contain the licensee's Social

1 Security number or an indication that the license is applicable only
2 to pistols and revolvers; or

3 (B) The licensee has not changed his or her place of residence
4 but the licensee's residence has been assigned a new street address
5 by the licensee's county or municipality of residence.

6 (6) When a licensee becomes a resident of a county other than
7 the county in which the license was issued and applies to the
8 sheriff of his or her new county of residence for a replacement
9 license pursuant to this subsection, the sheriff of the licensee's
10 new county of residence shall notify the issuing sheriff of record
11 within five business days. Within five business days of receipt of
12 a notice from the sheriff of another county that the licensee has
13 moved to that county and applied for a replacement license, the
14 issuing sheriff of record shall transfer the licensee's license file
15 to the sheriff of the licensee's new county of residence and the
16 sheriff of the licensee's new county of residence shall become the
17 issuing sheriff of record.

18 ~~(m)~~ (1) (1) The sheriff shall, immediately after the issuing a
19 license is granted as aforesaid to carry concealed weapons, furnish
20 the superintendent of the West Virginia state police a certified
21 copy of the approved application. It shall be the duty of Upon a
22 written request from the Attorney General, the superintendent or the
23 prosecuting attorney of that county for a list of all licenses

1 issued in the county, the sheriff ~~to~~ shall furnish to the
2 ~~superintendent of the West Virginia state police at any time so~~
3 ~~requested~~ requesting official a certified list of the names, birth
4 dates, license class, addresses and telephone numbers, e-mail
5 addresses and other personally-identifying information on file of
6 ~~all such licenses issued~~ licensees in the county within ten business
7 days of receipt of the written request.

8 (2) ~~The superintendent of the West Virginia state police shall~~
9 ~~maintain a~~ an automated registry of all ~~persons who have been issued~~
10 ~~concealed weapons licenses~~ licensees under this section and section
11 five of this article and other pertinent information, which shall be
12 available online, upon request, at all times to all law-enforcement
13 and criminal justice agencies throughout the United States. The
14 superintendent may respond only to inquiries limited to verifying an
15 individual license or determining whether a specific, named
16 individual is a licensee. A law-enforcement or criminal justice
17 agency may not conduct random inquiries on whether a specific, named
18 individual is a licensee unless the person is subject to a lawful
19 criminal investigation, arrest, detention or an investigatory stop
20 and the requesting agency has reasonable suspicion to believe the
21 person is carrying a concealed weapon or is otherwise engaging in an
22 act whose legality depends on whether the person is licensed under
23 this section or section five of this article. The superintendent

1 shall maintain and operate a concealed weapons license verification
2 service, which shall be operational twenty-four hours a day, seven
3 days a week, through a dedicated telephone number and the national
4 law-enforcement telecommunication system, for the purpose of
5 responding to law-enforcement inquiries from any law-enforcement
6 agency within the United States or licensed firearm dealer within
7 this state concerning the validity of an individual license issued
8 under this section or section five of this article or determining
9 whether a specific, named individual is a licensee pursuant to this
10 section or section five of this article.

11 (3) The sheriff shall immediately notify the superintendent, by
12 electronic means, including e-mail or facsimile transmission, if the
13 sheriff suspends or revokes a license, denies a renewal application
14 for which a license has been extended pursuant to subdivision (2),
15 subsection (g) of this section or receives a voluntarily-surrendered
16 license, that the license is no longer valid, and the superintendent
17 shall cause the concealed weapons license database to be updated
18 accordingly.

19 ~~(n) All licensees must carry with them a state-issued photo~~
20 ~~identification card with the concealed weapons license whenever the~~
21 ~~licensee is carrying a concealed weapon. Any licensee who fails to~~
22 ~~have in his or her possession a state-issued photo identification~~
23 ~~card and a current concealed weapons license while carrying a~~

~~1 concealed weapon shall be guilty of a misdemeanor and, upon
2 conviction thereof, shall be fined not less than fifty or more than
3 two hundred dollars for each offense.~~

~~4 (o) The sheriff shall deny any application or revoke any
5 existing license upon determination that any of the licensing
6 application requirements established in this section have been
7 violated by the licensee.~~

8 (p) A person who is (m) All persons engaged in the receipt,
9 review, ~~or in the issuance, suspension, or revocation or~~
10 reinstatement of a concealed weapon any license does not incur any
11 civil liability to carry concealed weapons under this section or
12 section five of this article shall be immune from liability in a
13 civil action as the result of the lawful performance of his or her
14 duties under this article or, unless the person committed willful
15 misconduct or gross negligence, for the acts or omissions of any
16 licensee, including misconduct with a deadly weapon committed by any
17 licensee.

18 (n) (1) Each applicant shall pay to the sheriff, at the time of
19 application, a nonrefundable license fee of \$60, which shall,
20 whenever the license, if granted, will be issued for a period of
21 other than five years pursuant to subdivision (1) or (4), subsection
22 (g) of this section or was extended pursuant to subdivision (2),
23 subsection (g) of this section, be prorated at a rate of \$1 per

1 month for which the license sought is to be issued and by which the
2 license was extended pursuant to subdivision (2), subsection (g) of
3 this section, exclusive of the remaining period of validity of a
4 current license for which a license fee was previously paid in the
5 case of renewal applications, unless the applicant is exempt from
6 payment of the fee pursuant to subdivision (5) of this subsection.
7 In determining the amount of time for which a license would be
8 issued, the license shall be presumed issued on the expiration date
9 of a license for which a renewal application is filed prior to its
10 date of expiration or, in any other case, the deadline for action on
11 the application specified in subdivision (4), subsection (f) of this
12 section, regardless of whether a license is issued sooner.

13 (2) A licensee who applies for a replacement license pursuant
14 to subsection (k) of this section, shall, unless the licensee is
15 exempt from payment of the fee pursuant to subdivision (5) of this
16 subsection or subdivision (5), subsection (k) of this section, pay
17 the sheriff a replacement license fee of \$5 if the licensee applies
18 for a replacement license before January 1, 2012, or, if the
19 licensee applies for a replacement license after December 31, 2011,
20 pay the sheriff a replacement license fee of \$5 if the licensee
21 applies for a replacement license within thirty days of the loss,
22 theft or destruction of the license or change of the licensee's name
23 or address or \$10 if the licensee applies for a replacement license

1 more than thirty days after the loss, theft or destruction of the
2 license or change of the licensee's name or address.

3 (3) Except as otherwise provided in subdivision (9) of this
4 subsection, notwithstanding any other provision of this code to the
5 contrary, the fees prescribed in subdivisions (1) and (2) of this
6 subsection cover all services performed by any public agency in
7 connection with the application and the issuance of a license, other
8 than a training course described in subsection (d) of this section,
9 including without limitation the taking of the applicant's
10 photograph and, if applicable, fingerprints, by the sheriff and all
11 background checks required by subsection (b) of this section, or
12 issuing a replacement license pursuant to subsection (k) of this
13 section. The required remittance under subdivision (1), subsection
14 (c) of this section is the only fee a sheriff shall be required to
15 pay for the services of the State Police in the performance of the
16 state background checks required by subsection (b) of this section.
17 Notwithstanding any provision of this code to the contrary, any
18 other fee required or authorized outside this section or section
19 five of this article shall be inapplicable to applicants for
20 licenses under this section and section five of this article.

21 (4) If the Attorney General, Superintendent or prosecuting
22 attorney requests from the sheriff a list of licenses issued in the
23 county pursuant to subdivision (1), subsection (1) of this section,

1 the sheriff shall charge the requesting official a fee equal to the
2 actual cost incurred by the sheriff in fulfilling the request.

3 ~~(q) Notwithstanding the provisions of subsection (a) of this~~
4 ~~section, with respect to application by (5) A former law-enforcement~~
5 ~~officer honorably retired from agencies any agency governed by~~
6 ~~article fourteen, chapter seven of this code; article fourteen,~~
7 ~~chapter eight of this code; article two, chapter fifteen of this~~
8 ~~code; and or article seven, chapter twenty of this code, an~~
9 ~~honorably retired officer is exempt from payment of fees and costs~~
10 ~~as otherwise required by this section, and the application of the~~
11 ~~honorably retired officer shall be granted without proof or inquiry~~
12 ~~by the sheriff as to those requirements set forth in subdivision~~
13 ~~(9), subsection (a) of this section, if the officer meets the~~
14 ~~remainder of the requirements of this section and has the approval~~
15 ~~of the appropriate chief law-enforcement officer other than the~~
16 Class 1 license application fingerprinting fee under subdivision
17 (10) of this subsection.

18 (6) Each sheriff shall accept, as payment for any fee an
19 applicant or licensee is required to pay the sheriff under this
20 section:

21 (A) Cash, personal checks drawn on a personal account of the
22 applicant or licensee on which are printed the name and residence or
23 other mailing address of the applicant or licensee, cashier's

1 checks, certified checks, money orders or any method the sheriff
2 accepts in person from an individual for payment of taxes collected
3 by the sheriff, for fees paid in person;

4 (B) Personal checks drawn on a personal account of the
5 applicant or licensee on which are printed the name and residence or
6 other mailing address of the applicant or licensee, cashier's
7 checks, certified checks, money orders or any method the sheriff
8 accepts by mail from an individual for payment of taxes collected by
9 the sheriff, for fees paid by mail.

10 (7) Each sheriff may, in his or her discretion, accept methods
11 of payment other than those required by subdivision (6) of this
12 subsection, for the payment of any fee any applicant or licensee is
13 required to pay the sheriff under this section.

14 (8) The sheriff may not apply any surcharge or discount to any
15 fee paid by an applicant or licensee based on the method of payment.

16 (9) The sheriff may charge a fee for any dishonored check,
17 draft or order not to exceed the amount authorized by section
18 thirty-nine-e, article three of this chapter.

19 (10) An applicant for a Class 1 license who is required to
20 submit fingerprints pursuant to subdivision (17), subsection (a) of
21 this section shall, in addition to any other fees required by this
22 section, pay the sheriff a nonrefundable fee equal to the fee
23 charged by the Federal Bureau of Investigation for its fingerprint

1 processing and background check services.

2 (o) (1) Each sheriff shall accept applications, notices of
3 change of name or address and other filings under this section in
4 person and by mail. Each sheriff shall accept filings under this
5 section and perform services required under this section during all
6 normal business hours, including all hours when the sheriff's tax
7 office is open to the public.

8 (2) Each sheriff shall maintain on file with the Attorney
9 General a current physical street address where the sheriff accepts
10 filings under this section in person, the days and hours of
11 operation of that office and the mailing address the sheriff uses to
12 accept filings by mail. The Attorney General shall make available to
13 the public a list of this information, free of charge, on the
14 Internet and in print.

15 (3) The sheriff shall cause all mail the sheriff receives at
16 the listed mailing address designated by the sheriff pursuant to
17 subdivision (2) of this subsection to be checked, opened and
18 processed each business day. Applications submitted by first-class
19 mail shall be presumed, subject to rebuttal by clear and convincing
20 evidence, to be filed with the sheriff not later than the third day,
21 excluding Sundays and legal holidays, after the postmark date on the
22 envelope in which the application was mailed. If an applicant
23 submits an application by registered or certified mail or by any

1 other means through which the United States Postal Service provides
2 official confirmation of the delivery date, the sheriff shall be
3 estopped from denying receipt of the application on the delivery
4 date confirmed by the United States Postal Service.

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

10 (p) (1) Notwithstanding any provision of this code, the Code of
11 State Rules, the common law of this state or any other law of this
12 state to the contrary:

13 (A) This section sets forth the complete and exclusive criteria
14 and procedures for the issuance of licenses to carry concealed
15 weapons and establishes their nature and scope.

16 (B) The Legislature does not delegate to the Attorney General,
17 the superintendent or any sheriff, public agency or other person or
18 body acting under color of law or governmental authority, the
19 authority to regulate or restrict the issuing of licenses provided
20 in this section beyond the provisions contained in this section.

21 (C) A sheriff, law-enforcement officer, public agency or other
22 person or body acting under color of law or governmental authority
23 may not change, modify, or supplement the licensing criteria or

1 procedures prescribed by the Legislature in this section, limit the
2 exercise of a license to carry concealed weapons or require an
3 applicant or licensee to provide any documentation or information
4 not specifically authorized by this section or solicited by the
5 uniform application form prescribed by the Attorney General.

6 (D) A public or private employer or contracting entity may not
7 condition employment or contracting on the fact that a current or
8 prospective employee or contractor is not an applicant or licensee
9 under this section or section five of this article or authorized by
10 subsection (d), section three of this article to carry a concealed
11 weapon without a license.

12 (E) Except as otherwise provided in subparagraph (iv),
13 paragraph (A), subdivision (4), subsection (d) of this section, this
14 section shall be liberally construed to effect the right of an
15 individual to bear arms for self-defense.

16 (F) This section is supplemental and additional to existing
17 rights to bear arms, and nothing in this section may be construed to
18 impair or diminish those rights.

19 (G) The entire field of regulation of the carrying of concealed
20 weapons or open or concealed carrying of concealable weapons, by any
21 licensee under this section or section five of this article or any
22 person who is authorized by subsection (d), section three of this
23 article, to carry a concealed weapon without a license, is fully

1 occupied and preempted by the Legislature.

2 (H) Any person who is a licensee under this section or section
3 five of this article, or authorized by subsection (d), section three
4 of this article, to carry a concealed weapon without a license, has
5 the absolute right to carry concealed weapons or handguns and other
6 concealable weapons, either openly or concealed, anywhere, at any
7 time, throughout this state, without restriction by any person or
8 entity, regardless of whether the person or entity is a public
9 agency or private actor or whether it is acting in a police,
10 proprietary, employment or contracting capacity, except where
11 prohibited or restricted by:

12 (i) Section eight, article five of this chapter;

13 (ii) Sections eleven-b, eleven-c, eleven-d or fourteen of this
14 article;

15 (iii) Subdivisions (5) through (10), subsection (d), section
16 sixteen of this article; or

17 (iv) Any federal law or regulation.

18 (I) In addition to any other remedies provided by law and in
19 addition to any other persons who may have standing to sue, any
20 licensee under this section or section five of this article or any
21 person authorized by subsection (d), section three of this article,
22 to carry concealed weapons without a license, may bring a civil
23 action to enforce this subsection against any public agency that

1 adopts or enforces any ordinance, rule or policy, or takes any
2 administrative action or engages in any other official act that
3 violates this subsection or any private contracting entity,
4 employer, higher education institution or property owner who
5 violates paragraph (A), (B), (C), (D), (G) or (H) of this
6 subdivision, and obtain declaratory and injunctive relief, actual
7 and consequential damages attributable to any violation of paragraph
8 (A), (B), (C), (D), (G) or (H) of this subdivision, attorney's fees
9 pursuant to section twenty of this article, liquidated damages of
10 three times the attorney's fees awarded pursuant to section twenty
11 of this article and any other relief to which the plaintiff may be
12 entitled under any other law of this state. The court shall, except
13 when otherwise requested by the plaintiff, assign the case a high
14 priority on its civil docket and hear the case on an expedited
15 basis.

16 (J) Any person who willfully violates the rights of any
17 licensee under this section or section five of this article or any
18 person authorized by subsection (d), section three of this article,
19 to carry concealed weapons without a license, under paragraph (A),
20 (B), (C), (D), (G) or (H) of this subdivision is guilty of a felony
21 and, upon conviction thereof, shall be imprisoned in a state
22 correctional facility for not less than one year nor more than five
23 years, fined not more than \$50,000, or both fined and imprisoned.

1 Any person who otherwise violates the rights of any licensee under
2 this section or section five of this article or any person
3 authorized by subsection (d), section three of this article, to
4 carry concealed weapons without a license, under paragraph (A), (B),
5 (C), (D), (G) or (H) of this subdivision is guilty of a misdemeanor
6 and, upon conviction thereof, shall be confined in jail for not more
7 than one year, fined not more than \$10,000, or both fined and
8 confined. In all cases, any public officer who is convicted of
9 violating the rights of any licensee under this section or section
10 five of this article or any person authorized by subsection (d),
11 section three of this article, to carry concealed weapons without a
12 license, under paragraph (A), (B), (C), (D), (G) or (H) of this
13 subdivision shall forfeit his or her office pursuant to section
14 nine, article six, chapter six of this code. Except as required by
15 the provisions of the state Constitution or the United States
16 Constitution, public funds may not be used to defend the unlawful
17 conduct of any person charged with a violation of paragraph (A),
18 (B), (C), (D), (G) or (H) of this subdivision, except where such
19 funds are obligated or paid after the final dismissal of charges
20 against such person or acquittal at trial, or where public funds are
21 expended to provide the services of the office of public defender or
22 court-appointed counsel as otherwise provided by law.

23 (K) In addition to any other remedies available by law for a

1 violation of paragraph (A), (B), (C), (D), (G) or (H) of this
2 subdivision, any violation of the rights of any licensee under this
3 section or section five of this article or any person authorized by
4 subsection (d), section three of this article, to carry concealed
5 weapons without a license, under paragraph (A), (B), (C), (D), (G)
6 or (H) of this subdivision is, for the purposes of article six,
7 chapter six of this code, per se official misconduct by every public
8 officer who engages in conduct that violates paragraph the rights of
9 any licensee under this section or section five of this article or
10 any person authorized by subsection (d), section three of this
11 article, to carry concealed weapons without a license, under
12 paragraph (A), (B), (C), (D), (G) or (H) of this subdivision.

13 (L) When a licensee under this section or section five of this
14 article or person authorized by subsection (d), section three of
15 this article to carry concealed weapons without a license is accused
16 of committing any misdemeanor under section three, eleven-a,
17 eleven-b, eleven-c or fourteen of this article, a citation in lieu
18 of arrest pursuant to section five-a, article one, chapter sixty-two
19 of this code or a summons issued pursuant to Rule 4 of the West
20 Virginia Rules of Criminal Procedure for Magistrate Courts shall be
21 the sole modes of commencing a criminal prosecution for the alleged
22 offense and the accused may not be arrested unless he or she demands
23 to be taken immediately before a magistrate, refuses to sign a

1 citation or accept service of a summons, refuses to cease and desist
2 from any alleged violations of this article or the arresting officer
3 reasonably believes the accused is likely to fail to appear to
4 answer the charge. If a licensee under this section or section five
5 of this article or person authorized by subsection (d), section
6 three of this article to carry concealed weapons without a license
7 is arrested for committing any misdemeanor under section three,
8 eleven-a, eleven-b, eleven-c or fourteen of this article, there
9 shall be a strong presumption in favor of releasing the defendant on
10 his or her own recognizance.

11 (M) When a licensee under this section or section five of this
12 article or person authorized by subsection (d), section three of
13 this article to carry concealed weapons without a license is charged
14 with any misdemeanor under section eleven-a, eleven-b, eleven-c or
15 fourteen of this article, the defendant may move for a continuance
16 of the proceedings for a period to be determined by the court of not
17 more than one hundred eighty days. During the pendency of any
18 continuance under this paragraph, all records of the case in
19 possession of the court, prosecuting attorney and any West Virginia
20 law-enforcement agency shall be placed under seal, shall be
21 confidential, are not public records and may be copied or inspected
22 only by the defendant or the defendant's attorney of record, or upon
23 order of the court with good cause shown and notice to the defendant

1 and an opportunity to respond. The sole condition for a continuance
2 pursuant to this paragraph shall be that the defendant not, during
3 the period of the continuance, violate this article or commit any
4 crime for which a conviction would result in the defendant's
5 disqualification from licensure under this section. Upon the
6 expiration of the continuance, the court shall dismiss the charges
7 with prejudice and order all records of the charges to be expunged
8 unless the court finds that, during the continuance, the defendant
9 committed another violation of this article or any crime for which
10 a conviction would result in the defendant's disqualification from
11 licensure under this section. If the defendant fails to qualify for
12 dismissal of the charges and expungement pursuant to this paragraph,
13 the court may proceed to an adjudication of the pending charges. A
14 motion for a continuance under this paragraph may not be construed
15 as an admission or be used as evidence.

16 (N) 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
19 convicted of committing any misdemeanor under section three,
20 eleven-a, eleven-b, eleven-c or fourteen of this article and appeals
21 the conviction, there shall be a strong presumption in favor of
22 granting the defendant postconviction bail and continuing the
23 defendant's pretrial bail or personal recognizance pending the

1 disposition of all appeals.

2 (2) (A) Subject to any other requirements of federal law, the
3 Constitution of this state and this code, a sheriff may exercise his
4 or her sound discretion in:

5 (i) Overruling a presumption of inebriation described in
6 subdivision (3) of this subsection;

7 (ii) Accepting alternative proof of vision under subparagraph
8 (iii), paragraph (A), subdivision (9), subsection (a) of this
9 section;

10 (iii) Accepting a demonstration of basic competence with a
11 handgun not enumerated in paragraphs (A) through (M), subdivision
12 (2), subsection (d) of this section, that the sheriff is authorized
13 to accept pursuant to paragraph (N), subdivision (2), subsection (d)
14 of this section;

15 (iv) Temporarily suspending for not more than twenty-one days
16 the diligent processing requirement of subdivision (2), subsection
17 (f) of this section during a proclaimed state of emergency, as
18 provided by that subdivision;

19 (v) Authorizing additional acceptable means of payment of fees
20 required under this section pursuant to subdivision (7), subsection
21 (n) of this section;

22 (vi) Establishing and modifying a worthless check fee pursuant
23 to subdivision (9), subsection (n) of this section; and

1 (vii) Determining whether an applicant or licensee is entitled
2 to have an alternate address printed on his or her license pursuant
3 to paragraph (D), subdivision (1), subsection (s) of this section.

4 (B) All duties of a sheriff under this section not specified in
5 paragraph (A) of this subdivision and all duties of the
6 superintendent under this section are wholly ministerial duties with
7 regard to whose exercise the Legislature accords no discretion.

8 (3) For the purposes of subdivision (7), subsection (a) of this
9 section, a person shall be presumed, subject to rebuttal, to be an
10 inebriate if, within the immediate preceding three years, the person
11 has been convicted of two or more intoxication-related offenses.

12 (q) (1) The sheriff shall suspend or revoke a license to carry
13 concealed weapons if the licensee becomes unable to meet the initial
14 licensure criteria specified in this section. When the sheriff
15 suspends or revokes a license, the sheriff shall comply with the
16 provisions of subsection (j) of this section and subdivision (3),
17 subsection (1) of this section and, within two business days after
18 the suspension or revocation, notify the licensee in writing, by
19 either personal service or certified mail, return receipt requested,
20 of the suspension or revocation, the licensee's duties under
21 subdivision (8) of this subsection and the criminal penalty for
22 violating subdivision (8) of this subsection. The sheriff shall
23 effect personal service of any notice of suspension or revocation if

1 the licensee refuses service of the notice by certified mail. If the
2 licensee fails to comply with the provisions of subdivision (8) of
3 this subsection, the sheriff shall take appropriate actions to
4 enforce subdivision (8) of this subsection, including, if
5 appropriate, petitioning the magistrate court for a warrant search
6 for and seize the license card and, if the sheriff has probable
7 cause to believe the licensee has violated subdivision (8) of this
8 subsection, file a criminal complaint and obtain a summons or arrest
9 warrant charging the licensee with violating subdivision (8) of this
10 subsection. Nothing contained in the foregoing sentence may be
11 construed to limit or restrict a search of any other place the
12 sheriff may lawfully search, or obtain a search warrant to search,
13 for the license card. The affidavits for any search warrant or
14 criminal complaint shall include the date, time, and manner of
15 service of the notice of suspension or revocation of the license,
16 sufficient in form to clearly indicate the expiration of the
17 licensee's time to comply with subdivision (8) of this subsection.

18 (2) The sheriff shall suspend a license if any fee paid under
19 this section is dishonored or returned and the licensee fails to pay
20 the fee plus any dishonored payment fees within the time provided by
21 section thirty-nine-a, article three of this chapter. The notice
22 specified in section thirty-nine-a, article three of this chapter
23 shall include a notice that the license may be suspended

1 indefinitely if the licensee does not pay the full arrearage. A
2 suspension for a dishonored fee payment does not affect any civil or
3 criminal remedies otherwise authorized by law. The sheriff shall
4 suspend a license if the sheriff finds that the licensee did not
5 properly demonstrate competence with a handgun as required by
6 subsection (d) of this section for the applicable class of license:
7 Provided, That if the sheriff finds a Class 1, 2 or 4 licensee
8 failed to demonstrate competence in handling and firing a handgun
9 pursuant to subdivision (4), subsection (d) of this section, but met
10 the requirement of demonstrating basic competence with a handgun
11 prescribed by subdivision (2), subsection (d) of this section, the
12 sheriff shall suspend the licensee's Class 1, 2 or 4 license
13 classification and issue the licensee a Class 3 or 5 license and the
14 licensee may seek a reconsideration of or appeal the sheriff's
15 decision on suspending the higher class of license and maintain the
16 lower class of license until qualifying for the higher class of
17 license originally issued or succeeding in a reconsideration or
18 appeal of the original decision on suspending the higher license
19 classification. The sheriff shall suspend a license if the licensee
20 has become disqualified from continued licensure by reason of any
21 indictment, court order described in subdivision (8), subsection
22 (a), section seven of this article or 18 U.S.C. §922(g) (8) or other
23 temporary disqualification. The sheriff shall revoke a license if

1 the licensee otherwise becomes disqualified from continued
2 licensure.

3 (3) The sheriff shall reinstate a license suspended for a
4 dishonored fee payment shall remain suspended if the licensee pays
5 the arrearage and applicable dishonored check fee in full. The
6 sheriff shall reinstate a license suspended for the licensee's
7 failure to demonstrate competence with a handgun as required by
8 subsection (d) of this section, if the licensee presents
9 satisfactory evidence of qualification under subsection (d) of this
10 section. A license suspended for any other reason shall remain
11 suspended until the licensee becomes eligible for licensure under
12 this section. If a suspended license is reinstated, the licensee
13 shall, unless the suspension occurred solely by reason of an
14 indictment against which the licensee prevailed, be subject to the
15 applicable fee for a replacement license. If a license is revoked
16 and the licensee subsequently becomes eligible for licensure or a
17 suspended license expires prior to its reinstatement, the licensee
18 shall apply for a new license as a first-time applicant.

19 (4) The superintendent shall electronically cross-reference the
20 concealed weapons license database maintained pursuant to
21 subdivision (2), subsection (1) of this section with relevant
22 criminal justice, immigration and mental health record databases and
23 shall automatically alert an issuing sheriff to any indication

1 derived from these cross-references that a licensee may have become
2 disqualified from continuing licensure. The superintendent shall,
3 not less than once monthly, conduct a background check by means of
4 electronic data transfer on each licensee under this section and
5 section five of this article through the State Police Criminal
6 Identification Bureau, the National Crime Information Center, the
7 Interstate Identification Index and the National Instant Criminal
8 Background Check System, to verify continuing eligibility. The
9 superintendent or sheriff may also conduct additional background
10 checks on a licensee at any time during the period that a license is
11 in effect to verify continuing eligibility.

12 (5) The clerk of any court in this state in which a person
13 becomes prohibited by 18 U.S.C. §922(g)(4) or subdivision (4),
14 subsection (a), section seven of this article from possessing
15 firearms by reason of having been adjudicated as a mental defective
16 or involuntarily committed to a mental institution, shall determine
17 whether the person is a licensee under this section or section five
18 of this article. If the clerk of the court determines that the
19 person is a licensee under this section or section five of this
20 article, the clerk shall notify the issuing sheriff of the person's
21 identity, address and other personally-identifying information known
22 to the court and not otherwise prohibited by law from being
23 transmitted for this purpose and the nature of the conduct,

1 adjudication or commitment that resulted in the notification. The
2 clerk shall also notify the sheriff of any event removing firearm
3 disabilities under 18 U.S.C. §922(g)(4) or subdivision (4),
4 subsection (a), section seven of this article.

5 (6) Whenever a person is indicted for or otherwise charged with
6 an offense that would, upon conviction, prohibit the person from
7 possessing a firearm or carrying a concealed weapon or otherwise
8 disqualify the person from licensure under this section, the
9 prosecuting attorney shall ascertain whether the person is a
10 licensee under this section or section five of this article. If the
11 person is a licensee under this section or section five of this
12 article, the prosecuting attorney shall notify the issuing sheriff
13 that the licensee has been charged with a disqualifying offense. The
14 prosecuting attorney shall also notify the sheriff of the final
15 disposition of the case.

16 (7) Upon receiving a notification from any court, prosecutor or
17 law-enforcement agency of this state, the United States or another
18 state, that a licensee is disqualified from licensure, the issuing
19 sheriff shall perform an independent investigation to determine
20 whether the licensee is the same person to which the potentially
21 disqualifying information pertains and whether the licensee has
22 actually become disqualified from continuing licensure.

23 (8) A licensee shall surrender the license to the issuing

1 sheriff or file with the issuing sheriff an affidavit, under penalty
2 of false swearing under section two, article five of this chapter,
3 declaring that the license has been lost, stolen or destroyed and
4 that the licensee is unable to surrender the license to the sheriff
5 for that reason, unless a court of competent jurisdiction enjoins
6 the application of this subdivision to the affected licensee for
7 good cause shown, within two business days of receiving notice of
8 the suspension or revocation or if the licensee becomes ineligible
9 for continued licensure regardless of whether the sheriff suspends
10 or revoked the license. Any person who knowingly and willfully
11 fails to surrender a license or file the alternative affidavit with
12 the sheriff as required by this subdivision is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined not more
14 than \$1,000, confined in jail for not more than six months, or both
15 fined and confined. Venue for any prosecution of a violation of
16 this subdivision shall be the county in which the license was issued
17 or, if the licensee had transferred the license to another county,
18 the county of the current issuing sheriff of record.

19 (9) The Attorney General, or the prosecuting attorney of the
20 county of the issuing sheriff of record, upon his or her own
21 initiative may, or upon complaint of any law-enforcement officer,
22 prosecutor, justice, judge or magistrate shall, if he or she finds
23 reasonable grounds to suspect a licensee was licensed or is

1 currently licensed in violation of this section, investigate any
2 licensee and issuing sheriff to determine whether the licensee was
3 licensed or is currently licensed in violation of this section.
4 Whenever the Attorney General or applicable prosecuting attorney
5 finds probable cause to believe that a licensee was licensed or is
6 currently licensed in violation of this section, he or she may bring
7 a civil action in the name of the state in the circuit court of the
8 issuing county of record against the licensee and issuing sheriff of
9 record to seek the enforcement of the applicable suspension or
10 revocation and license surrender requirements of this subsection.
11 The burden of proof is on the plaintiff to prove by clear and
12 convincing evidence that the licensee is disqualified from licensure
13 in the same manner required of the sheriff by subdivision (4),
14 subsection (4) of this section, to sustain a denial, suspension or
15 revocation of a license upon appeal to the circuit court.

16 (r)(1) Before January 1, 2012, the sheriff may, and, after
17 December 31, 2011, the sheriff shall, at least sixty days and not
18 more than ninety days prior to the expiration of each license other
19 than a temporary license issued pursuant to subdivision (6),
20 subsection (f) of this section or a license extended pursuant to
21 subsection (2), subsection (g) of this section for which the
22 sheriff issued a renewal notice pursuant to this subdivision prior
23 to the license's original expiration date, mail to the licensee at

1 the last mailing address of the licensee known to the sheriff a
2 notice of expiration and renewal procedures. The sheriff shall
3 include in this notice an application for renewal and a statement of
4 the physical street address and hours for applying for renewal in
5 person, the mailing address for applying for renewal by mail, the
6 telephone number of the sheriff's office, the date on which the
7 renewed license will expire if issued, as computed pursuant to
8 subsection (g) of this section, the calculated renewal fee as
9 computed pursuant to subsections (g) and (n) of this section and the
10 methods of payment accepted by the sheriff for the payment of the
11 fee. The sheriff shall include only the name and address of the
12 licensee and the appropriate return mail address on outside of the
13 envelope containing the license renewal notice. The sheriff may not
14 print on the outside of the envelope any other information relating
15 to the licensee nor any indicia that the contents of the envelope
16 pertain to a license to carry concealed weapons.

17 (2) Except as otherwise provided by subsection (y) of this
18 section, a licensee may apply for renewal of a license at any time
19 beginning one year prior to the expiration date of the licensee's
20 current license.

21 (3) If a licensee desires to upgrade the class of his or her
22 license before the renewal period specified in subdivision (2) of
23 this subsection, the licensee shall file with the sheriff of the

1 county in which he or she resides if the licensee is a resident of
2 this state, or the issuing sheriff of record if the licensee is a
3 nonresident:

4 (A) An application for a modified license on a form prescribed
5 by the Attorney General;

6 (B) The replacement license fee prescribed by subdivision (2),
7 subsection (n) of this section;

8 (C) A photocopy of the licensee's current license;

9 (D) If the licensee is currently a Class 3 licensee seeking an
10 upgrade to a Class 1 or 2 license or a Class 5 licensee seeking an
11 upgrade to a Class 1, 2 or 4 license, the required certification of
12 live fire shooting proficiency under subdivision (2), subsection (d)
13 of this section; and

14 (E) If the licensee is seeking an upgrade to a Class 1 license,
15 fingerprints under subdivision (17), subsection (a) of this section
16 and, in addition to the replacement license fee prescribed by
17 subdivision (2), subsection (n) of this section, the Federal Bureau
18 of Investigation fingerprinting fee under subdivision (10)
19 subsection (n) of this section.

20 (4) A Class 5 licensee who has attained the age of twenty-one
21 years shall apply for renewal as a Class 3 licensee unless he or she
22 has met the requirements for a Class 1 or 2 license and seeks to
23 renew as a Class 1 or 2 licensee. A Class 4 licensee who has

1 attained the age of twenty-one years shall apply for renewal as a
2 Class 2 licensee unless he or she has met the requirements for a
3 Class 1 license and seeks to renew as a Class 1 licensee.

4 (5) The sheriff may not require an applicant for renewal or
5 modification of a license under this section to surrender a current,
6 unexpired license or a license extended pursuant to subdivision (2),
7 subsection (g) of this section until after the licensee takes actual
8 physical possession of the new license card. A licensee who obtains
9 a renewal or modified license pursuant to this subsection shall,
10 unless the licensee declared the former license lost, stolen or
11 destroyed pursuant to subparagraph (i), paragraph (A), subdivision
12 (2), subsection (k) of this section, and after receiving actual
13 physical possession of the renewal or modified license, surrender
14 the former license to the issuing sheriff unless the licensee
15 previously surrendered the former license.

16 (s)(1) The sheriff may print on the face of a license an
17 address other than the licensee's residence address if:

18 (A) The licensee is enrolled in a state address confidentiality
19 program;

20 (B) The licensee's address is entitled to be suppressed under
21 a state or federal law or suppressed by a court order;

22 (C) The sheriff determines that the licensee has no fixed or
23 post office recognized designated address of principal residence and

1 must instead utilize another address; or

2 (D) At the discretion of the sheriff, the licensee's address
3 should be suppressed to provide security for classes of licensees
4 such as law-enforcement officers, prosecutors, protected witnesses,
5 members of the state and federal judicial systems and their spouses.

6 (2) A person described in paragraph (A) or (B), subdivision (1)
7 of this subsection may use an alternate address designated by the
8 address confidentiality program or by the court or other federal or
9 state government agency for the purposes of this section, if the
10 agency designating the alternate address provides to the sheriff
11 verification of the state in which the applicant or licensee resides
12 and, if the applicant or licensee resides in this state, the county
13 in which the applicant or licensee resides.

14 (t) (1) The Superintendent shall, not later than the twentieth
15 day of each regular session of the Legislature, submit to the
16 Governor, the Attorney General and the Legislative Librarian a
17 statistical report for the prior calendar year that contains:

18 (A) The number of license applications and licenses issued,
19 suspended, revoked and denied, further categorized by the age, sex,
20 county and ZIP code of the applicant or licensee and license class,
21 since the previous submission, subdivided by month, and in total;

22 (B) The number of licenses currently valid as of the last day
23 of the prior calendar year, categorized by county, ZIP code and

1 license class;

2 (C) The specific reasons for each suspension, revocation and
3 denial and the number of reversed, canceled or corrected actions;

4 (D) The numbers of arrests, convictions and types of offenses,
5 other than minor traffic violations or offenses not punishable by
6 incarceration, committed during the prior calendar year by
7 individuals licensed to carry concealed weapons under this section
8 and section five of this article, subdivided by county, ZIP code and
9 license class, including data as to the number of crimes committed
10 by individuals who used in furtherance of the crime a deadly weapon
11 that was lawfully concealed solely by virtue of any such license;

12 (E) To the extent known or determinable, data on the
13 justifiable use of firearms or concealed weapons in self-defense or
14 the defense of other persons by licensees under this section and
15 section five of this article;

16 (F) The numbers of arrests, convictions and types of offenses,
17 other than minor traffic violations or offenses not punishable by
18 incarceration, committed in this state during the prior calendar
19 year by qualified out-of-state licensees, subdivided by state,
20 including data as to the number of crimes committed by individuals
21 who used in furtherance of the crime a deadly weapon that was
22 lawfully concealed solely by virtue of a reciprocal state's license;

23 (G) To the extent known or determinable, data on the

1 justifiable use of firearms or concealed weapons in self-defense or
2 the defense of other persons within this state by qualified
3 out-of-state licensees;

4 (H) The mean and median amount of time and the longest and
5 shortest amount of time used by the Federal Bureau of Investigation
6 to process the fingerprints of applicants for Class 1 licenses and
7 return a complete national criminal background check report to the
8 requesting sheriff;

9 (I) The actual cost incurred by the State Police per license
10 issued during the prior calendar year, for background check
11 performed on each applicant as part of the background checks
12 required by subsection (b) of this section;

13 (J) Receipts, disbursements and any surplus or deficit incurred
14 by the State Police Concealed Weapons License Background Check
15 Administration Fund for the fiscal year that ended during the prior
16 calendar year;

17 (K) The actual cost incurred by each county in the fiscal year
18 that ended during the prior calendar year:

19 (i) Per license issued or renewed;

20 (ii) Per duplicate or replacement license card issued; and

21 (iii) Paying court costs, attorney's fees and other reasonable
22 expenses of litigation pursuant to section twenty of this article,
23 for applicants or licensees who prevailed in appeals of denials,

1 suspensions or revocations of licenses or obtained mandamus relief
2 to compel the sheriff to act as required by this section or section
3 five of this article; and

4 (L) Each county's concealed weapons license administration fund
5 balance at the end of the fiscal year that ended during the prior
6 calendar year.

7 (2) Each sheriff shall, upon written request from the
8 superintendent, furnish to the superintendent all information
9 available to the sheriff necessary in the compilation of the annual
10 reports required by subdivision (1) of this subsection.

11 (3) The Attorney General shall make the superintendent's annual
12 reports under subdivision (1) of this subsection available to the
13 public on the Internet free of charge and in print at a cost not to
14 exceed the actual marginal cost of publication of each printed copy.

15 (u) (1) (A) The Attorney General shall, not earlier than ninety
16 days nor later than one hundred twenty days after adjournment sine
17 die of each regular session of the Legislature, in the month of
18 December of each year and at any other times the Attorney General
19 may determine, notify the Attorney General and concealed weapon
20 licensing authority, if any, of every other state, in writing, of
21 the provisions of subdivision (1), subsection (d), section three of
22 this article and make written inquiry of whether the other state
23 will extend full faith and credit to licenses issued pursuant to

1 this section and section five of this article and, if so, which
2 classes of licenses and any applicable restrictions based upon an
3 individual licensee's age or residence.

4 (B) The Attorney General shall:

5 (i) Negotiate and execute reciprocity agreements on behalf of
6 this state with states that require a reciprocity agreement to
7 accord full faith and credit to licenses issued pursuant to this
8 section;

9 (ii) Seek to establish, by reciprocity agreement or otherwise,
10 the extension of full faith and credit to all classes of licenses
11 issued pursuant to this section by all states whose laws permit the
12 same, without a requirement for any additional license,
13 qualification or payment of any fee by a West Virginia licensee; and

14 (iii) Maintain efforts to obtain a reciprocity agreement for
15 all classes of licenses under this section and section five of this
16 article from any state that may generally honor licenses issued by
17 this state but affords greater recognition, including exemptions
18 from obtaining an additional license if regularly employed,
19 attending a higher education institution or conducting a business in
20 that state, to all classes of licenses issued by states that have
21 executed reciprocity agreements with that state.

22 (C) Notwithstanding paragraph (A) of this subdivision, the
23 Attorney General is not required to recontact another state while a

1 reciprocity agreement with that state is in force or the state
2 extends full faith and credit to all classes of licenses issued
3 pursuant to this section in the absence of a reciprocity agreement,
4 including when the reciprocity agreement or other extension of full
5 faith and credit is:

6 (i) Limited only to handguns or a similar firearm
7 classification;

8 (ii) Subject to:

9 (I) A restriction or prohibition on residents of the other
10 state using this state's license in that state; or

11 (II) A residency restriction limiting recognition only to
12 licenses held by residents of this state; or

13 (iii) Subject to a combination of the limitations described in
14 subparagraphs (i) and (ii) of this paragraph.

15 (D) The Legislature acknowledges that the majority of
16 license-issuing states issue licenses only for the carrying of
17 concealed handguns and not the carrying of other types of concealed
18 weapons. A licensee of this state is subject to the laws of the
19 state in which the licensee may carry a concealed weapon, including
20 limitations on the types or classes of weapons that may be carried,
21 or where such weapons may be carried, when the licensee is in the
22 other state.

23 (2) For the purposes of participation in reciprocity with other

1 states, the official government-issued identification card issued to
2 a law-enforcement officer or prosecutor who is described in
3 subdivision (2) or (3), subsection (d), section three of this
4 article but who is not a qualified law-enforcement officer under 18
5 U.S.C. §926B and a letter of authorization for a retired or
6 medically discharged member of the State Police to carry concealed
7 weapons issued by the superintendent pursuant to subsection (b),
8 section twenty-five, article two, chapter fifteen of this code,
9 shall be considered a license to carry concealed weapons issued by
10 this state.

11 (3) The Attorney General shall make available to the public:

12 (A) A list and map of those states that have entered into
13 reciprocity agreements with this state or granted full faith and
14 credit to licenses issued under this section without a reciprocity
15 agreement, subdivided by classes of licenses honored in each state;
16 and

17 (B) A list of any restrictions known to the Attorney General,
18 by state, with regard to those matters described in subparagraphs
19 (i) through (iii), paragraph (C), subdivision (1) of this
20 subsection.

21 (v) (1) The Attorney General shall, not later than the twentieth
22 day of each regular session of the Legislature, submit to the
23 Governor and the Legislative Librarian reports:

1 (A) Enumerating:

2 (i) The information specified in subdivision (3), subsection
3 (u) of this section;

4 (ii) The states that issue licenses similar to the license
5 described in this section that have declined to enter into
6 reciprocity agreements with this state and do not otherwise honor
7 licenses issued by this state, the reasons, if any, conveyed to the
8 Attorney General by each state for its respective position and
9 whether each such state has a reciprocity agreement with any other
10 state or otherwise recognizes licenses issued by any other state;

11 (iii) Specific recommendations for amending this section that
12 would result in additional states honoring each class of licenses
13 issued pursuant to this section; and

14 (iv) A public policy analysis, including any reasonable policy
15 arguments for and against the recommendations described in
16 subparagraph (iii) of this paragraph, and the Attorney General's
17 ultimate policy recommendation, concerning the recommendations
18 described in subparagraph (iii) of this paragraph; and

19 (B) Informing the Legislature of:

20 (i) The status of licenses issued pursuant to this section,
21 other than licenses extended pursuant to subdivision (2), subsection
22 (g) of this section, as a qualifying alternative under 18 U.S.C.
23 §922(t) (3) (A), 27 C.F.R. §478.102(d) (1) and any other applicable

1 federal law, to a new National Instant Criminal Background Check
2 System check on the licensee at the time of a firearm purchase or
3 other transfer through a licensed firearms dealer within this state;
4 and

5 (ii) If licenses issued pursuant to this section on and after
6 the effective date of the amendments to this section enacted during
7 the 2011 Regular Session of the Legislature, other than licenses
8 extended pursuant to subdivision (2), subsection (g) of this
9 section, have not been listed by the Bureau of Alcohol, Tobacco,
10 Firearms and Explosives as a qualifying alternative:

11 (I) Specific recommendations for amending this section that
12 would result in licenses issued pursuant to this section, other than
13 licenses extended pursuant to subdivision (2), subsection (g) of
14 this section, being listed as a qualifying alternative; and

15 (II) A public policy analysis, including any reasonable policy
16 arguments for and against the recommendations described in clause
17 (I) of this subparagraph, and the Attorney General's ultimate policy
18 recommendation, concerning the recommendations described in clause
19 (I) of this subparagraph.

20 (2) The Attorney General shall make the reports required by
21 subdivision (1) of this subsection available to the public on the
22 Internet free of charge and in print at a cost not to exceed the
23 actual marginal cost of publication of each printed copy.

1 (w) (1) Beginning July 1, 2011, the Attorney General shall
2 annually compile, publish and distribute to the public, free of
3 charge, on the Internet and in print, a compendium of West Virginia
4 weapons, self-defense and use of force laws. The Attorney General
5 shall ensure that all information presented in each year's edition
6 reflects legislation enacted during the regular session of the
7 Legislature held in the current year and reported decisions of the
8 Supreme Court of Appeals rendered through the adjournment sine die
9 of the January term of the Supreme Court of Appeals held in the
10 current year. The Attorney General shall distribute to all sheriffs
11 sufficient quantities of the current compendium of West Virginia
12 weapons and self-defense laws to supply a copy to each person who
13 obtains an application for a license under this section or section
14 five of this article.

15 (2) The compendium of West Virginia weapons and self-defense
16 laws described in subdivision (1) of this subsection shall include:

17 (A) This article in its entirety;

18 (B) Citations and short summaries of all reported decisions of
19 the Supreme Court of Appeals arising from this article;

20 (C) Other provisions of this code relating to the possession,
21 carrying or use of deadly weapons or the use of force;

22 (D) Reported decisions of the Supreme Court of Appeals relating
23 to the possession, carrying or use of deadly weapons or the use of

1 physical force or deadly force in self-defense or the defense of
2 others;

3 (E) The statutory and common law of this state concerning
4 citizen's arrests and the use of force in connection therewith;

5 (F) Beginning with the second annual edition published in the
6 year 2012, significant changes since the preceding edition;

7 (G) Beginning with the third annual edition published in the
8 year 2013, each edition's significant changes from the prior edition
9 for the last five years, subdivided by year; and

10 (H) Other information the Attorney General is required to
11 collect and publicly distribute pursuant to this section other than
12 the reports specified in subsection (u) of this section.

13 (x) Any applicant or licensee may redact his or her Social
14 Security account number from any document he or she submits to the
15 sheriff in connection with any application or license under this
16 section or section five of this article and the redaction shall not
17 affect the validity of the document. Upon request of any applicant
18 or licensee under this section or section five of this article, the
19 sheriff shall redact the Social Security account number of the
20 applicant or licensee from any documents in the sheriff's possession
21 or control furnished by the applicant or licensee in connection with
22 any application or license under this section or section five of
23 this article. Within five business days after receiving a request

1 for redaction of the Social Security number of any applicant or
2 licensee, the sheriff shall transmit a copy of that request to the
3 superintendent. Within five business days after receiving a copy of
4 a request for redaction from the sheriff, the superintendent shall
5 redact the Social Security number from any records the
6 superintendent maintains regarding any applicant or licensee in
7 connection with any application or license under this section or
8 section five of this article. Each application form and
9 instructions shall clearly inform applicants and licensees of their
10 rights under this subsection.

11 (y) Notwithstanding any provisions of this section or the
12 enactment of this section in effect immediately preceding the
13 effective date of the amendments to this section enacted during the
14 2011 Regular Session of the Legislature, to the contrary:

15 (1) Every sheriff shall, on the effective date of the
16 amendments to this section enacted during the 2011 Regular Session
17 of the Legislature, cease processing applications for licenses made
18 to the sheriff prior to such date pursuant to this section as it
19 existed prior to such date, consider the application withdrawn and,
20 within three business days, notify each applicant by certified mail,
21 return receipt requested, that the application has been determined
22 withdrawn by operation of law, that the license sought has been
23 neither issued nor denied and that the applicant may apply pursuant

1 to the enactment of this section effective upon the effective date
2 of the amendments to this section enacted during the 2011 Regular
3 Session of the Legislature and refund in full the application fee
4 paid by each applicant whose application is determined withdrawn by
5 this subdivision;

6 (2) All persons holding a current, valid license issued
7 pursuant to a prior enactment of this section as of the effective
8 date of the amendments to this section enacted during the 2011
9 Regular Session of the Legislature, shall continue to hold a valid
10 license to carry concealed weapons until the license expires, is
11 suspended or revoked pursuant to subsection (q) of this section or
12 subdivision (4) of this subsection, extended pursuant to subdivision
13 (2), subsection (q) of this section, modified pursuant to
14 subdivision (3), subsection (r) of this section, or voluntarily
15 surrendered, or the licensee obtains a reissued license pursuant to
16 subdivision (3) of this subsection. Any license in effect as of the
17 effective date of the amendments to this section enacted during the
18 2011 Regular Session of the Legislature shall continue in effect as
19 a Class 3 license if the licensee is at least twenty-one years of
20 age or a Class 5 license if the licensee is less than twenty-one
21 years of age. However, the limitation of licenses issued prior to
22 the effective date of the amendments to this section enacted during
23 the 2011 Regular Session of the Legislature to pistols and revolvers

1 is repealed and existing licensees are immediately relieved of such
2 limitation;

3 (3) Any licensee under this section who holds a current, valid
4 license under this section as of the effective date of the
5 amendments to this section enacted during the 2011 Regular Session
6 of the Legislature may apply to the appropriate sheriff for a
7 reissued license. The licensee shall file the application otherwise
8 required by this section and shall pay the sheriff the duplicate or
9 replacement license fee prescribed by subdivision (2), subsection
10 (n) of this section. The sheriff shall follow the same procedure as
11 provided by this section for renewing a license. The sheriff shall,
12 within forty-five days after the date of application for a reissued
13 license under this subdivision, issue the licensee a reissued
14 license or deny a reissued license and suspend or revoke the
15 licensee's current license as required by subsection (q) of this
16 section if the licensee is not eligible for licensure under this
17 section. A reissued license pursuant to this subdivision shall
18 expire on the same date as the licensee's current license, but
19 shall entitle the licensee to all rights, benefits, privileges, and
20 immunities to which a licensee who is licensed under this section on
21 or after the effective date of the amendments to this section
22 enacted during the 2011 Regular Session of the Legislature is
23 entitled, including, but not limited to, the exemption described in

1 18 U.S.C. §922(t)(3)(A) and 27 C.F.R. §478.102(d)(1) and the benefit
2 of any reciprocity agreements or other arrangements which may be
3 limited to licenses issued on or after the effective date of the
4 amendments to this section enacted during the 2011 Regular Session
5 of the Legislature; and

6 (4) The eligibility criteria for a license to carry concealed
7 weapons specified in subdivisions (3) through (8), subsection (a) of
8 this section, shall be applied retroactively to all current licenses
9 in effect as of the effective date of the amendments to this section
10 enacted during the 2011 Regular Session of the Legislature. The
11 Superintendent and each sheriff shall fulfill the requirements of
12 subsection (q) of this section with respect to any existing licensee
13 who does not meet the current requirements of subdivisions (3)
14 through (8), subsection (a) of this section, as amended by the
15 amendments to this section enacted during the 2011 Regular Session
16 of the Legislature.

17 (z)(1) Notwithstanding any provision of this code or other law
18 of this state to the contrary, except as otherwise provided in this
19 subsection, the names, addresses and other personally-identifying
20 information of all applicants and licensees under this section and
21 section five of this article and all applications, licenses or
22 reports regarding any individual applicant or licensee under this
23 section or section five of this article or which contains any

1 personally-identifying information about any individual applicant or
2 licensee under this section or section five of this article, unless
3 such information has been redacted, shall be confidential, are not
4 public records and may be copied or inspected only:

5 (A) By the person to whom the record pertains;

6 (B) By the duly qualified conservator or guardian of a person
7 to whom the record pertains;

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

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

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

21 (F) By any licensed firearm dealer within this state from which
22 a licensee proposes purchasing a firearm, for the purpose of
23 verifying the validity of the license; or

1 (G) (i) Pursuant to an order of any court based upon a finding
2 of the court that the information is sufficiently necessary to a
3 proceeding before the court to substantially outweigh the importance
4 of maintaining the confidentiality of records established by this
5 subsection.

6 (ii) Before any court may grant access to any records pursuant
7 to this paragraph, the court shall order the party seeking access to
8 those records to give each affected applicant or licensee notice of
9 the proceedings, the request for confidential records under this
10 paragraph and the opportunity of affected applicants and licensees
11 to confidentially intervene and object to the request by:

12 (I) Publishing a Class III-O legal advertisement in accordance
13 with the provisions of article three, chapter fifty-nine of this
14 code, whose publication area shall be every county in which any
15 applicant or licensee affected by the request is known to reside.
16 For this purpose, the custodian of records shall provide the court
17 and the party seeking access to those records a list, in writing,
18 verified under oath, of all counties in which the custodian of
19 records has information indicating that applicants or licensees
20 affected by the request reside; and

21 (II) Directing the sheriff or other applicable custodian of
22 records to print and mail by first-class mail to each affected
23 applicant or licensee, the costs for which the moving party shall

1 prepay in full to the sheriff or other applicable custodian of
2 records, and perform this notification in a manner not inconsistent
3 with the confidentiality provisions of this subsection.

4 (iii) Any affected applicant or licensee may, either in person
5 or by counsel, enter a confidential appearance before the court to
6 object to the request for disclosure and present evidence and
7 arguments against the proposed disclosure. The court shall take
8 appropriate measures to protect the confidentiality of individuals
9 entering appearances and objections to disclosures pursuant to this
10 subparagraph.

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

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

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

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

1 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, may not be disclosed pursuant to this subdivision.

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

14 (E) Before any personally-identifying information of any
15 licensee under this section or section five of this article may
16 disclosed pursuant to this subdivision, the person obtaining the
17 information shall complete and verify under oath a notarized request
18 form prescribed by the Attorney General, which shall be a public
19 record, and file the request form at the headquarters of the State
20 Police in person or by certified mail, return receipt requested.
21 The superintendent shall maintain a record of requests fulfilled
22 under this subdivision for at least five years and not more than
23 seven years. The superintendent shall, upon request of any current

1 or former licensee under this section or section five of this
2 article, notify the current or former licensee of all organizations
3 to which the person's personally-identifying information have been
4 disclosed pursuant to this subdivision during the period for which
5 the superintendent maintains those records and provide a copy of all
6 requests for disclosure made to the superintendent pursuant to this
7 subdivision.

8 **§61-7-5. Emergency licenses to carry concealed weapons.**

9 (a) A sheriff, upon the application of a bona fide resident of
10 this state and the county in which the application is made, has not,
11 except as otherwise provided by subsection (f) of this section, been
12 issued an emergency license to carry concealed weapons under this
13 section within the five-year period immediately preceding the date
14 of the application for an emergency license and who is eligible for
15 licensure under section four of this article except for the
16 requirements of subdivisions (10) and (11), subsection (a) of that
17 section:

18 (1) Shall issue an emergency license to carry concealed weapons
19 to the applicant if the applicant presents evidence of imminent
20 danger; or

21 (2) May issue an emergency license to carry concealed weapons
22 to the applicant if the applicant shows good cause for emergency

1 licensure other than presentment of evidence of imminent danger. Any
2 application under this subdivision shall include a statement from
3 the applicant of the applicant's stated cause for requiring an
4 emergency license, in writing, verified under oath.

5 (b) The sheriff shall, prior to issuing an emergency license to
6 carry concealed weapons, conduct a preliminary background check on
7 the applicant based on available resources for an instant background
8 check to determine the applicant's eligibility for licensure and
9 shall determine whether the applicant has been issued an emergency
10 license to carry concealed weapons under this section within the
11 immediate preceding five years. This preliminary background check
12 shall include the background checks listed in paragraphs (E) through
13 (G), subdivision (3), subsection (b), section four of this article.
14 The sheriff shall make a written statement of the sheriff's findings
15 regarding the sufficiency of the statement of need made by an
16 applicant for an emergency license under subdivision (2), subsection
17 (a) of this section before issuing or denying an emergency license
18 sought under subdivision (2), subsection (a) of this section. An
19 emergency licensee shall, before the sheriff issues an approved
20 emergency license, pay to the sheriff a license fee of \$30, which
21 shall be credited against any fees due if the emergency licensee
22 applies for a license under section four of this article prior to
23 the expiration date of the emergency license.

1 (c) (1) A sheriff shall, upon issuing an emergency license to
2 carry concealed weapons, furnish the emergency licensee with a copy
3 of the current compendium of West Virginia weapons and self-defense
4 laws described in subsection (w), section four of this article if
5 the sheriff did not furnish a copy of it to the emergency licensee
6 during the emergency license application process and immediately
7 transmit to the superintendent a copy of the approved application,
8 a copy of the applicant's evidence of imminent danger submitted in
9 support of the application under subdivision (1), subsection (a) of
10 this section or the applicant's statement of need submitted in
11 support of the application under subdivision (2), subsection (a) of
12 this section and the sheriff's written statement on the sufficiency
13 of the statement of need.

14 (2) A sheriff that issues an emergency license to carry
15 concealed weapons under this section shall retain, for the entire
16 period during which the emergency license to carry concealed weapons
17 is in effect, the evidence of imminent danger or the evidence of
18 other good cause for an emergency license that the emergency license
19 to carry concealed weapons submitted to the issuing sheriff and that
20 was the basis for the license, or a copy of that evidence, as
21 appropriate. Upon the expiration of an emergency license, the
22 sheriff and Superintendent shall destroy all copies of the evidence
23 of imminent danger or the evidence of other good cause for an

1 emergency license that the emergency license to carry concealed
2 weapons submitted to the issuing sheriff and that was the basis for
3 the license, that are in the possession of the sheriff or
4 Superintendent or any agent of the sheriff or Superintendent.

5 (3) The sheriff and Superintendent shall retain for five years
6 the application for an emergency license for the purpose of
7 verifying whether an applicant for an emergency license has been
8 previously issued an emergency license within the immediate past
9 five years, as required by subsection (a) of this section.

10 (d) Upon receiving the information described in subsection (c)
11 of this section, the sheriff shall immediately commence all
12 background checks of the emergency licensee that would be performed
13 upon the emergency licensee's application for a license under
14 section four of this article.

15 (e) If an emergency licensee is found to be disqualified after
16 the emergency license is issued, the issuing sheriff shall revoke
17 the license as provided in section four of this article for licenses
18 issued under that section.

19 (f) An emergency license issued under this section shall expire
20 one hundred eighty days from the date of issue, unless sooner
21 surrendered, suspended, revoked or cancelled, or a regular license
22 is issued. Not earlier than thirty days prior to, nor later than
23 thirty days after, the expiration date of an emergency license under

1 this section that has not been previously renewed, the sheriff shall
2 renew the license for one additional period of one hundred eighty
3 days if the licensee shows good cause, in writing, verified under
4 oath, for why the licensee has been unable to fulfill the
5 requirements of subdivision (10), subsection (a), section four of
6 this article and apply for a regular license under section four of
7 this article.

8 (g) An emergency license may not contain the licensee's
9 photograph. An applicant for an emergency license shall not be
10 required to submit photographs as part of the application for an
11 emergency license. For the purposes of the license classification
12 system under section four of this article, an emergency license
13 issued to a licensee who is at least twenty-one years of age is a
14 Class 3-E license and an emergency license issued to a licensee who
15 is at least 18 years of age but less than twenty-one years of age is
16 a Class 5-E license.

17 (h) Every court of this state shall, upon issuing any domestic
18 violence protective order or other court order enjoining threats or
19 violence against the petitioner or a family or household member of
20 the petitioner, unless the petitioner is known to be disqualified
21 from licensure, offer the petitioner information on obtaining both
22 an emergency license to carry concealed weapons under this section
23 and a regular license to carry concealed weapons under section four

1 of this article.

2 (i) Every West Virginia law-enforcement agency shall, upon
3 taking a police report alleging a person has been the victim of any
4 felony crime of violence, felony sexual offense, misdemeanor crime
5 of violence, stalking or threats of harm to the safety of a person
6 or a family or household member of the person, unless the person is
7 known to be disqualified from licensure, offer the person
8 information on obtaining both an emergency license to carry
9 concealed weapons under this section and a regular license to carry
10 concealed weapons under section four of this article.

11 (j) In this section, "evidence of imminent danger" means:

12 (1) A written, notarized statement by an applicant for an
13 emergency license to carry concealed weapons, signed and sworn
14 before a notary public, made under penalty of false swearing under
15 section two, article five of this chapter, that states that the
16 applicant has reasonable cause to fear a criminal attack upon the
17 applicant or a family or household member of the applicant, such as
18 would justify a prudent person in going armed; or

19 (2) A written document prepared by a governmental entity or
20 public official describing the facts that give the applicant seeking
21 an emergency license to carry concealed weapons reasonable cause to
22 fear a criminal attack upon the applicant or a family or household
23 member of applicant, such as would justify a prudent person in going

1 armed. Written documents of this nature include, but are not
 2 limited to, any protective order, as that term is defined in section
 3 two hundred nine, article twenty-seven, chapter forty-eight of this
 4 code, any protective order issued outside this state that is granted
 5 full faith and credit in this state pursuant to section three
 6 hundred ten, article twenty-seven, chapter forty-eight of this code,
 7 or other court order, any court report and any report filed with or
 8 made by a law-enforcement officer or prosecutor. For the purposes of
 9 this subdivision, in addition to the definition specified in section
 10 two of this article, "prosecutor" includes any officer, employee or
 11 agent of this state, the United States or another state, or any
 12 political subdivision thereof, who has the power to prosecute
 13 criminal actions.

14 **§61-7-7. Persons prohibited from possessing firearms or ammunition**
 15 **or carrying concealed weapons; classifications; relief**
 16 **from disabilities; offenses; penalties.**

17 (a) Except as otherwise provided in subsection (b) of this
 18 section, no person shall may possess a firearm as such is defined in
 19 section two of this article who or ammunition or, except in the
 20 person's residence, temporary place of abode, fixed place of
 21 business or other real property owned, leased or lawfully possessed
 22 by the person, carry a concealed weapon on his or her person, if the

1 person:

2 (1) Has been convicted in any court within the United States of
3 a crime punishable by imprisonment for a term exceeding one year;

4 (2) Is ~~habitually addicted to alcohol~~ a fugitive from justice;

5 (3) Is an unlawful user of or ~~habitually~~ addicted to any
6 controlled substance;

7 (4) Has been adjudicated as a mental defective or ~~who~~ has been
8 involuntarily committed to a mental institution; ~~pursuant to the~~
9 ~~provisions of chapter twenty seven of this code: Provided, That~~
10 ~~once an individual has been adjudicated as a mental defective or~~
11 ~~involuntarily committed to a mental institution, he or she shall be~~
12 ~~duly notified that they are to immediately surrender any firearms in~~
13 ~~their ownership or possession: Provided, however, That the mental~~
14 ~~hygiene commissioner or circuit judge shall first make a~~
15 ~~determination of the appropriate public or private individual or~~
16 ~~entity to act as conservator for the surrendered property~~

17 (5) Is an alien illegally or unlawfully in the United States;

18 (6) Has been discharged from the Armed Forces under
19 dishonorable conditions;

20 (7) Having been a citizen of the United States, has renounced
21 his or her citizenship;

22 ~~(7)~~(8) Is subject to a ~~domestic violence protective~~ court order

1 that:

2 (A) Was issued after a hearing of which ~~such person~~ the
3 respondent received actual notice and at which ~~such person~~ the
4 respondent had an opportunity to participate;

5 (B) Restrains ~~such person~~ the respondent from harassing,
6 stalking or threatening an intimate partner of ~~such person~~ the
7 respondent or child of ~~such~~ the intimate partner or ~~person~~
8 respondent, or engaging in other conduct that would place an
9 intimate partner in reasonable fear of bodily injury to the partner
10 or child; and

11 (C) (i) Includes a finding that ~~such person~~ the respondent
12 represents a credible threat to the physical safety of ~~such~~ the
13 intimate partner or child; or

14 (ii) By its terms explicitly prohibits the use, attempted use
15 or threatened use of physical force against ~~such~~ the intimate
16 partner or child that would reasonably be expected to cause bodily
17 injury; or

18 ~~(8) Has been convicted of a misdemeanor offense of assault or~~
19 ~~battery either under the provisions of section twenty-eight, article~~
20 ~~two of this chapter or the provisions of subsection (b) or (c),~~
21 ~~section nine of said article in which the victim was a current or~~
22 ~~former spouse, current or former sexual or intimate partner, person~~
23 ~~with whom the defendant has a child in common, person with whom the~~

~~1 defendant cohabits or has cohabited, a parent or guardian, the
2 defendant's child or ward or a member of the defendant's household
3 at the time of the offense or has~~

4 (9) Is currently prohibited under 18 U.S.C. §922(g)(9) from
5 possessing, transporting, shipping or receiving firearms by virtue
6 of having been convicted in any court within the United States of
7 ~~any jurisdiction~~ of a ~~comparable~~ misdemeanor crime of domestic
8 violence as defined in 18 U.S.C. §921(a)(33).

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

10 (1) Any person who has been granted relief from disability
11 pursuant to subsection (e) of this section or any prior enactment of
12 this section;

13 (2) Any person who is exempt from 18 U.S.C. §922(g) pursuant to
14 18 U.S.C. §925(a), to the extent the exemption under 18 U.S.C.
15 §925(a) pertains to causes for which the person would otherwise be
16 under disability under subsection (a) of this section;

17 (3) Any person who has received relief from disabilities
18 pursuant to 18 U.S.C. §925(b), to the extent the relief granted
19 pertains to causes for which the person would otherwise be under
20 disability under subsection (a) of this section;

21 (4) With respect to any event causing a disability under
22 subsection (a) of this section that occurred in another state, any
23 person who has received relief from disabilities under the laws of

1 the state in which the disabling event occurred, to the extent the
2 relief granted effected the removal of federal firearm disabilities
3 otherwise applicable pursuant to 18 U.S.C. §922(g) and the laws of
4 the state in which relief was granted;

5 (5) With respect to a disability under subdivision (4),
6 subsection (a) of this section, any person who has received relief
7 from disability under the former section five, article seven-a of
8 this chapter, as it existed between June 8, 2008, and its repeal and
9 consolidation with subsection (e) this section, as enacted
10 concurrent with the amendments to this section enacted during the
11 2011 Regular Session of the Legislature, or any other program or
12 procedure that, under Section 105 of the NICS Improvement Amendments
13 Act of 2007, Public Law 110-180, 121 Stat. 2559, 2569-70, removes
14 federal firearm disabilities otherwise applicable pursuant to 18
15 U.S.C. §922(d)(4) or (g)(4); or

16 (6) Any person who has received any combination of the forms of
17 relief described in subdivisions (1) through (5) of this subsection
18 if, as a combined result of all applicable grants of relief the
19 person has received, the person is not subject to any federal
20 firearms disability otherwise applicable under 18 U.S.C. §922(g).

21 (c)(1) Except as otherwise provided in this subsection, no
22 person may knowingly carry a concealed weapon on his or her person
23 while he or she is in any public place if he or she:

1 (A) Has, within the immediate preceding three years, been
2 convicted in any court within the United States of any misdemeanor
3 drug offense, any misdemeanor crime of violence, any misdemeanor
4 under section nine hundred three, article twenty-seven, chapter
5 forty-eight of this code or any offense under federal law or the
6 laws of another state or political subdivision thereof that, if
7 committed within this state, would constitute an offense under
8 section nine hundred three, article twenty-seven, chapter
9 forty-eight of this code;

10 (B) Has, within the immediate preceding three years, received
11 a conditional discharge pursuant to section four hundred seven,
12 article four, chapter sixty-a of this code or the substantially
13 similar law of the United States or any other state for, any
14 misdemeanor drug offense;

15 (C) Has entered into a pretrial diversion agreement for, or had
16 adjudication of guilt withheld or imposition of sentence suspended
17 on, any crime for which a conviction would disqualify the person
18 under this subdivision or subsection (a) of this section from
19 possessing firearms or carrying a concealed weapon in a public
20 place, unless the record has been sealed or expunged or three years
21 have elapsed since probation or any other conditions set by the
22 court have been fulfilled;

23 (D) Is less than thirty years of age and has been adjudicated

1 delinquent as a juvenile in any court within the United States for
2 any act that, if the person had been tried and convicted of
3 committing as an adult, would disqualify the person under paragraph
4 (A) or (E) of this subdivision or subsection (a) of this section
5 from possessing firearms or carrying a concealed weapon in a public
6 place;

7 (E) Has been convicted in any court within the United States of
8 committing any misdemeanor drug offense, any misdemeanor crime of
9 violence, any misdemeanor under section nine hundred three, article
10 twenty-seven, chapter forty-eight of this code, or any offense under
11 federal law or the laws of another state or political subdivision
12 thereof that, if committed within this state, would constitute an
13 offense under section nine hundred three, article twenty-seven,
14 chapter forty-eight of this code, committed subsequent to the entry
15 of any conviction, conditional discharge or pretrial diversion
16 agreement in any court within the United States for any crime
17 punishable by imprisonment by a term exceeding one year, any
18 misdemeanor drug offense, any misdemeanor crime of violence, any
19 misdemeanor under section nine hundred three, article twenty-seven,
20 chapter forty-eight of this code, or any offense under federal law
21 or the laws of another state or political subdivision thereof that,
22 if committed within this state, would constitute an offense under
23 section nine hundred three, article twenty-seven, chapter

1 forty-eight of this code, unless at least ten years have elapsed
2 since the date of conviction and at least five years have elapsed
3 since the completion of any sentence, probation, parole, other
4 supervision and payment in full of all fines, court costs and
5 restitution, whichever last occurs;

6 (F) Is an inebriate as defined in section four, article one,
7 chapter twenty-seven of this code;

8 (G) Is receiving social security disability benefits by reason
9 of alcohol dependence, drug dependence, mental disability or
10 blindness;

11 (H) Presently suffers a mental illness, as defined in section
12 two, article one, chapter twenty-seven of this code, to the extent
13 the person is likely to cause serious harm, as defined in section
14 twelve, article one, chapter twenty-seven of this code;

15 (I) Presently suffers an intellectual disability, as defined in
16 section three, article one, chapter twenty-seven of this code, to
17 the extent the person is likely to cause serious harm, as defined in
18 section twelve, article one, chapter twenty-seven of this code; or

19 (J) Has received treatment in any mental health facility, as
20 defined in section nine, article one, chapter twenty-seven of this
21 code, or any similar institution in any other state, for any mental
22 illness, as defined in section two, article one, chapter
23 twenty-seven of this code, or addiction, as defined in section

1 eleven, article one, chapter twenty-seven of this code, unless a
2 licensed psychiatrist, as defined in section ten, article one,
3 chapter twenty-seven of this code, has issued a certificate
4 attesting that the person has not suffered mental illness or
5 addiction for at least five years immediately preceding the issuance
6 of the certificate.

7 (2) Subdivision (1) of this subsection does not apply to:

8 (A) Any person who is authorized by subsection (c) or (e),
9 section three of this article or subdivision (2), (5), (6), (7) or
10 (9), subsection (d), section three of this article, to carry a
11 concealed weapon;

12 (B) Any person who is at, in or on a gun show, premises of a
13 licensed firearm dealer, hunting or target shooting facility or the
14 woods, fields or waters of this state where the person is present
15 lawfully for the purpose of hunting or target shooting or other
16 lawful activity involving firearms; or

17 (C) Any person who has been granted relief from disability
18 under subsection (e) of this section.

19 (3) It is an affirmative defense to an offense under this
20 subsection that:

21 (A) The defendant was not prohibited from possessing firearms
22 by 18 U.S.C. §922(g), as it exists as of January 1, 2011, and not
23 prohibited by subsection (a) of this section from possessing

1 firearms; and

2 (B) (i) The defendant carried the weapon for defensive purposes
3 while the defendant was engaged in or was going to or from the
4 defendant's lawful business or occupation, which business or
5 occupation was of a character or was necessarily carried on in a
6 manner or at a time or place as to render the defendant particularly
7 susceptible to criminal attack, such as would justify a prudent
8 person in going armed; or

9 (ii) The defendant carried the weapon for defensive purposes
10 while the actor was engaged in a lawful activity and had reasonable
11 cause to fear a criminal attack upon the defendant or any person
12 accompanying the defendant, such as would justify a prudent person
13 in going armed.

14 (4) In this subsection, "public place" means any property
15 owned, leased or controlled by a public agency or private property
16 that is regularly and frequently open to or made available for use
17 by the public in sufficient numbers to give clear notice of the
18 property's current dedication to public use, but does not include a
19 person's dwelling house or premises, the place of business owned or
20 managed by the person, or land possessed by the person; a gun show,
21 premises of a licensed firearm dealer or hunting or target shooting
22 facility, or the woods, fields or waters of this state where the
23 person is present lawfully for the purpose of hunting or target

1 shooting or other lawful activity involving firearms.

2 (d) (1) (A) Any person who:

3 (i) Knowingly and willfully possesses a firearm or carries a
4 concealed weapon in violation of subdivision (1), subsection (a) of
5 this section, when the prohibition on possessing firearms is based
6 in whole or in part upon a conviction for any aggravated felony;

7 (ii) Knowingly possesses a firearm or ammunition or carries a
8 concealed weapon in violation of subdivision (5), subsection (a) of
9 this section;

10 (iii) Carries on or about his or her person a firearm or
11 concealed weapon that the person knowingly and willfully possesses
12 in violation of subsection (a) or (c) of this section while the
13 person commits any aggravated felony; or

14 (iv) Knowingly possesses a firearm or carries a concealed
15 weapon in violation of subsection (a) or (c) of this section after
16 having been previously convicted of possessing a firearm or carrying
17 a concealed weapon in violation of this section, 18 U.S.C. §922(g)
18 or any substantially similar law of any other state, unless at least
19 ten years have elapsed since the date of conviction and at least
20 five years have elapsed since the completion of any sentence,
21 probation, parole, other supervision and payment in full of all
22 fines, court costs and restitution, whichever last occurs, is guilty
23 of a felony and, upon conviction thereof, shall be fined not more

1 than \$100,000, imprisoned in a state correctional facility for not
2 less than one year nor more than ten years, or both fined and
3 imprisoned.

4 (B) The prosecuting attorney shall, in all cases in which a
5 defendant is convicted of a felony punishable under paragraph (A) of
6 this subdivision and has been previously convicted of a felony for
7 which the defendant is eligible for any sentencing enhancement under
8 section eighteen, article eleven of this chapter, obtain and present
9 to the court record evidence of all prior felony convictions against
10 the defendant and seek the maximum recidivist sentencing enhancement
11 for which the defendant is eligible under section eighteen, article
12 eleven of this chapter. A prosecuting attorney shall not have
13 discretion to refuse or fail to act as required by this paragraph or
14 to negotiate or enter into any plea agreement to avoid any
15 recidivist sentencing enhancement required by this paragraph and
16 section eighteen, article eleven of this chapter. Nothing in this
17 paragraph may be construed to prohibit any sentencing order or plea
18 agreement that provides for any sentence for any offense under this
19 section to be served concurrent with any sentence of imprisonment in
20 a federal correctional facility for any offense under Title 18,
21 Chapter 44 of the United States Code (18 U.S.C. §§921 through 931),
22 arising from the same transaction or occurrence.

23 (2) Except as otherwise provided by subdivision (1) of this

1 subsection, any person who knowingly possesses a firearm or carries
2 a concealed weapon in violation of subdivisions (1) or (9),
3 subsection (a) of this section, where the prohibition on possessing
4 firearms or carrying a concealed weapon is based upon one or more
5 misdemeanor convictions from which at least five years have elapsed
6 since the date of conviction, completion of sentence or probation or
7 payment in full of all fines, court costs and court-ordered
8 restitution, whichever last occurs, or who possesses ammunition in
9 violation of subsection (a) of this section, is guilty of a
10 misdemeanor and, upon conviction thereof, shall be fined not more
11 than \$500, confined in jail for not more than thirty days, or both
12 fined and confined.

13 (3) Except when subdivision (1) or (2) of this subsection is
14 applicable, any person who ~~violates this~~ knowingly possesses a
15 firearm or carries a concealed weapon in violation of subsection
16 ~~shall be~~ (a) or (c) of this section is guilty of a misdemeanor and,
17 upon conviction thereof, shall be fined not ~~less than one hundred~~
18 ~~dollars nor~~ more than ~~one thousand dollars or~~ \$2,500, confined in
19 ~~the county jail for not less than ninety days nor~~ more than one
20 year, or both fined and confined.

21 ~~(b) Notwithstanding the provisions of subsection (a) of this~~
22 ~~section, any person:~~

23 ~~(1) Who has been convicted in this state or any other~~

1 ~~jurisdiction of a felony crime of violence against the person of~~
2 ~~another or of a felony sexual offense; or~~

3 ~~(2) Who has been convicted in this state or any other~~
4 ~~jurisdiction of a felony controlled substance offense involving a~~
5 ~~Schedule I controlled substance other than marijuana, a Schedule II~~
6 ~~or a Schedule III controlled substance as such are defined in~~
7 ~~sections two hundred four, two hundred five and two hundred six,~~
8 ~~article two, chapter sixty-a of this code and who possesses a~~
9 ~~firearm as such is defined in section two of this article shall be~~
10 ~~guilty of a felony and, upon conviction thereof, shall be confined~~
11 ~~in a state correctional facility for not more than five years or~~
12 ~~fined not more than five thousand dollars, or both. The provisions~~
13 ~~of subsection (c) of this section shall not apply to persons~~
14 ~~convicted of offenses referred to in this subsection or to persons~~
15 ~~convicted of a violation of this subsection.~~

16 ~~(c)~~ (e) (1) Any person resident of this state who is prohibited
17 from possessing a firearm firearms and ammunition or carrying a
18 concealed weapon by ~~the provisions of~~ subsection (a) or (c) of this
19 section may petition the circuit court of the county in which he or
20 she resides ~~to regain the ability to possess a firearm and~~ for
21 relief from disabilities. Any nonresident who is prohibited from
22 possessing firearms and ammunition or carrying a concealed weapon by
23 subsection (a) or (c) of this section may petition the circuit court

1 of any county for relief from disabilities. However, any
2 nonresident who is prohibited from possessing firearms and
3 ammunition or carrying a concealed weapon by subsection (a) or (c)
4 of this section by virtue of any conviction, commitment,
5 adjudication, domestic violence protective order or other act that
6 occurred within this state may petition only the circuit court of
7 Kanawha County or a county in which any disabling event under
8 subsection (a) or (c) of this section occurred for relief from
9 disabilities. The petitioner shall, at the time of filing the
10 petition, pay the clerk of the circuit court a filing fee equal to
11 the filing fee for instituting a civil action pursuant to
12 subdivision (1), subsection (a), section eleven, article one,
13 chapter fifty-nine of this code. The petition shall be verified
14 under oath and include the following information:

15 (A) The petitioner's current name and all other legal names or
16 aliases by which petitioner has been known at any time;

17 (B) All of the petitioner's residence addresses from the date
18 of onset of a disability under this section to the date of the
19 petition;

20 (C) The petitioner's date and place of birth;

21 (D) If the petitioner is under any disability under
22 subdivisions (1) or (9), subsection (a) of this section or paragraph
23 (A), (B), (C), (D) or (E), subdivision (1), subsection (c) of this

1 section:

2 (i) The petitioner's date of arrest, the court of jurisdiction
3 and criminal complaint, indictment, summons or case number;

4 (ii) The statute or statutes and offense or offenses for which
5 the petitioner was charged and for which the petitioner was
6 convicted, placed on pretrial diversion, granted a conditional
7 discharge or adjudicated delinquent as a juvenile;

8 (iii) The names of the victim or victims, if any;

9 (iv) Whether there is a current order, or has ever been, a
10 prior order for restitution, a domestic violence protective order or
11 other restraining order prohibiting the petitioner from contacting
12 the victims. If such an order is currently in effect, the petitioner
13 shall attach a copy of the order to the petition;

14 (v) The court's disposition of the matter and punishment
15 imposed, if any; and

16 (vi) The steps the petitioner has taken since the time of the
17 offenses toward personal rehabilitation, including treatment, work
18 or other personal history that demonstrates rehabilitation;

19 (E) If the petitioner is under any disability under subdivision
20 (4), subsection (a) of this section, the name of the court or other
21 tribunal of jurisdiction, the case or file number and the current
22 status of the matter;

23 (F) Whether the petitioner has ever been granted similar relief

1 by any court in this state or any court, tribunal or other agency of
2 any other state or the United States;

3 (G) Whether the petitioner has previously filed any petitions
4 for relief from disabilities under this section or any prior
5 enactment thereof and, if so, a listing of all petitions, courts in
6 which they were filed, case numbers and their dispositions;

7 (H) A memorandum of law concerning whether the petitioner is
8 currently prohibited by federal law from possessing firearms and
9 what effect, if any, the court granting the petition would have on
10 the petitioner's eligibility under federal law to possess firearms;
11 and

12 (I) Any supporting documents, affidavits or other information
13 supporting the petition.

14 (2) The State of West Virginia shall be named as the respondent
15 to any petition under this subsection. The petitioner shall serve
16 a copy of the petition and any supporting documentation pursuant to
17 the West Virginia Rules of Civil Procedure and the West Virginia
18 Trial Court Rules upon the prosecuting attorney of the county in
19 which the petition is filed and the prosecuting attorney of any
20 county in which the petitioner was convicted, placed on pretrial
21 diversion, granted a conditional discharge or adjudicated delinquent
22 as a juvenile for any criminal offense creating a disability under
23 subdivisions (1) or (9), subsection (a) of this section or paragraph

1 (A), (B), (C), (D) or (E), subdivision (1), subsection (c) of this
2 section, or in which a court order described in subdivision (8),
3 subsection (a) of this section was issued, or the equivalent
4 official of the United States or any other state in which any such
5 conviction occurred or order issued. If the petition pertains to
6 any disability under subdivisions (1), (8) or (9), subsection (a) of
7 this section or paragraph (A), (C), (D) or (E), subdivision (1),
8 subsection (c) of this section, the prosecuting attorney shall serve
9 by first class mail a copy of the petition, accompanying
10 documentation and any proposed order to any identified victims and
11 the prosecuting attorney shall take reasonable steps to locate any
12 identifiable victims, including but not limited to searches of
13 driver's license, voter registration and tax databases to which the
14 prosecuting attorney may have access for official purposes. If
15 there are no identifiable victims or the prosecuting attorney cannot
16 locate and serve an identifiable victim, the prosecuting attorney
17 shall notify the court and the petitioner, and shall have no further
18 duty with respect to the location and service of any victim.

19 (3) The court may require the petitioner to appear before the
20 sheriff of the county in which the petition was filed and submit to
21 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,

1 present a memorandum of law concerning the state's position on
2 whether the petitioner is currently prohibited by federal law from
3 possessing firearms and what effect, if any, the court granting the
4 petition would have on the petitioner's eligibility under federal
5 law to possess firearms. The petitioner shall be granted at least
6 ten business days after service of any notice of opposition to the
7 petition or any memorandum of law to file a reply.

8 (5) Not earlier than fourteen days nor more than thirty days
9 after the expiration of the time period for a party to enter a
10 notice of opposition to the petition and, if applicable, for the
11 petitioner to file a reply with the court, the court shall:

12 (A) Summarily deny the petition if the court determines that
13 the petition is insufficient or, based upon supporting documentation
14 and sworn statements filed in opposition to the petition, the court
15 determines that the petitioner, as a matter of law, is not entitled
16 to relief;

17 (B) Summarily grant the petition if the court does not
18 summarily deny the petition pursuant to paragraph (A) of this
19 subdivision, the petitioner does not request a hearing on the
20 petition, no opposition to the petition has been filed with the
21 court and the court does not desire, upon its own motion, to set the

1 matter for hearing; or

2 (C) In any other case, set the matter for hearing.

3 (6) If the court sets the matter for hearing, the clerk of the
4 court shall notify the petitioner and all interested parties who
5 have filed a notice of opposition. The court, at the hearing, may
6 inquire into the background of the petitioner and shall have access
7 to any reports or records relating to the petitioner that are on
8 file with any law-enforcement authority and other agency which was
9 in any way involved with the events resulting in the petitioner's
10 disability under this section, including any record of arrest or
11 conviction or domestic violence or mental health proceedings in any
12 state or federal court. The court may hear testimony of witnesses
13 and any other matter the court deems proper and relevant to its
14 determination regarding the petition.

15 (7) The court shall grant relief if the court finds by clear
16 and convincing evidence that the person is competent and capable of
17 exercising the responsibility concomitant with the possession of a
18 firearm, the court may enter an order allowing the person to possess
19 a firearm if such possession would not violate any federal law.
20 Provided, That a person prohibited from possessing a firearm by the
21 provisions of subdivision (4), subsection (a) of this section may

1 ~~petition to regain the ability to possess a firearm in accordance~~
2 ~~with the provisions of section five, article seven-a of this chapter~~
3 circumstances regarding the disability and the petitioner's record
4 and reputation are such that the petitioner will not be likely to
5 act in a manner dangerous to public safety and that granting relief
6 would not be contrary to the public interest. However, the court
7 may deny the petition or limit the relief granted to exclude
8 firearms, as defined in 18 U.S.C. §921, and regulated under 18
9 U.S.C. §922(g), if it finds that the petitioner is currently
10 prohibited by federal law from possessing firearms and would remain
11 prohibited by federal law from possessing firearms notwithstanding
12 the granting of the petition and removal of disabilities under this
13 section.

14 (8) Any petitioner denied relief under this subsection or
15 granted less than the full relief sought may, from time to time,
16 upon notice to the prosecuting attorney and any parties that entered
17 objections to the petition or which may otherwise be designated by
18 the court, petition the court to reconsider its decision to deny
19 relief or grant limited relief, regardless of whether the petitioner
20 originally appealed the previous order denying relief or granting
21 limited relief or the resolution of that appeal. The court may, in

1 its discretion, in an order denying reconsideration under this
2 subdivision or granting less than full relief upon reconsideration,
3 specify that the petitioner may not seek another reconsideration of
4 the court's decision for a specified period of time, not to extend
5 beyond one year after the date on which the order is entered.

6 (9) Any order granting relief under this subsection does not
7 relieve the petitioner from any disability under subsection (a) or
8 (c) of this section that the petitioner did not completely and
9 accurately disclose to the court in the petition.

10 (10) The court may, at any time upon actual notice to the
11 petitioner and after a reasonable opportunity for the petitioner to
12 be heard, revoke its order granting relief under this subsection
13 upon good cause shown by clear and convincing evidence.

14 (11) The court shall, upon granting, denying or revoking
15 relief, enter in the record an order reflecting its ruling on the
16 petition with appropriate findings of fact and conclusions of law.
17 If the court denies the petition, grants limited relief or revokes
18 any previous grant of relief, it shall clearly indicate in its
19 findings of fact and conclusions of law specific findings and
20 conclusions regarding the petitioner's eligibility under federal law
21 to lawfully possess firearms and whether the petitioner's

1 eligibility under federal law to lawfully possess firearms would
2 have been affected had the court granted the petition or not revoked
3 the prior grant of relief, and shall clearly state whether the court
4 would have granted the petition in full or not revoked the prior
5 grant of relief had it reached a different conclusion on the
6 question of the petitioner's eligibility under federal law to
7 lawfully possess firearms. Upon entry of an order granting, denying
8 or revoking relief under this subsection, the clerk of the court
9 shall transmit certified copies of the order to the petitioner,
10 prosecuting attorney and all parties that entered notices of
11 opposition to the petition.

12 (12) In any appeal of a denial of relief or revocation of any
13 grant of relief, all matters appealed by the petitioner shall be
14 reviewed de novo.

15 (13) If the court grants relief from a disability under
16 subsection (a) or (c) of this section or revokes any grant of relief
17 from any disability under subsection (a) or (c) of this section, the
18 clerk of the court shall transmit a certified copy of the order to
19 the superintendent. If the order grants relief from a disability
20 under subsection (a) of this section or revokes any grant of relief
21 from any disability under subsection (a) of this section, the

1 superintendent shall transmit a certified copy of the order to the
2 Federal Bureau of Investigation or other federal entity operating
3 the National Instant Criminal Background Check System. If the order
4 grants relief from disabilities under subdivision (4), subsection
5 (a) of this section and 18 U.S.C. §922(g)(4), the superintendent
6 shall, immediately upon receipt of the certified copy of the order,
7 remove the petitioner's name and other pertinent information from
8 the central state mental health registry maintained pursuant to
9 article seven-a of this chapter.

10 (14) The Legislature declares that this subsection is the
11 process established by this state pursuant to Section 105 of the
12 NICS Improvement Amendments Act of 2007, Public Law 110-180, 121
13 Stat. 2559, 2569-70, to grant relief from any firearms disability
14 under subdivision (4), subsection (a) of this section or 18 U.S.C.
15 §922(d)(4) or (g)(4).

16 **§61-7-9. Firearms regulated by National Firearms Act; prohibited**
17 **acts; penalties.**

18 ~~It shall be unlawful for any~~ (a) A person to may not knowingly
19 carry, transport or have in his possession, possess any machine gun
20 submachine gun, or any other fully automatic weapon firearm that is
21 regulated by the National Firearms Act, 26 U.S.C. Chapter 53, as it

1 exists as of January 1, 2011, unless ~~he or she~~ the person has fully
2 complied with ~~applicable federal statutes~~ the National Firearms Act,
3 as it exists as of January 1, 2011, and all applicable ~~rules and~~
4 ~~regulations of the secretary of the treasury of the United States~~
5 ~~relating to such firearms~~ promulgated pursuant to the National
6 Firearms Act, as they exist as of January 1, 2011.

7 (b) Every chief law-enforcement official and prosecuting
8 attorney is a chief law-enforcement officer in this state for
9 purposes of certification of the transfer and registration of any
10 firearm required to be certified pursuant to the National Firearms
11 Act.

12 (c) A chief law-enforcement official or prosecuting attorney
13 shall, except as otherwise provided by subsection (e) of this
14 section, whenever a resident of the political subdivision served by
15 the chief law-enforcement official or prosecuting attorney presents
16 to the chief law-enforcement official or prosecuting attorney an
17 application for certification of the transfer and registration of a
18 firearm subject to the National Firearms Act, provide the
19 certification; (i) within seven days of receipt of the federal
20 application and the request for certification if the applicant is
21 currently licensed to carry concealed weapons pursuant to section

1 four of this article (other than a temporary, temporary renewal or
2 emergency license) and presents a photocopy of the license to the
3 chief law-enforcement official with the federal application and
4 request for certification or (ii) within forty-five days of receipt
5 of the federal application and request for certification in any
6 other case. The failure of the chief law-enforcement official or
7 prosecuting attorney to notify the applicant in writing, by personal
8 service or certified mail, return receipt requested, of a denial of
9 certification within the applicable time period and the reasons for
10 the denial, constitutes granting the requested certification. A fee
11 may not be charged for providing a certification pursuant to this
12 subsection.

13 (d) (1) A chief law-enforcement official or prosecuting attorney
14 shall deny the certification described in subsection (c) of this
15 section if the applicant is prohibited by federal law or subsection
16 (a), section seven of this article from receiving the firearm.

17 (2) A chief law-enforcement official or prosecuting attorney
18 may deny the certification described in subsection (c) of this
19 section if the chief law-enforcement official or prosecuting
20 attorney has specific, credible, documented information proving that
21 the applicant intends to use the firearm for an unlawful purpose.

1 (3) A chief law-enforcement official or prosecuting attorney
2 may, in his or her discretion, deny the certification described in
3 subsection (c) of this section if the applicant is prohibited by
4 subsection (c), section seven of this article from carrying a
5 concealed weapon in a public place.

6 (e) (1) Any person denied a certification pursuant to
7 subsections (b) through (d) of this section may file in the circuit
8 court of the county in which the certification was requested a
9 petition seeking review of the denial. The petitioner shall file
10 the petition for review within sixty days of the denial.

11 (2) Unless the requested certification was denied pursuant to
12 subdivision (3), subsection (d) of this section, the court shall
13 review de novo all matters appealed by the petitioner, determine
14 whether the petitioner is entitled to receive the requested
15 certification and, unless the chief law-enforcement official or
16 prosecuting attorney who denied the certification proves by clear
17 and convincing evidence that the petitioner is disqualified by
18 subsection (d) of this section from receiving the certification,
19 order the chief law-enforcement official or prosecuting attorney to
20 issue the certification. The court shall view any information
21 described in paragraph (A), subdivision (2), subsection (d) of this

1 section, in the light most favorable to the petitioner.

2 (3) (A) If the chief law-enforcement official or prosecuting
3 attorney denied the requested certification pursuant to subdivision
4 (3), subsection (d) of this section, the court shall:

5 (i) Review de novo the petitioner's eligibility to lawfully
6 carry a concealed weapon in a public place under section seven of
7 this article and all facts relied upon by the chief law-enforcement
8 official or prosecuting attorney in denying the requested
9 certification; and

10 (ii) Order the chief law-enforcement official or prosecuting
11 attorney to issue the certification unless the chief law-enforcement
12 official or prosecuting attorney proves by clear and convincing
13 evidence that the petitioner is prohibited by section seven of this
14 article from carrying a concealed weapon in a public place and
15 proves by a preponderance of evidence that the denial of the
16 requested certification was not arbitrary, capricious or
17 characterized by abuse of discretion or clearly unwarranted exercise
18 of discretion.

19 (B) If the circuit court affirms a denial of a requested
20 certification, the circuit court's decision shall be reviewed de
21 novo on appeal.

1 (f) Every chief law-enforcement official and prosecuting
2 attorney who approves a certification as required by subsection (c)
3 of this section and all employees and agents of any chief
4 law-enforcement official or prosecuting attorney who participate in
5 the investigation of the applicant or the decision on granting the
6 certification, are immune from liability in any civil action
7 resulting from the lawful performance of their duties under
8 subsections (b) through (d) of this section.

9 (g) Any person who violates ~~the provision~~ subsection (a) of
10 this section ~~shall be~~ or willfully fails to certify the transfer and
11 registration of a firearm subject to the National Firearms Act, as
12 required by and within the time limits specified by subsection (c)
13 of this section, is guilty of a misdemeanor and, upon conviction
14 thereof, shall be fined not ~~less than \$1,000 nor~~ more than \$5,000,
15 or ~~shall be~~ confined in ~~the county~~ jail for not ~~less than ninety~~
16 ~~days,~~ or more than one year, or both fined and confined. Any public
17 officer who is convicted of willfully failing to certify the
18 transfer and registration of a firearm subject to the National
19 Firearms Act, as required by and within the time limits specified by
20 subsection (c) of this section, shall forfeit his or her office
21 pursuant to section nine, article six, chapter six of this code.

1 (h) In addition to any other remedies available by law for a
2 violation of subsection (c) of this section, any violation of
3 subsection (c) of this section is, for the purposes of article six,
4 chapter six of this code, per se official misconduct or neglect of
5 duty by every person subject to the provisions of that article who
6 willfully fails to certify the transfer and registration of a
7 firearm subject to the National Firearms Act, as required by and
8 within the time limits specified by subsection (c) of this section.

9 (i) (1) Notwithstanding any provision of this code or other law
10 of this state to the contrary, except as otherwise provided in this
11 subsection, the names, addresses and other personally-identifying
12 information of persons who apply for or receive a certification of
13 the transfer and registration of any firearm required to be
14 certified pursuant to the National Firearms Act are confidential,
15 are not public records and may be copied or inspected only by:

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

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

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

1 record pertains;

2 (D) An attorney, attorney-in-fact or other agent or
3 representative acting pursuant to a written power of attorney or
4 other written authorization signed by the person to whom the record
5 pertains;

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

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

17 (ii) Before any court may grant access to any records pursuant
18 to this paragraph, the court shall order the moving party to give
19 each affected person notice of the proceedings, the request for
20 confidential records under this paragraph and the opportunity of
21 affected persons to confidentially intervene and object to the

1 request by directing the applicable custodian of records to print
2 and mail by first-class mail to each affected person, the costs for
3 which the moving party shall prepay in full to the custodian of
4 records, and perform this notification in a manner not inconsistent
5 with the confidentiality provisions of this subsection.

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

19 (3) This subsection does not prohibit disclosure or publication
20 of statistical summaries, abstracts or other records containing
21 information in an aggregate or statistical form that does not

1 disclose any personally-identifying information protected from
2 public disclosure under this subsection.

3 (j) In this section, "chief law-enforcement official" means the
4 superintendent, the sheriff of any county or the chief of police of
5 any municipality.

6 **§61-7-10. Regulation of the sale or transfer of deadly weapons; sale**
7 **to prohibited persons; penalties; civil remedies.**

8 (a) A person may not publicly display and offer for rent or
9 sale, or, where the person is other than a natural person, knowingly
10 permit an employee thereof to publicly display and offer for rent or
11 sale, to any passersby on any street, road or alley, any deadly
12 ~~weapon machine gun, submachine gun or other fully automatic weapon,~~
13 ~~any rifle, shotgun or ammunition. for same~~

14 ~~(b) Any person who violates the provisions of subsections (a)~~
15 ~~or (c) of this section shall be guilty of a misdemeanor, and, upon~~
16 ~~conviction thereof, shall be fined not more than five thousand~~
17 ~~dollars or shall be confined in the county jail for not more than~~
18 ~~one year, or both fined and confined, except that where the person~~
19 ~~violating the provisions of said subsections is other than a natural~~
20 ~~person, such person shall be fined not more than ten thousand~~
21 ~~dollars.~~

1 (b) A licensed firearm dealer and its employees and agents may
2 not refuse to sell or otherwise transfer a firearm to any person
3 solely on the basis that the person purchased a firearm that was
4 later the subject of a law-enforcement trace request.

5 (c) A licensed firearm dealer and its employees and agents
6 shall, upon completion of a federal firearms transaction record,
7 Form 4473, by a purchaser or other prospective transferee of a
8 firearm subject to the provisions of 18 U.S.C. §922(t), inquire of
9 the purchaser or transferee whether he or she has a license to carry
10 concealed weapons issued pursuant to section four of this article
11 that is a qualifying alternative under 18 U.S.C. §922(t) (3) (A) to
12 the performance of a National Instant Criminal Background Check
13 System check pursuant to 18 U.S.C. §922(t) or other evidence of
14 exemption under 18 U.S.C. §922(t) (3) and verbally inform the person
15 that if he or she has such a license and presents it for inspection
16 as required by federal law, the person may complete the purchase or
17 transfer of the firearm without undergoing a National Instant
18 Criminal Background Check System check. If the person presents an
19 instrument purporting to be a West Virginia license to carry
20 concealed weapons that is a qualifying alternative under 18 U.S.C.
21 §922(t) (3) (A), the licensed dealer or its employee or agent may

1 contact the State Police Concealed Weapons License Verification
2 Service established pursuant to subdivision (2), subsection (1),
3 section four of this article, and verify the validity of the license
4 before completing the sale or transfer without a National Instant
5 Criminal Background Check System check pursuant to 18 U.S.C.
6 §922(t)(3)(A). If the purchaser or transferee presents acceptable
7 evidence of an exemption under 18 U.S.C. §922(t)(3) or applicable
8 federal regulations, the licensed dealer or its employee or agent
9 shall complete the sale or transfer of the firearm without
10 conducting a National Instant Criminal Background Check System check
11 as permitted by federal law.

12 (d) A licensed firearm dealer and its employees and agents
13 shall, upon initiating a sale or transfer of a firearm subject to
14 the provisions of 18 U.S.C. §922(t) in which the licensed firearm
15 dealer or its employee or agent has contacted the National Instant
16 Criminal Background Check System as described in 18 U.S.C.
17 §922(t)(1)(A) and is permitted by 18 U.S.C. §922(t)(1)(B)(ii) based
18 upon the failure of the National Instant Criminal Background Check
19 System to provide a response to the dealer's request within three
20 business days, promptly complete the transfer of the firearm as
21 permitted by federal law.

1 ~~(c) A~~ (e) A person may not knowingly and willfully sell, rent,
2 give or lend, or, where the person is other than a natural person,
3 knowingly and willfully permit an employee thereof to knowingly and
4 willfully sell, rent, give or lend, any deadly weapon other than a
5 firearm or ammunition to a person prohibited from purchasing or
6 possessing a deadly weapon other than a firearm firearms or
7 ammunition by any provision of this article or by 18 U.S.C. §922(g)
8 or (n), as they exist as of January 1, 2011, or other applicable
9 federal law in effect as of January 1, 2011.

10 ~~(d) A person may not knowingly sell, rent, give or lend, or~~
11 ~~where the person is other than a natural person, knowingly permit an~~
12 ~~employee thereof to knowingly sell, rent give or lend a firearm or~~
13 ~~ammunition to a person prohibited by any provision of this article~~
14 ~~or the provisions of 18 U. S. C. §922.~~

15 ~~(e) Any person who violates any of the provisions of subsection~~
16 ~~(d) of this section is guilty of a felony, and, upon conviction~~
17 ~~thereof, shall be fined not more than \$100,000 imprisoned in a state~~
18 ~~correctional facility for a definite term of years of not less than~~
19 ~~three years nor more than ten years, or both fined and imprisoned,~~
20 ~~except that where the person committing an offense punishable under~~
21 ~~this subsection is other than a natural person, such person shall be~~

1 ~~fined not more than \$250,000.~~

2 (f) Any person who knowingly ~~solicits, persuades, encourages~~
3 ~~or entices a licensed dealer or private seller of firearms or~~
4 ~~ammunition~~ and willfully solicits, persuades, encourages or entices
5 any person to transfer a firearm or ammunition under circumstances
6 which the person knows would violate any federal law in effect as of
7 January 1, 2011, or the laws of this state. ~~or the United States is~~
8 ~~guilty of a felony~~ Any person or who knowingly and willfully
9 procures another to engage in conduct prohibited by this subsection
10 shall be punished as a principal. This subsection does not apply to
11 a law-enforcement officer acting in his or her official capacity
12 within his or her jurisdiction or any person acting under the
13 direction, supervision and control of any such law-enforcement
14 officer as part of a lawful, bona fide law-enforcement investigation
15 designed to detect, apprehend and prosecute violations of federal
16 law or this article.

17 (g) Any person who violates ~~the provisions of this~~ subsection
18 (e) or (f) of this section is guilty of a felony and, upon
19 conviction thereof, shall be fined not more than ~~\$5,000~~ \$100,000, or
20 imprisoned in a state correctional facility for a definite term of
21 not less than ~~one year~~ three years nor more than ~~five~~ ten years, or

1 both fined and imprisoned. If the person committing an offense
2 punishable under this subsection is other than a natural person, the
3 person shall be fined not more than \$250,000.

4 (h) Except as otherwise provided in subsection (g) of this
5 section, any person who knowingly violates any provision of this
6 section is guilty of a misdemeanor and, upon conviction thereof,
7 shall be fined not more than \$10,000, or confined in jail for not
8 more than one year, or both fined and confined, except that where
9 the person is other than a natural person, the person shall be fined
10 not more than \$25,000.

11 (i) In addition to any other person with proper standing to
12 sue, the Attorney General and the prosecuting attorney of any county
13 in which a violation of this section is alleged to have occurred
14 have concurrent authority to bring a civil action in any county in
15 which this section is violated or in which a violation of this
16 section is threatened to enjoin violations of any provision of this
17 section and obtain any other appropriate remedies available by law.

18 **§61-7-11a. Possessing deadly weapons within school safety zones**
19 **prohibited; exceptions; penalties; reports by school**
20 **principals; suspension or revocation of driver's**
21 **license.**

1 ~~(a) The Legislature hereby finds that the safety and welfare of~~
2 ~~the citizens of this state are inextricably dependent upon~~
3 ~~assurances of safety for children attending, and the persons~~
4 ~~employed by, schools in this state and for those persons employed~~
5 ~~with the judicial department of this state. It is for the purpose of~~
6 ~~providing such assurances of safety, therefore, that subsections~~
7 ~~(b), (g) and (h) of this section are enacted as a reasonable~~
8 ~~regulation of the manner in which citizens may exercise those rights~~
9 ~~accorded to them pursuant to section twenty two, article three of~~
10 ~~the Constitution of the State of West Virginia.~~

11 ~~(b) (1) It shall be unlawful for any person to possess any~~
12 ~~firearm or any other deadly weapon on any school bus, as defined in~~
13 ~~section one, article one, chapter seventeen-a of this code, or in or~~
14 ~~on any public or private primary or secondary education building,~~
15 ~~structure, facility or grounds thereof, including any vocational~~
16 ~~education building, structure, facility or grounds thereof where~~
17 ~~secondary vocational education programs are conducted or at any~~
18 ~~school-sponsored function.~~

19 ~~(2) This subsection shall not apply to:~~

20 ~~(A) A law enforcement officer acting in his or her official~~
21 ~~capacity;~~

1 ~~(B) A person specifically authorized by the Board of Education~~
2 ~~of the county or principal of the school where the property is~~
3 ~~located to conduct programs with valid educational purposes;~~

4 (a) Except as otherwise provided by subsection (b) of this
5 section, a person may not knowingly possess one or more deadly
6 weapons:

7 (1) Within a school safety zone; or

8 (2) Unless the person is a nonstudent adult, at curricular,
9 cocurricular, extracurricular or supplementary activity or any
10 school-sponsored function occurring outside a school safety zone.

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

12 (1) Any nonstudent adult who is licensed to carry concealed
13 weapons pursuant to section four or five of this article or
14 authorized by subsection (d), section three of this article, to
15 carry a concealed weapon without a license;

16 ~~(C) (2) A person who as otherwise permitted by the provisions~~
17 ~~of this article, possesses, an unloaded firearm carries, transports,~~
18 ~~or stores any deadly weapon in or on a motor vehicle or leaves an~~
19 ~~unloaded firearm or deadly weapon in a locked motor vehicle other~~
20 ~~than a school bus that is transporting one or more primary or~~
21 ~~secondary school students to or from school or school-related~~

1 activities;

2 ~~(D)~~ (3) Programs or raffles conducted with the approval of the
3 county board of education or school which include the display of
4 unloaded deadly weapons other than loaded firearms; or

5 (4) Any person who possesses a deadly weapon as a part of any
6 program sponsored or facilitated by either the school or any
7 organization authorized by the school to conduct its programs either
8 on or off the school premises;

9 (5) Any person who possesses a knife or blade which he or she,
10 uses customarily in his or her occupation, profession or trade;

11 ~~(E)~~ (6) The official mascot of West Virginia University,
12 commonly known as "The Mountaineer", when acting in his or her
13 official capacity;

14 (7) A person traversing school premises for the purpose of
15 gaining access to public or private lands open to hunting;

16 (8) Any person who possesses written authorization by the
17 county school superintendent in the case of a school under the
18 jurisdiction of a county board of education, or the principal or
19 other chief administrative officer of any other school, to carry the
20 weapon;

21 (9) The transitory possession or use of a deadly weapon during

1 an act committed in self-defense or in defense of another person or
2 any other act committed if legally justified or excused, provided
3 such possession or use lasts no longer than is reasonably necessary;
4 or

5 (10) Except with respect to a violation of subsection (a) of
6 this section that punishable under subdivision (2), subsection (e)
7 of this section, any nonstudent adult who possesses a deadly weapon
8 in or on any premises, or portion thereof, that is not in compliance
9 with subdivision (1), subsection (c) of this section.

10 (c) (1) Each principal or other chief administrator of a public
11 or private primary or secondary school shall display at all public
12 entrances to all school buildings, sports arenas, gymnasiums,
13 stadiums and cafeterias; at the corners of school property that make
14 a turn of thirty degrees or more and are not enclosed by fences,
15 walls or other complete barriers with gates or controlled entrances;
16 at the gate or controlled entrances of enclosed school properties;
17 at the entrance of any access road for any real property owned,
18 operated, leased or controlled by a primary or secondary school or
19 board of education to which subsection (a) of this section is
20 applicable; and at any other entrance to real property constituting
21 a school safety zone to which subsection (a) of this section is

1 applicable, signs conforming to the specifications of section
2 fifteen of this article, which shall include the following text:

3 “Unless specifically authorized by law, possession of a weapon
4 in a school safety zone in West Virginia is prohibited by law and
5 may be punishable as a felony. Nonstudent adults who are licensed
6 to carry concealed weapons or authorized by WV Code §61-7-3(d) to
7 carry a concealed weapon without a license are exempt from this
8 prohibition. Posted pursuant to WV Code §61-7-11a.”

9 (2) Subsection (e), section fifteen of this article applies to
10 an alleged violation of subsection (a) of this section only when:

11 (A) The defendant is a nonstudent adult; and

12 (B) The alleged violation of subsection (a) of this section is
13 not punishable under subdivision (2), subsection (e) of this
14 section.

15 (d) For the purposes of subsections (a) through (c) of this
16 section, the term “nonstudent adult” means any person who is not:

17 (1) An unemancipated minor;

18 (2) A student of any primary or secondary school, public or
19 private, within or without this state; or

20 (3) (A) Less than twenty-one years of age; and

21 (B) Currently suspended or expelled from any primary or

1 secondary school.

2 (e) (1) Except as otherwise provided by subdivision (2) of this
3 subsection, any person who violates subsection (a) of this section
4 is guilty of a misdemeanor and, upon conviction thereof, shall be
5 fined not more than \$2,500 or confined in jail not more than one
6 year, or both fined and confined.

7 ~~(3)~~ (2) Any person violating who violates subsection (a) of
8 this subsection shall be section with the intent to use the deadly
9 weapon unlawfully or to threaten or endanger another person or cause
10 the deadly weapon to be used unlawfully or to threaten or endanger
11 another person, or actually attempts to use the deadly weapon
12 unlawfully or to threaten or endanger another person, is guilty of
13 a felony and, upon conviction thereof, shall be imprisoned in the
14 penitentiary of this state a state correctional facility for a
15 definite term of years of not less than two years nor more than ten
16 years, or fined not more than five thousand dollars \$100,000, or
17 both fined and imprisoned. However, notwithstanding any provision of
18 this code to the contrary, if the defendant unlawfully discharged a
19 firearm during the commission of an offense punishable under this
20 subdivision, the defendant shall be sentenced to a mandatory minimum
21 term of imprisonment of five years to be served consecutively with

1 any other sentence and shall be ineligible for parole until he or
2 she has served at least five years.

3 ~~(c) It shall be the duty of~~ (f) The principal of ~~each~~ a school
4 subject to the authority of the State Board of Education ~~to~~ shall
5 report any violation of subsection ~~(b)~~ (a) of this section
6 ~~discovered by such principal to~~ the local office of the West
7 Virginia State Police and the State Superintendent of Schools within
8 seventy-two hours after ~~such~~ the principal discovers the violation.
9 ~~occurs~~ The State Board of Education shall keep and maintain ~~such~~
10 reports and may prescribe rules establishing policy and procedures
11 for the making and delivery of ~~the same~~ those reports as required by
12 this subsection. ~~In addition, it shall be the duty of the principal~~
13 ~~of each school subject to the authority of the State Board of~~
14 ~~Education to report any violation of subsection (b) of this section~~
15 ~~discovered by such the principal to the appropriate local office of~~
16 ~~the division of public safety within 72 hours after such violation~~
17 ~~occurs.~~

18 ~~(d)~~ (g) In addition to the methods of disposition provided by
19 article five, chapter forty-nine of this code, any court which
20 adjudicates a ~~person~~ minor who is fourteen years of age or older as
21 delinquent for a violation of subsection ~~(b)~~ (a) of this section

1 may, in its discretion, order the ~~Division~~ Commissioner of Motor
2 Vehicles to suspend any driver's license or instruction permit
3 issued to ~~such person~~ the delinquent minor for ~~such~~ an appropriate
4 period of time ~~as the court may deem appropriate, such suspension,~~
5 ~~however,~~ not to extend beyond ~~such person's~~ the delinquent minor's
6 nineteenth birthday, as specified by the court's order; or, where
7 ~~such person~~ the delinquent minor has not been issued a driver's
8 license or instruction permit by this state, order the ~~Division~~
9 Commissioner of Motor Vehicles to deny ~~such person's~~ the delinquent
10 minor's application for the ~~same~~ driver's license or instruction
11 permit for ~~such~~ an appropriate period of time, as specified by the
12 court's order, ~~as the court may deem appropriate, such denial,~~
13 ~~however~~ not to extend beyond ~~such person's~~ the delinquent minor's
14 nineteenth birthday. Any suspension ordered by the court pursuant to
15 this subsection shall be effective upon the date of entry of ~~such~~
16 the order. Where the court orders the suspension of a driver's
17 license or instruction permit pursuant to this subsection, the court
18 shall confiscate any driver's license or instruction permit in the
19 ~~adjudicated person's~~ delinquent minor's possession and forward ~~the~~
20 ~~same~~ it to the Division of Motor Vehicles with a certified copy of
21 the court's order.

1 ~~(e)~~ (h) (1) If a person eighteen years of age or older is
2 convicted of ~~violating subsection (b) of a felony under subdivision~~
3 (2), subsection (e) of this section and ~~if such person~~ does not act
4 to appeal ~~such the~~ conviction within the time periods described in
5 subdivision (2) of this subsection or fails to prevail in an appeal,
6 ~~such the~~ Commissioner of Motor Vehicles shall revoke the person's
7 driver's license or privilege to operate a motor vehicle in this
8 state ~~shall be revoked~~ in accordance with the provisions of this
9 ~~section~~ subsection.

10 (2) The clerk of the circuit court in which ~~the~~ a person is
11 convicted of a felony under subdivision (2), subsection (e) of this
12 section as described in subdivision (1) of this subsection shall
13 forward to the Commissioner of Motor Vehicles a transcript certified
14 abstract of the judgment of conviction ~~if the conviction is the~~
15 ~~judgment of a magistrate court, the magistrate court clerk shall~~
16 ~~forward such transcript when the person convicted has not requested~~
17 ~~an appeal within twenty days of the sentencing for such conviction.~~
18 ~~If the conviction is the judgment of a circuit court, the circuit~~
19 ~~clerk shall forward such transcript when~~ if the person convicted has
20 defendant does not filed file a notice of intent to file a ~~petition~~
21 for an appeal ~~or writ of error~~ within thirty days after the judgment

1 was entered, if the defendant fails to file an appeal within the
2 time limits prescribed by the West Virginia Rules of Appellate
3 Procedure or if the conviction is affirmed on appeal.

4 (3) If, upon examination of the ~~transcript~~ certified abstract
5 of the judgment of conviction transmitted to the Commissioner of
6 Motor Vehicles pursuant to subdivision (2) of this subsection, the
7 Commissioner ~~shall determine~~ of Motor Vehicles determines that the
8 person was convicted as described in subdivision (1) of this
9 subsection, the Commissioner of Motor Vehicles shall make and enter
10 an order revoking ~~such~~ the person's license or privilege to operate
11 a motor vehicle in this state for the greater of: (i) a period of
12 one year or ~~in the event~~ (ii) if the person is a student enrolled in
13 a secondary school, for a period of one year or until the person's
14 twentieth birthday. ~~whichever is the greater period~~ The order shall
15 contain the reasons for the revocation and the revocation period.
16 The order of ~~suspension~~ revocation shall advise the person that
17 because of the receipt of the court's transcript, a presumption
18 exists that the person named in the order of ~~suspension~~ revocation
19 is the same person named in the ~~transcript~~ certified abstract of
20 judgment. The Commissioner of Motor Vehicles may grant an
21 administrative hearing which substantially complies with the

1 requirements of the provisions of section two, article five-a,
2 chapter seventeen-c of this code upon a preliminary showing that a
3 possibility exists that the person named in the notice of conviction
4 is not the same person whose license is being ~~suspended~~ revoked.
5 ~~Such request for~~ A person seeking a hearing pursuant to this
6 subdivision shall ~~be made~~ request the hearing within ten days after
7 receipt of a copy of the order of ~~suspension~~ revocation. The sole
8 purpose of this hearing shall be for the person requesting the
9 hearing to present evidence that ~~he or she~~ the person is not the
10 person named in the notice. ~~In the event~~ If the Commissioner of
11 Motor Vehicles grants an administrative hearing, the Commissioner of
12 Motor Vehicles shall stay the license ~~suspension~~ revocation pending
13 the Commissioner's order resulting from the hearing.

14 ~~(4) For the purposes of this subsection, a person is convicted~~
15 ~~when such person enters a plea of guilty or is found guilty by a~~
16 ~~court or jury.~~

17 ~~(f) (1) It shall be unlawful for~~

18 (i) Any parent(s), guardian(s) or custodian(s) of ~~a person less~~
19 ~~than eighteen years of age~~ an unemancipated minor who knows that
20 ~~said person~~ the unemancipated minor child or ward is in violation of
21 subsection ~~(b)~~ (a) of this section, or who has reasonable cause to

1 believe that ~~said person's violation of said~~ the unemancipated minor
2 child or ward will imminently violate subsection ~~is imminent~~ (a) of
3 this section, ~~to fail to~~ shall immediately report such knowledge or
4 belief to the appropriate school or law-enforcement officials.

5 (2) Any person ~~violating this~~ who knowingly and willfully
6 violates this subsection ~~shall be~~ is guilty of a misdemeanor and,
7 upon conviction thereof, shall be fined not more than \$1,000, or
8 shall be confined in jail for not more than one year, or both fined
9 and confined.

10 (g) (1) ~~It shall be unlawful for any person to possess any~~
11 ~~firearm or any other deadly weapon on any premises which houses a~~
12 ~~court of law or in the offices of a family law master.~~

13 (2) ~~This subsection shall not apply to:~~

14 (A) ~~A law enforcement officer acting in his or her official~~
15 ~~capacity; and~~

16 (B) ~~A person exempted from the provisions of this subsection by~~
17 ~~order of record entered by a court with jurisdiction over such~~
18 ~~premises or offices.~~

19 (3) ~~Any person violating this subsection shall be guilty of a~~
20 ~~misdemeanor, and, upon conviction thereof, shall be fined not more~~
21 ~~than one thousand dollars, or shall be confined in jail not more~~

1 ~~than one year, or both.~~

2 ~~(h) (1) It shall be unlawful for any person to possess any~~
3 ~~firearm or any other deadly weapon on any premises which houses a~~
4 ~~court of law or in the offices of a family law master with the~~
5 ~~intent to commit a crime.~~

6 ~~(2) Any person violating this subsection shall be guilty of a~~
7 ~~felony, and, upon conviction thereof, shall be imprisoned in the~~
8 ~~penitentiary of this state for a definite term of years of not less~~
9 ~~than two years nor more than ten years, or fined not more than five~~
10 ~~thousand dollars, or both.~~

11 ~~(i) Nothing in this section may be construed to be in conflict~~
12 ~~with the provisions of federal law.~~

13 **§61-7-11b. Possessing deadly weapons in court proceedings and**
14 **chambers prohibited; exceptions; penalties; posting of**
15 **signs; secure weapon storage areas.**

16 (a) Except as otherwise provided by subsections (b) and (c) of
17 this section, a person may not knowingly:

18 (1) Possess one or more deadly weapons within the chambers of
19 any justice, judge or magistrate without the express permission and
20 authorization of that justice, judge or magistrate;

21 (2) Convey or attempt to convey one or more deadly weapons into

1 the chambers of any justice, judge or magistrate without the express
2 permission and authorization of that justice, judge or magistrate;

3 (3) Possess one or more deadly weapons within any courtroom
4 during any court proceeding without the express permission and
5 authorization of the presiding justice, judge or magistrate; or

6 (4) Convey or attempt to convey one or more deadly weapons into
7 any courtroom with the intent to cause that weapon to be present in
8 the courtroom during any court proceeding without the express
9 permission and authorization of the presiding justice, judge or
10 magistrate.

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

12 (1) Any justice, judge, magistrate, prosecutor or
13 law-enforcement officer, while acting in his or her official
14 capacity;

15 (2) A person exempted from the provisions of subsection (a) of
16 this section by order of record entered by a court with jurisdiction
17 over the applicable courtroom or chambers;

18 (3) A person who possesses, conveys or attempts to convey a
19 weapon to the extent reasonably necessary to convey the weapon to a
20 secure weapon storage area established pursuant to subsection (f) of
21 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

1 any weapon in any courtroom or chambers of any justice, judge or
2 magistrate in violation of the order of the applicable justice,
3 judge or magistrate.

4 (d) The authority in control of each place into which the
5 possession or conveyance of a deadly weapon is prohibited by
6 subsection (a) of this section shall make available at each public
7 entrance to any place into which the possession or conveyance of a
8 deadly weapon is prohibited by subsection (a) of this section a
9 secure weapon storage area for the temporary checking of concealable
10 weapons by persons entering the place into which the possession or
11 conveyance of a deadly weapon is prohibited by subsection (a) of
12 this section. The person who takes custody of any checked weapon or
13 other personal property shall issue an itemized receipt for the
14 checked items to the person who checked those items, unless those
15 items were checked by being deposited directly in a self-service
16 storage locker by the person who checked those items. Receipts or
17 record keeping are not required for weapons and other items directly
18 placed and retrieved from a self-service storage locker by the
19 person who checked the weapon or other property. The Administrator
20 of the Supreme Court of Appeals shall promulgate a uniform form for
21 receipts required under this subsection and distribute copies of

1 this form to all court security officers in sufficient quantities to
2 ensure compliance with this subsection. All officers, employees or
3 other agents of this state or any political subdivision of this
4 state who maintain records of checked weapons and other personal
5 property for which receipts are issued under this subsection shall
6 purge each record within a reasonable amount of time, not to exceed
7 two business days, after the weapon and other checked personal
8 property have been retrieved by the person who checked the weapon
9 and other personal property. The Supreme Court of Appeals shall
10 propose in its annual budget request pursuant to Article VIII, §3
11 and Article VI, §51(b)(5) of the state Constitution, sufficient
12 funds to establish and upgrade self-service keyed storage lockers
13 for all court facilities in sufficient numbers to meet the general
14 demand for weapon storage so as to minimize the incidence of
15 designated court security officials taking possession of weapons
16 where self-service keyed storage lockers are not available in
17 sufficient quantities to fulfill the usual and customary demand.
18 The authority in control of each place into which the possession or
19 conveyance of a deadly weapon is prohibited by subsection (a) of
20 this section shall post a notice of the location of each secure
21 weapon storage facility as required by subsection (e) of this

1 section.

2 (e) 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 cause to be displayed at all
5 public entrances to the place into which the possession or
6 conveyance of a deadly weapon is prohibited by subsection (a) of
7 this section, signs conforming to the specifications of section
8 fifteen of this article, which shall contain the following text:

9 "Possessing a deadly weapon within [insert appropriate
10 description of place into which the possession or conveyance of a
11 deadly weapon is prohibited by subsection (a) of this section] or
12 conveying or attempting to convey a deadly weapon into [insert
13 appropriate description of place into which the possession or
14 conveyance of a deadly weapon is prohibited by subsection (a) of
15 this section] in West Virginia is prohibited by WV Code §61-7-11b
16 and punishable as a MISDEMEANOR.

17 A license to carry a concealed weapon is NOT an exception to
18 this provision.

19 Posted pursuant to WV Code §61-7-11b."

20 (f) If a place into which the possession or conveyance of a
21 deadly weapon is prohibited by subsection (a) of this section is

1 within a permanent secure restricted access area established
2 pursuant to section eleven-c of this article, the secure weapon
3 storage areas required by subsection (d) of this section may be
4 supplanted by the secure weapon storage areas required by section
5 eleven-c of this article and the signs required by subsection (e) of
6 this section may be supplanted by the signs required by section
7 eleven-c of this article.

8 (g) Except as otherwise provided by subsection (h) of this
9 section, any person who violates subsection (a) of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be fined
11 not more than \$2,500 or confined in jail for not more than one year,
12 or both fined and confined.

13 (h) Any person who is licensed under section four or five of
14 this article to carry concealed weapons or who is authorized by
15 subsection (d), section three of this article, to carry a concealed
16 weapon without a license, who violates subsection (a) of this
17 section, is guilty of a misdemeanor and, upon conviction thereof,
18 shall be fined not more than \$500; for a second offense occurring
19 within one year of the date on which the first offense was committed
20 and subsequent to a conviction for the first offense, fined not more
21 than \$1,000, confined in jail for not more than six months, or both

1 fined and confined; and, for a third or subsequent offense within
2 one year and subsequent to the second prior conviction, punished as
3 provided in subsection (g) of this section.

4 (i) For the purposes of this section, "courtroom" includes any
5 regularly-appointed courtroom located within any courthouse in this
6 state and any other room or outdoor premises in which court may be
7 temporarily held while court is in session.

8 **§61-7-11c. Establishment of secure restricted access areas in public**
9 **buildings; procedures; prohibition of deadly weapons**
10 **in secure restricted access area; penalty; secure**
11 **weapon storage areas; posting of signs; reporting**
12 **requirements.**

13 (a) A public agency that has jurisdiction and control over any
14 public building or any portion of a public building may designate
15 all or part of any area of any public building under its
16 jurisdiction and control as a secure restricted access area and
17 restrict or prohibit the possession of firearms and other deadly
18 weapons within the secure restricted access area if:

19 (1) Prior to establishing the secure restricted access area:

20 (A) The public agency drafts and publishes a written plan
21 specifying:

1 (i) The name (if any), address and other descriptive
2 information about the public building for which the secure
3 restricted access area is proposed;

4 (ii) The portions of the public building contained within the
5 secure restricted access area;

6 (iii) All current public entrances and exits to or from the
7 public building and, if different, the proposed secure restricted
8 access area, and, with regard to public entrances and exits, the
9 general days and hours those entrances and exits are currently open
10 to public access and will be open to public access under the plan;

11 (iv) The anticipated cost of equipping every entrance to the
12 secure restricted access area with the storage lockers and metal
13 detectors or other electronic weapon screening devices required by
14 subdivision (2) of this subsection;

15 (v) The anticipated cost of maintaining law-enforcement
16 officers or other security personnel at the security screening
17 stations at each entrance to the secure restricted access area
18 required by subdivision (2) of this subsection;

19 (vi) The funding sources for the costs specified in
20 subparagraphs (iv) and (v) of this paragraph;

21 (vii) Whether licensees under sections four and five of this

1 article and individuals authorized by subsection (d), section three
2 of this article, to carry a concealed weapon without a license, will
3 be exempted from or subject to a weapons restriction pursuant to
4 subdivision (2), subsection (b) of this section;

5 (viii) That the public agency has good and substantial reason,
6 based upon specific and articulated facts and reasoning, for
7 establishing the secure restricted access area and accompanying
8 weapons restrictions, in light of:

9 (I) Other provisions of this article and federal laws
10 regulating firearms;

11 (II) The strong public policy presumption of this state in
12 favor of an individual's right to keep and bear arms, either openly
13 or concealed, at all times and places, including within all public
14 buildings other than correctional facilities as provided by
15 subdivision (1), subsection (c), section eight, article five of this
16 chapter, school safety zones as provided by section eleven-a of this
17 article, certain portions of court facilities as provided by section
18 eleven-b of this article and in secure restricted access areas as
19 provided by this section; and

20 (III) The statistically insignificant incidence of crimes
21 involving the misuse of deadly weapons committed by individuals

1 licensed to carry concealed weapons pursuant to section four or five
2 of this article or authorized to carry a concealed weapon without a
3 license pursuant to subsection (d), section three of this article,
4 or who exercise their right to open carry;

5 (ix) The public agency's plan for implementing adequate
6 security measures in and around the secure restricted access area to
7 guarantee the safety of all persons inside the secure restricted
8 access area from felony crimes of violence and detect and prevent
9 the unauthorized possession or carrying of weapons within the secure
10 restricted access area. For the purposes of this subparagraph,
11 "adequate security measures" include the use of electronic equipment
12 and personnel to detect and restrict the carrying of any weapons
13 into the secure restricted access area, including, but not limited
14 to, the minimum security measures required by subdivision (2) of
15 this subsection;

16 (B) The public agency forwards a copy of the plan specified in
17 paragraph (A) of this subdivision and public hearing notice
18 specified in paragraph (C) of this subdivision to the Attorney
19 General, who shall publish a copy of those documents on the Internet
20 and notify interested organizations and persons in communication
21 with the Attorney General about firearm law issues;

1 (C) The public agency holds a public comment period of not less
2 than thirty days in length, followed by a public hearing, on the
3 plan specified in paragraph (A) of this subdivision, which shall be
4 preceded by the publication of the plan and a notice of the public
5 comment period and public hearing:

6 (i) On the Attorney General's web site as provided by paragraph
7 (B) of this subdivision;

8 (ii) In a Class III-O legal advertisement in accordance with
9 the provisions of article three, chapter fifty-nine of this code,
10 whose publication area shall be each county and municipality in
11 which a public building subject to the proposed plan is located, and
12 whose last publication shall be not less than seven nor more than
13 fourteen days before the public hearing; and

14 (iii) The State Register, if the public building is owned,
15 leased or controlled by an agency as defined in section two, article
16 one, chapter twenty-nine-a of this code;

17 (D) If the public agency modifies or revises the plan following
18 the public comment period and public hearing, the public agency
19 submits the modified or revised plan to the Attorney General in the
20 same manner as required for the original plan by paragraph (B) of
21 this subdivision and conducts a public comment period and public

1 hearing on the modified or revised plan in the same manner as
2 required for the original plan by paragraph (C) of this subdivision;

3 (E) If the affected public building is owned, leased or
4 controlled by:

5 (i) A county or municipality, the applicable county commission
6 or municipal governing body enacts an ordinance granting final
7 approval for the plan and the establishment of the secure restricted
8 access area; or

9 (ii) A county board of education, the county board of education
10 adopts a resolution granting final approval for the plan and the
11 establishment of the secure restricted access area;

12 (iii) The Legislature or either house thereof, the Legislature
13 adopts a concurrent resolution or the affected house (if a single
14 house) adopts a resolution granting final approval for the plan and
15 the establishment of the secure restricted access area; or

16 (iv) A state institution of higher education, the board of
17 governors of that institution adopts a resolution granting final
18 approval for the plan and receives the written approval of the
19 governor for the plan; or

20 (v) An agency, as defined in section two, article one, chapter
21 twenty-nine-a of this code, of the executive branch of state

1 government, the Governor grants approval for the plan in writing;
2 and

3 (F) Any secure restricted access area established pursuant to
4 this subdivision shall be established for not more than two years at
5 a time and may be reestablished only through the same process
6 required for its initial establishment; and

7 (2) At all times the secure restricted access area is in
8 effect:

9 (A) Signs conforming to the specifications of section fifteen
10 of this article that clearly describe the applicable weapons
11 restriction or prohibition, the availability of a secure weapon
12 storage area and the misdemeanor penalties for violating subsection
13 (c) of this section shall be displayed at every entrance to the
14 secure restricted access area. The text of the sign shall conclude,
15 "Posted pursuant to WV Code §61-7-11c.";

16 (B) Armed, uniformed security personnel and electronic weapons
17 screening devices shall be permanently in place at each entrance to
18 the secure restricted access area that is not secured as provided by
19 paragraph (F) of this subdivision;

20 (C) Security personnel shall electronically screen every person
21 not exempted under subsection (b) of this section who enters the

1 secure restricted access area through a point of entry described in
2 paragraph (B) of this subdivision and all handbags, briefcases and
3 other personal effects of those persons to determine whether each
4 nonexempt person who enters the secure restricted access area is
5 carrying a deadly weapon of any kind;

6 (D) The public agency shall maintain at each security station
7 described in paragraphs (B) and (C) of this subdivision a secure
8 weapon storage area consisting of self-service storage lockers in
9 which individuals entering the secure restricted access area may
10 check and store deadly weapons and other objects excluded from the
11 secure restricted access area and other personal effects the person
12 may elect to store if the storage locker will contain those items.
13 However, the public agency may provide for the checking and secure
14 storage of deadly weapons by other means if all self-service storage
15 lockers at the applicable location are in use or otherwise
16 unavailable. The person who takes custody of any weapon or other
17 personal property not placed in a self-service storage locker shall
18 issue an itemized receipt for the checked items to the person who
19 checked those items. All officers, employees or other agents of any
20 public agency who maintain records of checked weapons and other
21 personal property for which receipts are issued under this paragraph

1 shall purge each record within a reasonable amount of time, not to
2 exceed two business days, after the weapon and other checked
3 personal property have been retrieved by the person who checked the
4 weapon and other personal property;

5 (E) Security personnel shall require each person who is
6 carrying a deadly weapon of any kind and not exempted under
7 subsection (b) of this section to leave the weapon in a secure
8 weapon storage area described in paragraph (D) of this subdivision
9 while the nonexempt person is in the secure restricted access area.
10 The security personnel may require every person who carries a
11 concealed weapon in a place described in subsection (b), section
12 three of this article, regardless of whether that person is exempted
13 from this section by subsection (b) of this section, to display the
14 documents described in subdivision (3), subsection (h), section
15 three of this article or evidence of entitlement to an exemption
16 under subsection (d), section three of this article; and

17 (F) All points of ingress or egress to the secure restricted
18 access area that are not open to public or employee access and which
19 are not subject to the security measures required by paragraphs (B)
20 through (E) of this subdivision shall be secured by biometric entry
21 locking devices and monitored and recorded by high-definition video

1 surveillance equipment through which all points of ingress or egress
2 to the secure restricted access area are monitored at all times by
3 on-duty law-enforcement officers or armed, uniformed security
4 personnel who are stationed on the premises and able to promptly
5 respond to any apparent security breach. The signs posted pursuant
6 to paragraph (A) of this subdivision at each point of ingress or
7 egress secured pursuant to this paragraph shall include a notice of
8 the location or locations of entrances to the secure restricted
9 access area that are open to public or employee access and subject
10 to paragraphs (B) through (E) of this subdivision.

11 (b) (1) When acting in an official capacity and upon
12 presentation of a government-issued photo identification showing
13 that the person is described in subdivision (2), (3), (4), (5) or
14 (6), subsection (d), section three of this article, a person
15 described in subdivision (2), (3), (4), (5) or (6), subsection (d),
16 section three of this article, is exempt from weapons screenings and
17 prohibitions or restrictions under subsection (a) of this section
18 when the person is acting in an official capacity.

19 (2) The public agency in control of any public building that
20 designates a secure restricted access area under subsection (a) of
21 this section may, in writing, exempt from weapons restrictions and

1 screenings under subsection (a) of this section certain classes of
2 persons not described in subdivision (1) of this subsection or
3 specific named individuals and shall cause a copy of a list of all
4 exemptions granted under this subdivision to be maintained by the
5 security personnel at each entrance to the applicable secure
6 restricted access area.

7 (3) Any individual authorized by subdivisions (1) or (2),
8 subsection (b), section eleven-b of this article, to possess or
9 convey a deadly weapon into a court facility, shall be permitted to
10 convey any weapon to and from a court facility as permitted by
11 section eleven-b of this article.

12 (c) (1) Except as otherwise provided by subsection (b) of this
13 section, a person may not knowingly and willfully:

14 (A) Possess one or more deadly weapons within a secure
15 restricted access area of a public building established under
16 subsection (a) of this section, beyond the security checkpoints and
17 designated secure weapon storage area; or

18 (B) Convey or attempt to convey one or more deadly weapons into
19 a secure restricted access area of a public building established
20 under subsection (a) of this section, beyond the security
21 checkpoints and designated secure weapon storage area.

1 (2) Except as otherwise provided by subdivision (3) of this
2 subsection, any person who violates subdivision (1) of this
3 subsection is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not more than \$2,500 or confined in jail for not more
5 than one year, or both fined and confined.

6 (3) Any person who is licensed under section four or five of
7 this article to carry concealed weapons or authorized by subsection
8 (d), section three of this article, to carry a concealed weapon
9 without a license, who violates subdivision (1) of this subsection,
10 is guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than \$500.

12 (d) For the purposes of section sixteen of this article, this
13 section is a specific statutory authorization of restrictions or
14 prohibitions on the possession and carrying of concealable weapons,
15 firearms and parts, components and ammunition for firearms.

16 (e) Together with section sixteen of this article, this section
17 is the sole and exclusive means by which any public agency may
18 restrict or prohibit the possession or carrying of deadly weapons
19 within a public building unless the Legislature has, in some other
20 provision of this code, specifically and expressly:

21 (1) Restricted or prohibited the possession or carrying of

1 deadly weapons within the type of public building involved and
2 prescribed a criminal penalty for violations of the applicable
3 restriction or prohibition; or

4 (2) Authorized the public agency to restrict or prohibit the
5 possession or carrying of deadly weapons, prescribed a criminal
6 penalty for violations of the applicable restriction or prohibition
7 and, if the restriction or prohibition pertains to a public
8 building, the express statutory authorization for the restriction or
9 prohibition includes the type of public building involved and
10 authorization for the restriction or prohibition without the public
11 agency implementing the security and electronic weapon screening
12 requirements of subsection (a) of this section.

13 (f) This section does not apply to any weapon restriction or
14 prohibition established pursuant to subdivisions (5) through (10),
15 subsection (d), section sixteen of this article, or any federal law.
16 This section does not apply to any public building security plan
17 under which the otherwise lawful possession or carrying of deadly
18 weapons is not restricted or prohibited except as otherwise provided
19 by subsection (e) of this section.

20 (g) On the first day of each regular session of the
21 Legislature, each public agency of state government that establishes

1 any secure restricted access area pursuant to this section shall
2 issue to the Governor, the Attorney General and the Legislative
3 Librarian a report enumerating, for the prior calendar year:

4 (1) All individual public buildings in which secure restricted
5 access areas were established or maintained pursuant to this
6 section, including the county and municipality, if any, in which
7 each applicable public building is located and the street address of
8 each applicable public building; and

9 (2) With regard to each individual location identified pursuant
10 to subdivision (1) of this subsection:

11 (A) Any resulting reduction in the number of public entrances
12 maintained at each location or the hours of operation of those
13 public entrances;

14 (B) Statistical data for the number of individuals who checked
15 their weapons as provided by subdivision (3), subsection (a) of this
16 section, including the mean, sixty-seventh percentile, eightieth
17 percentile and ninety-fifth percentile daily figures for each
18 location;

19 (C) The number of keyed, self-service weapon storage lockers
20 provided at each location;

21 (D) The number of arrests and resulting dispositions for

1 violations of subsection (c) of this section or other violations of
2 this article discovered at the security checkpoints at each
3 location; and

4 (E) The costs of establishing and maintaining each secure
5 restricted access area and the funding source for those costs.

6 (h) Not later than February 1 of each year, each county or
7 municipal public agency that establishes any secure restricted
8 access area pursuant to this section shall issue to the Governor,
9 the Attorney General, the Legislative Librarian and the appropriate
10 county commission or municipal governing body, a report enumerating,
11 for the prior calendar year, the same information as is required of
12 public agencies of state government under subsection (g) of this
13 section.

14 (i) All reports under subsections (g) and (h) of this section
15 shall be of public record. The Attorney General shall publish on
16 the Internet for public viewing all reports transmitted to the
17 Attorney General pursuant to subsections (g) and (h) of this
18 section. Any person may also obtain one print copy of each report
19 free of charge but the issuing agency may charge the actual marginal
20 cost of printing to provide additional copies of any report provided
21 in print.

1 **§61-7-12. Wanton endangerment involving a firearm.**

2 Any person who discharges one or more rounds of live ammunition
3 from a firearm in a manner that wantonly ~~performs any act with a~~
4 ~~firearm which~~ creates a substantial risk of death or serious bodily
5 injury to ~~another shall be~~ one or more other persons is guilty of a
6 felony and, upon conviction thereof, shall be ~~confined in the~~
7 ~~penitentiary~~ imprisoned in a state correctional facility for a
8 definite term ~~of years~~ of not less than one year nor more than five
9 years, or, in the discretion of the court, confined in ~~the county~~
10 jail for not more than one year, or fined not ~~less than two hundred~~
11 ~~fifty dollars nor~~ more than \$2,500, or both fined and imprisoned.

12 ~~For purposes of this section, the term "firearm" shall have the~~
13 ~~same meaning ascribed to such term as set forth in section two of~~
14 ~~this article.~~

15 **§61-7-13. Criminal misconduct involving weapons; classifications;**
16 **offenses; penalties.**

17 (a) Except to the extent that a greater minimum sentence is
18 otherwise provided by this section, any person who, during and in
19 relation to any aggravated felony, including any aggravated felony
20 that provides for an enhanced punishment if committed by the use of
21 a deadly or dangerous weapon or device, uses or carries a firearm,

1 or who, in furtherance of any aggravated felony, possesses a
2 firearm, is guilty of a felony and, upon conviction thereof, shall
3 be:

4 (1) Imprisoned in a state correctional facility for life
5 without parole, life or any definite term of not less than a
6 mandatory minimum sentence of:

7 (A) If the firearm is discharged, ten years;

8 (B) If the firearm is brandished and paragraph (A) of this
9 subdivision does not apply, seven years. For purposes of this
10 paragraph, the term "brandish" means, with respect to a firearm, to
11 display all or part of the firearm, or otherwise make the presence
12 of the firearm known to another person, in order to intimidate that
13 person, regardless of whether the firearm is directly visible to
14 that person; or

15 (C) In any other case, five years; and

16 (2) Fined not more than \$250,000.

17 (b) If the firearm possessed by a person convicted of a
18 violation of subsection (a) of this section is a firearm, as defined
19 in 26 U.S.C. §5845(a), as it exists as of January 1, 2011, that is
20 regulated by the National Firearms Act, 26 U.S.C. Chapter 53, as it
21 exists as of January 1, 2011, the minimum term of imprisonment under

1 subdivision (1), subsection (a) of this section, shall be doubled.

2 (c) If there is a second or subsequent conviction under
3 subsection (a) or (b) of this section, including convictions under
4 a law of another state or the United States that would constitute
5 such an offense if committed in this state, for an act occurring
6 after conviction and imposition of sentence for the prior offense,
7 the person shall:

8 (1) Be sentenced to a mandatory term of imprisonment of:

9 (A) Life without parole or life if the firearm involved is a
10 firearm, as defined in 26 U.S.C. §5845(a), as it exists as of
11 January 1, 2011, that is regulated by the National Firearms Act, 26
12 U.S.C. Chapter 53, as it exists as of January 1, 2011; or

13 (B) Otherwise, life without parole, life or a definite term of
14 not less than 25 years; and

15 (2) Fined not more than \$250,000.

16 (d) A person may not, while unlawfully possessing any Schedule
17 I or II controlled substance, knowingly possess a firearm or
18 concealable weapon.

19 (e) A person may not, while unlawfully possessing any Schedule
20 I or II controlled substance, knowingly carry about his or her
21 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:

1 (1) Each offense under this section is a separate and distinct
2 offense from any other crime that may constitute a predicate offense
3 for any offense under this section.

4 (2) The sentences of imprisonment for any felony under this
5 section are mandatory sentences.

6 (3) Each sentence of imprisonment for any felony under this
7 section shall be served consecutively to any other sentence,
8 including any sentence for any other crime in the course of which a
9 person committed an offense under this section.

10 (4) A person is not eligible for probation for any felony under
11 this section.

12 (5) A person is not eligible for parole for any felony under
13 this section until he or she has served the minimum sentence
14 prescribed under this section.

15 (6) The prosecuting attorney shall, in all cases in which a
16 defendant is convicted of a felony punishable under this section and
17 has been previously convicted of a felony for which the defendant is
18 eligible for any sentencing enhancement under section eighteen,
19 article eleven of this chapter, obtain and present to the court
20 record evidence of all prior felony convictions against the
21 defendant and seek the maximum recidivist sentencing enhancement for

1 which the defendant is eligible under section eighteen, article
2 eleven of this chapter. A prosecuting attorney may not refuse or
3 fail to act as required by this subdivision or to negotiate or enter
4 into any plea agreement to avoid any recidivist sentencing
5 enhancement required by this subdivision and section eighteen,
6 article eleven of this chapter. Nothing in this subdivision may be
7 construed to prohibit any sentencing order or plea agreement that
8 provides for any sentence for any offense under this section to be
9 served concurrent with any sentence of imprisonment in a federal
10 correctional facility for any offense under Title 18, Chapter 44 of
11 the United States Code (18 U.S.C. §§921 through 931), arising from
12 the same transaction or occurrence.

13 (k) Any person who knowingly and willfully carries about his or
14 her person any deadly weapon with the specific intent to use the
15 weapon to commit a misdemeanor crime of violence is guilty of a
16 misdemeanor and, upon conviction thereof, shall be confined in jail
17 for not more than one year or fined not more than \$2,500, or both
18 fined and confined.

19 (l) For the purposes of subsections (f) and (k) of this
20 section, the intent to use a weapon unlawfully shall not be inferred
21 from the mere possession, carrying or concealment of a loaded or

1 unloaded firearm or any other weapon.

2 **§61-7-14. Right of private property owners to limit carrying of**
3 **deadly weapons on private property.**

4 ~~Notwithstanding the provisions of this article, any owner,~~
5 ~~lessee or other person charged with the care, custody and control of~~
6 ~~real~~

7 (a) Except as otherwise provided in this section, a private
8 property owner in possession of private property may restrict or
9 prohibit the carrying, openly or concealed, of any ~~firearm~~ or deadly
10 weapon on private property under his or her ~~the~~ domain ~~Provided,~~
11 ~~That for purposes of this section "person" means an individual or~~
12 ~~any entity which may acquire title to real property and control of~~
13 the private property owner in accordance with the provisions of this
14 section and section fifteen of this article. A landlord may not
15 restrict or prohibit the otherwise lawful possession or carrying of
16 any deadly weapon by a tenant or a tenant's guests.

17 (b) A private property owner who establishes any restriction or
18 prohibition on the carrying of a deadly weapon pursuant to
19 subsection (a) of this section shall give notice of the restriction
20 or prohibition in writing by posting signs in the form required by
21 section fifteen of this article. A property owner, employer or

1 other person may not subject any person who violates any restriction
2 or prohibition on carrying a deadly weapon unless the private
3 property owner gave notice of the restriction or prohibition by
4 posting signs in the specific form required by this subsection or
5 the person who violated the restriction or prohibition carried the
6 weapon in violation of federal law or a provision of this article
7 other than this section. The signage requirements of this
8 subsection are mandatory, technical requirements that a person may
9 not waive under any circumstance. Any contractual provision waiving
10 the right to notice in the form required by this subsection violates
11 public policy and is unlawful and unenforceable.

12 (c) Any private property owner who establishes a restriction or
13 prohibition on the carrying of deadly weapons pursuant to subsection
14 (a) of this section and gives notice of the restriction or
15 prohibition in accordance with subsection (b) of this section and
16 section fifteen of this article, may, upon discovering that a person
17 is carrying a deadly weapon on the private property owner's premises
18 in violation of the restriction or prohibition established and
19 posted by the private property owner in accordance with subsection
20 (b) of this section and section fifteen of this article, personally
21 demand either that the person leave the premises or that the person

1 leave the premises or temporarily relinquish custody of the deadly
2 weapon while the person remains on the premises.

3 (d) A person who carries a deadly weapon on a private property
4 owner's premises in violation of a restriction or prohibition
5 established and posted by the private property owner pursuant to
6 subsection (b) of this section and section fifteen of this article
7 and complies with the personal demand of the private property owner
8 under subsection (c) of this section upon being confronted about the
9 violation, is immune from criminal and civil liability for the
10 violation and may not be subjected to any other form of adverse
11 action by the private property owner.

12 (e) Subsections (b) through (d) of this section do not apply to
13 private residences. The lawful possessor of a private residence may
14 restrict or prohibit the carrying of deadly weapons and provide
15 notice thereof in any lawful manner.

16 ~~Any (f)(1) A person carrying or possessing may not knowingly~~
17 ~~and willfully carry a firearm or other deadly weapon on the property~~
18 ~~premises of another who refuses to temporarily relinquish possession~~
19 ~~of such firearm or other deadly weapon, upon being requested to do~~
20 ~~so, or to leave such premises, while in possession of such firearm~~
21 ~~or other deadly weapon, shall be a private property owner in~~

1 violation of a restriction or prohibition established and, except as
2 otherwise provided by subsection (e) of this section, posted by the
3 private property owner pursuant to this section and section fifteen
4 of this article, and knowingly and willfully defy a personal demand
5 of the private property owner under subsection (c) of this section
6 upon being confronted about the violation.

7 (2) Except as otherwise provided in subdivisions (3) and (4) of
8 this subsection, any person who knowingly and willfully violates
9 subdivision (1) of this subsection is guilty of a misdemeanor and,
10 upon conviction thereof, shall be fined not more than \$1,000, ~~or~~
11 confined in ~~the county~~ jail for not more than six months, or both
12 fined and confined. ~~Provided, That the provisions of~~

13 (3) Except as otherwise provided in subdivision (4) of this
14 subsection, any person who is licensed under section four or five of
15 this article to carry concealed weapons or who is authorized by
16 subsection (d), section three of this article, to carry a concealed
17 weapon without a license, who knowingly and willfully violates
18 subdivision (1) of this subsection, is guilty of a misdemeanor and,
19 upon conviction thereof, shall be fined not more than \$25; for a
20 second offense occurring within one year of the date on which the
21 first offense was committed and subsequent to a conviction for the

1 first offense, fined not more than \$100; and, for a third or
2 subsequent offense within one year and subsequent to the second
3 prior conviction, punished as provided in subdivision (2) of this
4 subsection.

5 (4) Any person who violates subdivision (1) of this subsection
6 in a vehicle or vessel or in any parking lot or parking facility is
7 subject only to liability in a civil action for trespass on the case
8 and may not be criminally prosecuted.

9 (g) Any restriction or prohibition on carrying any weapon under
10 this section shall not apply to: ~~those persons set forth in~~
11 ~~subsections (3) through (6) of section six of this code while such~~
12 ~~persons are acting in an official capacity: *Provided, however, That*~~
13 ~~under no circumstances may any person possess or carry or cause the~~
14 ~~possession or carrying of any firearm or other deadly weapon on the~~
15 ~~premises of any primary or secondary educational facility in this~~
16 ~~state unless such person is a law enforcement officer or he or she~~
17 ~~has the express written permission of the county school~~
18 ~~superintendent~~

19 (1) Any officer, employee or agent of the United States, this
20 state, any political subdivision of this state or any other state or
21 political subdivision thereof, when that person is acting in an

1 official capacity;

2 (2) Any person serving any summons, subpoena or other legal
3 process for any proceeding before any court or administrative agency
4 of this state, the United States or another state; or

5 (3) Any person who possesses, carries, transports or stores any
6 firearm, part of a firearm, ammunition, ammunition component or any
7 other deadly weapon in a motor vehicle pursuant to section
8 fourteen-a of this article.

9 (h) Notwithstanding article three-b of this chapter or the
10 common law of this state relating to trespassing, this section and
11 section fifteen of this article set forth the exclusive criteria to
12 provide for the exclusion of firearms and other deadly weapons from
13 private property and the exclusive criminal penalties that may
14 attach to violations thereof. Notwithstanding any provision of this
15 code or the common law of this state to the contrary, the provisions
16 of subsections (b) through (d) of this section and section fifteen
17 of this article shall apply to any action of any private property
18 owner to, in any manner, directly or indirectly, prohibit, restrict
19 or attempt to restrict or prohibit the carrying of firearms or other
20 weapons on private property, other than a private residence, or to
21 exclude any person from private property, other than a private

1 residence, where that exclusion is based, in whole or in part,
2 directly or indirectly, on the person's carrying of firearms or
3 other weapons. This subsection shall be liberally construed to
4 protect the right of a person otherwise lawfully carrying a firearm
5 or other weapon to notice in the form required by subsection (b) of
6 this section and section fifteen of this article, confrontation and
7 a demand to desist prior to incursion of civil or criminal liability
8 or any other legal consequences pursuant to subsection (c) of this
9 section and immunity from civil or criminal liability or other
10 consequences upon complying with personal demand to desist pursuant
11 to subsection (d) of this section.

12 (i) This section does not apply to any offense under subsection
13 (b), section three of this article.

14 (j) A private property owner who voluntarily refrains from
15 restricting or prohibiting persons who are licensed under section
16 four or five of this article to carry concealed weapons or
17 authorized by subsection (d), section three of this article to carry
18 a concealed weapon without a license, from carrying deadly weapons
19 on the private property owner's premises:

20 (1) Has no duty of care with respect to the acts or omissions
21 of persons who are licensed under section four or five of this

1 article to carry concealed weapons or authorized by subsection (d),
2 section three of this article, to carry a concealed weapon without
3 a license, resulting from any alleged discharge of a firearm or any
4 alleged unlawful or tortious use of a deadly weapon, unless the
5 private property owner knowingly and willfully and expressly
6 solicited, requested, commanded, encouraged or aided the person in
7 discharging a firearm or unlawfully using a deadly weapon;

8 (2) Shall be immune from liability in a civil action for any
9 injury, death or loss to any person or property that allegedly was
10 caused by or related to a person licensed under section four or five
11 of this article to carry concealed weapons or authorized by
12 subsection (d), section three of this article, to carry a concealed
13 weapon without a license, bringing a firearm or other deadly weapon
14 onto the premises or property of the private property owner,
15 including motor vehicles owned by the private property owner, unless
16 the private property owner acted with malicious purpose; and

17 (3) Is immune from liability in a civil action for any injury,
18 death or loss to any person or property that allegedly was caused by
19 or related to the private property owner's decision to permit a
20 person licensed under section four or five of this article to carry
21 concealed weapons or authorized by subsection (d), section three of

1 this article, to carry a concealed weapon without a license, to
2 bring a firearm or other deadly weapon onto the premises or property
3 of the private property owner.

4 (k) A private employer who voluntarily refrains from
5 restricting or prohibiting employees who are licensed under section
6 four or five of this article to carry concealed weapons or
7 authorized by subsection (d), section three of this article to carry
8 a concealed weapon without a license, from carrying deadly weapons
9 while acting in the course of their employment:

10 (1) Has no duty of care with respect to the acts or omissions
11 of employees who are licensed under section four or five of this
12 article to carry concealed weapons or authorized by subsection (d),
13 section three of this article, to carry a concealed weapon without
14 a license, resulting from any alleged discharge of a firearm or any
15 alleged unlawful or tortious use of a deadly weapon, unless the
16 private employer knowingly and willfully and expressly solicited,
17 requested, commanded, encouraged or aided the person in discharging
18 a firearm or unlawfully using a deadly weapon;

19 (2) Shall be immune from liability in a civil action for any
20 injury, death or loss to any person or property that allegedly was
21 caused by or related to an employee who is licensed under section

1 four or five of this article to carry concealed weapons or
2 authorized by subsection (d), section three of this article, to
3 carry a concealed weapon without a license, bringing a firearm or
4 other deadly weapon onto the premises or property of the private
5 employer, including vehicles owned by the private employer, unless
6 the private employer acted with malicious purpose; and

7 (3) Is immune from liability in a civil action for any injury,
8 death or loss to any person or property that allegedly was caused by
9 or related to the private employer's decision to permit a person
10 licensed under section four or five of this article to carry
11 concealed weapons or authorized by subsection (d), section three of
12 this article, to carry a concealed weapon without a license, to
13 bring a firearm or other deadly weapon onto the premises or property
14 of the private employer.

15 (1) The immunities from civil liability conferred by
16 subsections (j) and (k) of this section shall be liberally construed
17 to promote the public policy of this state of encouraging private
18 property owners and private employers to voluntarily refrain from
19 restricting or prohibiting the lawful possession or carrying of
20 deadly weapons by any individual who is licensed under section four
21 or five of this article to carry concealed weapons or authorized by

1 subsection (d), section three of this article, to carry a concealed
2 weapon without a license.

3 (m) (1) A private property owner who restricts or prohibits any
4 person who is licensed under section four or five of this article to
5 carry concealed weapons or authorized by subsection (d), section
6 three of this article, to carry a concealed weapon without a
7 license, from carrying a deadly weapon on private property
8 constituting a place of employment or a place of public
9 accommodation, shall be strictly liable for any damages resulting
10 from any felony crime of violence or felony sexual offense occurring
11 on the restricted premises.

12 (2) In this subsection:

13 (A) "Place of employment" includes any premises owned, leased,
14 operated or controlled by an employer as defined by section
15 fourteen-a of this article, in or on which any employee, as defined
16 by section fourteen-a of this article, regularly works.

17 (B) "Place of public accommodation" includes any place defined
18 as such by section three, article eleven, chapter five of this code,
19 or, except for the element of "affecting commerce," 42 U.S.C.
20 §12181(7), as it exists as of January 1, 2011.

21 **§61-7-14a. Right of employees and other persons to possess firearms**

1 **in vehicle; exceptions; remedies.**

2 (a) Notwithstanding any law of this state to the contrary,
3 except as otherwise provided in subsection (f) of this section:

4 (1) A public or private employer, higher education institution
5 or property owner may not prohibit any customer, employee, student
6 or invitee from possessing any legally owned firearm or concealable
7 weapon when the firearm or concealable weapon is lawfully possessed
8 and locked inside or locked to a private motor vehicle in a parking
9 lot and when the customer, employee, student or invitee is lawfully
10 in such area.

11 (2) A public or private employer, higher education institution
12 or property owner may not make any verbal or written inquiry
13 regarding the presence of a firearm or concealable weapon inside or
14 locked to a private motor vehicle in a parking lot or solicit
15 consent to search or search a private motor vehicle in a parking lot
16 to ascertain the presence of a firearm or concealable weapon within
17 the vehicle or take any action against a customer, employee, student
18 or invitee based upon verbal or written statements of any party
19 concerning possession of a firearm or concealable weapon stored
20 inside a private motor vehicle in a parking lot for lawful purposes.
21 A search of a private motor vehicle in the parking lot of a public

1 or private employer or higher education institution to ascertain the
2 presence of a firearm or concealable weapon within the vehicle may
3 only be conducted by an on-duty law-enforcement officer who strictly
4 complies with all applicable Constitutional, statutory and common
5 law protections against unreasonable searches and seizures.

6 (3) A public or private employer or higher education
7 institution may not condition employment or enrollment upon any
8 agreement by a current or prospective employee or student that
9 prohibits an employee or student from keeping a legal firearm or
10 concealable weapon locked inside or locked to a private motor
11 vehicle in a parking lot when the firearm or concealable weapon is
12 kept for lawful purposes.

13 (4) A public or private employer, higher education institution
14 or property owner may not prohibit or attempt to prevent any
15 customer, employee, student or invitee from entering any motor
16 vehicle parking lot because the private motor vehicle owned, leased,
17 operated or controlled by a customer, employee, student or invitee
18 contains a legal firearm or concealable weapon being carried for
19 lawful purposes, that is out of sight within a private motor vehicle
20 owned, leased, operated or controlled by a customer, employee,
21 student or invitee.

1 (5) A public or private employer or higher education
2 institution may not terminate the employment or enrollment of or
3 otherwise take any form of adverse action against an employee or
4 student, or expel a customer, student or invitee for exercising his
5 or her legal right to keep and bear arms or for exercising the right
6 of self-defense as long as a firearm or concealable weapon is not
7 publicly exhibited on private property for any reason other than
8 lawful defensive purposes.

9 (b) Subsection (a) of this section applies to all public agency
10 employers, public property owners and state institutions of higher
11 education, including those already prohibited from regulating
12 firearms under the provisions of section sixteen of this article,
13 and is in addition to and not in lieu of the provisions of section
14 sixteen of this article.

15 (c) (1) When subject to the provisions of subsection (a) of this
16 section, a public or private employer, higher education institution
17 or property owner has no duty of care related to the actions
18 prohibited under subsection (a) of this section.

19 (2) A public or private employer, higher education institution
20 or property owner is immune from liability in a civil action based
21 on actions or inactions taken in compliance with this section. The

1 immunity provided in this subdivision does not apply to civil
2 actions based on actions or inactions of public or private
3 employers, higher education institutions or property owners that are
4 unrelated to compliance with this section.

5 (3) Nothing contained in this section may be construed to
6 expand any existing duty or create any additional duty on the part
7 of any public or private employer, property owner, higher education
8 institution or any agent of any such entity.

9 (d) In addition to any other person who may have standing to
10 sue, the Attorney General shall enforce the protections of this
11 section on behalf of any customer, employee, student or invitee
12 aggrieved under this section who requests the Attorney General's
13 assistance. If there is reasonable cause to believe that the
14 aggrieved person's rights under this section have been violated by
15 a public or private employer, higher education institution or
16 property owner, the Attorney General shall commence a civil or
17 administrative action for damages, injunctive relief and civil
18 penalties, and such other relief as may be appropriate under the
19 laws of this state, or may negotiate a settlement with any employer,
20 higher education institution or property owner on behalf of any
21 person aggrieved under the section. However, nothing in this

1 subsection may be construed to impair the right of a person
2 aggrieved under this section to bring a civil action for violation
3 of rights protected under the section. In any successful action
4 brought by a customer, employee, student or invitee aggrieved under
5 this section, in addition to any other relief to which the person
6 may be entitled, the court shall award all reasonable personal costs
7 and losses suffered by the aggrieved person as a result of the
8 violation of his or her rights under this section. 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.

12 (e) Any person who willfully violates subsection (a) of this
13 section is guilty of a felony and, upon conviction thereof, shall be
14 imprisoned in a state correctional facility for not less than one
15 year nor more than five years or fined not more than \$50,000, or
16 both fined or imprisoned. Any person who otherwise violates
17 subsection (a) of this section is guilty of a misdemeanor and, upon
18 conviction thereof, shall be confined in jail for not more than one
19 year or fined not more than \$10,000, or both fined and confined.
20 In all cases, any public officer who is convicted of violating
21 subsection (a) of this section shall forfeit his or her office

1 pursuant to section nine, article six, chapter six of this code.

2 (2) Except as required by the provisions of the state
3 Constitution or the United States Constitution, no public funds may
4 be used to defend the unlawful conduct of any person charged with a
5 violation of this section, except where such funds are obligated or
6 paid after the final dismissal of charges against such person or
7 acquittal at trial. Notwithstanding the foregoing provisions of this
8 subdivision, public funds may be expended to provide the services of
9 the office of public defender or court-appointed counsel as
10 otherwise provided by law.

11 (3) Any public agency in whose service or employ any provision
12 of this section is violated may be assessed a civil penalty of not
13 more than \$5,000,000 if the court determines that the violation was
14 willful and that any person at the public agency with oversight of
15 the offending official, designee, contractee or employee knew or in
16 the exercise of ordinary care should have known the act was a
17 violation of this section. The Attorney General, any person
18 aggrieved by a violation of this section or any organization whose
19 members have been aggrieved by a violation of this section may bring
20 a civil action to enforce the civil penalties assessed under this
21 subdivision.

1 (4) The prosecuting attorney shall investigate complaints of
2 criminal violations of this section occurring within his or her
3 county and, where evidence indicates a violation may have occurred,
4 shall prosecute violators.

5 (f) Subsection (a) of this section does not apply to:

6 (1) Any motor vehicle owned by a private employer, private
7 higher education institution or private property owner to which the
8 otherwise proscribed policy pertains;

9 (2) Any property owned, leased or occupied by the United States
10 government, upon which the possession or carrying of firearms is
11 prohibited or controlled by federal law or regulation; or

12 (3) Any other property owned or leased by a public or private
13 employer or the landlord of a public or private employer upon which
14 possession of a firearm or other legal product by a customer,
15 employee or invitee is prohibited pursuant to any federal law or
16 regulation, contract with a federal government entity or the laws of
17 this state.

18 (g) In this section:

19 (1) "Parking lot" includes any property that is used for
20 parking motor vehicles and is available to customers, employees,
21 students or invitees for temporary or long-term parking or storage

1 of motor vehicles.

2 (2) "Employee" includes any person who:

3 (A) Works for salary, wages or other remuneration;

4 (B) Is an independent contractor; or

5 (C) Is a volunteer, intern or other similar individual for an
6 employer.

7 (3) "Employer" includes any business that is a sole
8 proprietorship, partnership, corporation, limited liability company,
9 cooperative, joint venture, trust, firm, institution or association,
10 or public agency, that has one or more employees in this state.

11 (4) "Invitee" includes any business invitee, including a
12 customer or visitor, who is lawfully on the premises of a public or
13 private employer or higher education institution.

14 **§61-7-15a. Requirements for signage indicating weapons prohibitions;**

15 **failure to post constitutes defense.**

16 (a) All signs indicating a prohibition or restriction on
17 possessing or carrying handguns or other deadly weapons shall be in
18 the form prescribed by this section.

19 (b) A sign regulated by this section shall not be valid or
20 enforceable unless the sign:

21 (1) Expresses the prohibition in both written language

1 interdict and universal sign language;

2 (2) Is posted at every entrance into a building where any
3 person is prohibited or restricted from possessing or carrying a
4 weapon, including every separate entry door at any entrance equipped
5 with more than one door, and shall:

6 (A) Except as provided otherwise by paragraph (D) of this
7 subdivision, have an opaque white background;

8 (B) Be not less than 11 inches wide by 17 inches tall or, if
9 larger, in substantially similar proportions, except as otherwise
10 provided by paragraph (F) of this subdivision;

11 (C) Be bounded by a red rectangle not less than one-half of an
12 inch in width, whose corners may be squared or rounded, which shall
13 be surrounded on each side by not less than one-half of an inch of
14 the white background specified in paragraph (A) of this subdivision;

15 (D) Contain at the top of the inside of the area bounded by the
16 rectangular border described in paragraph (C) of this subdivision,
17 in bold, opaque, white, underscored, uppercase, 72-point or larger
18 type, the word "WARNING", centered between the lateral edges of the
19 rectangular border, imposed on an opaque red background that shall
20 extend not less than one-half of an inch in each direction from the
21 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

1 prohibition and any exemptions applicable thereto, including the
2 statement required by subsection (c) of this section, and the name,
3 physical street address and mailing address of the person under
4 whose authority the sign is posted and, if available, that person's
5 telephone number, e-mail address and Internet web site. If the
6 headline text described in paragraph (D) of this subdivision and the
7 graphic described in paragraph (E) of this subdivision leave
8 inadequate space, the sign's vertical dimensions may be increased to
9 accommodate the requirements of this paragraph without increasing
10 the width of the sign or the size of the graphic described in
11 paragraph (E) of this subdivision;

12 (G) Be placed so that the base of the sign is not less than 40
13 inches nor more than 60 inches from the bottom of the building's
14 entrance door; and

15 (H) Be posted in sufficient quantities to be clearly visible
16 and readable from a distance of at least 30 feet;

17 (3) If the designated premises does not have doors, the signs
18 required by this subsection shall:

19 (A) Except as provided otherwise by paragraph (D) of this
20 subdivision, have an opaque white background;

21 (B) Be not less than 36 inches wide by 48 inches tall or, if

1 larger, in substantially similar proportions, except as otherwise
2 provided by paragraph (F) of this subdivision;

3 (C) Be bounded by a red rectangle not less than one inch in
4 width, whose corners may be squared or rounded, which shall be
5 surrounded on each side by not less than one inch of the white
6 background specified in paragraph (A) of this subdivision;

7 (D) Contain at the top of the inside of the area bounded by the
8 rectangular border described in paragraph (C) of this subdivision,
9 in bold, opaque, white, underscored, uppercase type not less than
10 three inches tall, the word "WARNING", centered between the lateral
11 edges of the rectangular border, imposed on an opaque red background
12 that shall extend not less than one inch in each direction from the
13 lettering and underscoring, with at least one inch of the white
14 background between those letters and the rectangle or any other text
15 or graphics;

16 (E) Contain immediately below the text described in paragraph
17 (D) of this subdivision, a graphic consisting of:

18 (i) A red circle with a red diagonal line that runs from the
19 upper left to the lower right at a 45 degree angle from the
20 horizontal, commonly known as the international "No" symbol, which
21 shall have circumference and diagonal line widths of not less than

1 two inches and an overall diameter equal to the width of the sign
2 minus two inches;

3 (ii) A black silhouette of a handgun inside the symbol
4 described in subparagraph (i) of this paragraph, which shall be
5 pointed facing right and, along its greatest dimension, occupy at
6 least eighty percent of the enclosed space within the symbol
7 described in subparagraph (i) of this paragraph; and

8 (iii) No text anywhere within the area beginning two inches
9 above the graphic and extending to two inches below the graphic;

10 (F) Contain below the graphic described in paragraph (E) of
11 this subdivision, in black one-inch tall or larger type, centered
12 between the lateral edges of the rectangular border described in
13 paragraph (B) of this subdivision, words indicating the nature of
14 the prohibition and any exemptions applicable thereto, including the
15 statement required by subsection (c) of this section, and the name,
16 physical street address and mailing address of the person under
17 whose authority the sign is posted and, if available, that person's
18 telephone number, e-mail address and Internet web site. If the
19 headline text described in paragraph (D) of this subdivision and the
20 graphic described in paragraph (E) of this subdivision leave
21 inadequate space, the sign's vertical dimensions may be increased to

1 accommodate the requirements of this paragraph without increasing
2 the width of the sign or the size of the graphic described in
3 paragraph (E) of this subdivision;

4 (G) Be placed so that the base of the sign is not less than
5 forty inches nor more than sixty inches above the ground; and

6 (H) Be posted at every entry to the premises in sufficient
7 quantities to be clearly visible and readable from a distance of at
8 least thirty feet by any person entering the premises; and

9 (4) All text on any sign shall be in English or in identical
10 form in English and one or more other languages, at the option of
11 the person or entity responsible for posting the sign.

12 (c) Any sign regulated by this section shall clearly and
13 expressly state whether persons 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, are exempt from the indicated restriction
17 or prohibition. For this purpose, the words "concealed weapons
18 license holders are not exempt," in which the word "not" is
19 boldfaced and underscored, immediately following the general
20 explanation of the indicated restriction or prohibition, shall be
21 sufficient to effectively state that persons licensed under section

1 four or five of this article to carry concealed weapons or
2 authorized by subsection (d), section three of this article, to
3 carry a concealed weapon without a license, are not exempt from the
4 indicated restriction or prohibition. Notwithstanding any provision
5 of this code to the contrary, the omission from any sign regulated
6 by this section of a clear and express statement that a person
7 licensed under section four or five of this article to carry
8 concealed weapons or authorized by subsection (d), section three of
9 this article, to carry a concealed weapon without a license, is not
10 exempt from the indicated restriction or prohibition, constitutes an
11 express exemption from the restriction or prohibition for persons
12 licensed under section four or five of this article to carry
13 concealed weapons or authorized by subsection (d), section three of
14 this article, to carry a concealed weapon without a license.

15 (d) The requirements of this section are mandatory, technical
16 requirements with which any entity subject to this section shall
17 strictly comply.

18 (e) Except as specifically and expressly provided otherwise by
19 a more specific provision of this code, it is an exception to any
20 criminal offense under this code prohibiting or restricting the
21 possession or carrying of deadly weapons in specified locations, a

1 defense to any civil action for trespassing and a bar to termination
2 from public or private employment or any other adverse action taken
3 against a person by a property owner resulting from an alleged
4 violation of a restriction or prohibition on carrying deadly
5 weapons, that signage required to be posted under this section was
6 not properly posted. In any criminal case, the state, or in any
7 other context, the party attempting to enforce the prohibition or
8 restriction on the possession or carrying of deadly weapons to which
9 the signage requirements of this section are applicable, has the
10 burden of negating the existence of the exception specified in the
11 preceding sentence.

12 **§61-7-16. Uniform law; preemption; exceptions; construction.**

13 (a) This article is uniformly applicable throughout this state
14 and in all of its political subdivisions.

15 (b) Except as otherwise provided in this section and
16 notwithstanding any provision of this code, the Code of State Rules,
17 the common law of this state or other applicable law of this state
18 to the contrary:

19 (1) The Legislature fully occupies and preempts the entire
20 field of regulation of concealable weapons, firearms and parts,
21 components and ammunition for any firearm within this state, to the

1 exclusion of all other public agencies within this state;

2 (2) Except as specifically provided otherwise by the United
3 States Constitution, the Constitution of this state, federal law or
4 a specific provision of this code, any person, without further
5 license, permission, restriction, delay or process, may own,
6 possess, carry, purchase, sell, transfer, transport, store and keep
7 any concealable weapon, firearm and parts, components and ammunition
8 for any firearm, anywhere in this state, including without
9 limitation anywhere within or upon any public building or any other
10 real or personal property owned, leased or controlled by any public
11 agency; and

12 (3) Any ordinance, resolution, motion, rule, policy, condition
13 of public employment, condition of public contracting, public
14 employee or contractor code of conduct, higher education institution
15 student code of conduct, administrative action or any other action
16 of any public agency, direct or indirect, other than those expressly
17 exempted by subsection (d) of this section, pertaining, either
18 directly or indirectly, to concealable weapons, firearms or parts,
19 components or ammunition for any firearm, or otherwise inconsistent
20 with this subsection, regardless of whether the same is adopted
21 before, on or after the effective date of this section, and

1 regardless of whether the public agency is acting in a police,
2 proprietary, employment or contracting capacity, is void.

3 (c) In this section:

4 (1) The possession, transportation or carrying of concealable
5 weapons, firearms and parts, components and ammunition for any
6 firearm include, but are not limited to, the possession,
7 transporting or carrying, openly or concealed, on or about the
8 person, of a concealable weapon, a firearm or parts, components or
9 ammunition for any firearm.

10 (2) The ownership, possession, carrying, purchase, sale,
11 transfer, transportation, storage or keeping of any concealable
12 weapon, firearm or parts, components or ammunition for any firearm,
13 include, but are not limited to, any decision by an owner or other
14 person in possession of any concealable weapon, firearm or parts,
15 components or ammunition for any firearm, to report or refrain from
16 reporting the loss or theft of any concealable weapon, firearm or
17 parts, components or ammunition for any firearm, to any
18 law-enforcement agency.

19 (d) Subsection (b) of this section does not apply to:

20 (1) A county or municipal planning or zoning ordinance that
21 regulates or prohibits the commercial sale of concealable weapons,

1 firearms and parts, components and ammunition for any firearm, in
2 areas zoned for residential or agricultural uses;

3 (2) A county or municipal planning or zoning ordinance that
4 regulates the hours of operation or the geographic areas where the
5 commercial sale of concealable weapons, firearms and parts,
6 components and ammunition for any firearm may occur, if the
7 ordinance:

8 (A) Is consistent with planning or zoning ordinances for other
9 retail businesses in the same geographic area;

10 (B) Does not result in a de facto prohibition of, or unduly
11 frustrate, the commercial sale or other transfer of concealable
12 weapons, firearms or parts, components and ammunition for any
13 firearm, in areas zoned for commercial, retail or industrial uses;
14 and

15 (C) Does not prohibit or restrict the commercial sale or other
16 transfer of concealable weapons, firearms or parts, components and
17 ammunition for any firearm, in areas zoned for commercial, retail or
18 industrial uses, based on the day of the week or time of the day of
19 the sale or other transaction, at any time between the hours of
20 eight o'clock antemeridian and ten o'clock postmeridian on any day;

21 (3) A municipal ordinance regulating trade in secondhand sales

1 or consignments of firearms or concealable weapons by pawn shops,
2 licensed firearm dealers and other businesses dealing in secondhand
3 goods, to the extent the ordinance furthers the interests of
4 recovering stolen property, returning stolen property to its
5 rightful owners and apprehending, prosecuting and convicting
6 individuals responsible for committing any offense under sections
7 thirteen, eighteen or nineteen, article three of this chapter, or
8 any other criminal offense under the laws of this state, the United
9 States or any other state, with respect to stolen property;

10 (4) Rules established by the Director of the Division of
11 Natural Resources pursuant to chapter twenty of this code regulating
12 hunting to the extent those rules do not contain more restrictive
13 provisions regulating the possession, carrying or transportation of
14 firearms than provided by the Legislature in article two, chapter
15 twenty of this code;

16 (5) The otherwise lawful, temporary disarming of any person who
17 has been contacted by a law-enforcement officer, subject to section
18 eighteen of this article;

19 (6) The otherwise lawful disarming of any person lawfully
20 detained by or in the lawful custody of any mental health facility
21 as defined in section nine, article one, chapter twenty-seven of

1 this code;

2 (7) Firearm safety rules applicable to any shooting range
3 owned, leased or controlled by, or to the conduct of participants in
4 any firearm safety or training class or hunter safety class
5 conducted or supervised by or conducted on property owned, leased or
6 controlled by, the public agency that establishes and enforces those
7 rules;

8 (8) Any resolution, motion, rule or policy adopted by the State
9 Board of Education, a county board of education, a primary or
10 secondary school or a higher education institution relating to:

11 (A) Students receiving military training in the Reserved
12 Officers' Training Corps or other military training program
13 administered by the educational institution;

14 (B) Athletic events involving firearms or concealable weapons;
15 or

16 (C) Authorizing a resident of a dormitory located at a higher
17 education institution to request in writing only a roommate who will
18 not possess deadly weapons within the dormitory room, providing for
19 the exclusion of deadly weapons from any dormitory room whose
20 residents make the election described in this paragraph in writing,
21 reserving to the residents of any such room the right to mutually

1 agree in writing to make or change an election under this paragraph
2 at any time, and to enforce any valid, written election under this
3 paragraph;

4 (9) Any regulation of the possession, carrying, storage,
5 transportation, use, care or maintenance of weapons owned by any
6 public agency;

7 (10) Any regulation of the possession, carrying, storage,
8 transportation, use, care or maintenance of weapons in the course of
9 employment by a public agency by individuals who are:

10 (A) Employed as law-enforcement officers or security personnel;
11 or

12 (B) Required by the public agency to possess, carry, transport
13 or store a weapon; or

14 (11) Any otherwise lawful action that is specifically and
15 expressly authorized by the Legislature in this code. For the
16 purposes of this subdivision, a provision of this code that does not
17 specifically and directly refer to concealable weapons, firearms or
18 parts, components or ammunition for firearms, or to deadly weapons,
19 shall not be construed to provide specific, express authorization.

20 (e) In addition to any other persons who may have proper
21 standing to sue, the prosecuting attorney of any county in which a

1 violation of this section has been alleged to have occurred, the
2 Attorney General, any person aggrieved by any alleged violation of
3 this section and any organization whose members are adversely
4 affected by any alleged violation of this section shall have
5 concurrent power to bring a civil action to enforce this section and
6 obtain declaratory and injunctive relief, actual and consequential
7 damages attributable to any violation of this section, attorney's
8 fees pursuant to section twenty of this article, liquidated damages
9 of three times the attorney's fees awarded pursuant to section
10 twenty of this article and any other relief to which the plaintiff
11 may be entitled under any other law of this state. The court shall,
12 except when otherwise requested by the plaintiff, assign any civil
13 action brought under this section a high priority on its civil
14 docket and hear the case on an expedited basis. Notwithstanding any
15 provision of this code or other law of this state to the contrary,
16 and except as specifically provided by the United States
17 Constitution, federal law or the Constitution of this state, when
18 any person, group or entity challenges any ordinance, resolution,
19 motion, rule, policy, administrative action or any other act of any
20 public agency as being in conflict with this section:

21 (1) The court shall presume that the challenged ordinance,

1 resolution, motion, rule, policy, administrative action or other act
2 is in conflict with this section unless the public agency proves
3 beyond a reasonable doubt that the challenged ordinance, resolution,
4 motion, rule, policy, administrative action or other act is not
5 preempted by and does not otherwise conflict with this section;

6 (2) The court shall liberally construe the provisions of this
7 subsection and subsections (b) and (c) of this section and narrowly
8 construe the provisions of subsection (d) of this section and any
9 provision of this code purporting to provide express authorization
10 as described in subdivision (11), subsection (d) of this section, in
11 favor of a presumption of an individual's right to keep and bear
12 arms at all times and all places for defense of self, family, home
13 and state, for lawful hunting and recreational uses and for any
14 other lawful purpose; and

15 (3) In any appeal of a case arising under this section, every
16 decision of the trial court in favor of the public agency and the
17 challenged action shall be reviewed *de novo*.

18 (f) (1) Any person who willfully violates subsection (b) of this
19 section is guilty of a felony and, upon conviction thereof, shall be
20 imprisoned in a state correctional facility for not less than one
21 year nor more than five years or fined not more than \$50,000, or

1 both fined and imprisoned. Any person who otherwise violates
2 subsection (b) of this section is guilty of a misdemeanor and, upon
3 conviction thereof, shall be confined in jail for not more than one
4 year or fined not more than \$10,000, or both fined and confined. In
5 all cases, any public officer who is convicted of violating
6 subsection (b) of this section shall forfeit his or her office
7 pursuant to section nine, article six, chapter six of this code.

8 (2) Except as required by the provisions of the state
9 Constitution or the United States Constitution, public funds may not
10 be used to defend the unlawful conduct of any person charged with a
11 violation of this section, except where such funds are obligated or
12 paid after the final dismissal of charges against such person or
13 acquittal at trial. Notwithstanding the foregoing provisions of this
14 subdivision, public funds may be expended to provide the services of
15 the office of public defender or court-appointed counsel as
16 otherwise provided by law.

17 (3) Any public agency in whose service or employ any provision
18 of this section is violated may be assessed a civil penalty of not
19 more than \$5 million if the court determines that the violation was
20 willful and that any person at the public agency with oversight of
21 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 (g) In addition to any other remedies available by law for a
12 violation of this section, any violation of subsection (b) of this
13 section is, for the purposes of article six, chapter six of this
14 code, *per se* official misconduct by every person who engages in
15 conduct that violates subsection (b) of this section.

16 (h) This section is supplemental and additional to existing
17 rights to bear arms now guaranteed by the Constitution and laws of
18 this state and decisions of the courts of this state, and nothing in
19 this section may be construed to impair or diminish those rights.

20 **§61-7-17. Prohibition of registration of firearms and concealable**
21 **weapons; exceptions; penalty.**

1 (a) *Legislative Findings And Intent.*--The Legislature intends
2 through the provisions of this section to:

3 (1) Protect the right of individuals to keep and bear arms as
4 protected by both the Second Amendment to the United States
5 Constitution and Article III, §22 of the state Constitution;

6 (2) Protect the privacy rights of law-abiding owners of
7 firearms and concealable weapons; and

8 (3) Establish protections from registration of firearms,
9 concealable weapons or law-abiding owners thereof supplemental to
10 section sixteen of this article.

11 (b) *Prohibitions.*--A public agency or any other person, public
12 or private, may not keep or cause to be kept any list, record or
13 registry of privately-owned firearms, concealable weapons or any
14 list, record or registry of the owners thereof.

15 (c) *Exceptions.*--The provisions of subsection (b) of this
16 section do not apply to:

17 (1) Records of weapons that have been used in committing any
18 crime;

19 (2) Records relating to any person who has been convicted of a
20 crime;

21 (3) Records of weapons that have been reported stolen that are

1 retained for a period not in excess of ten days after such weapons
2 are recovered. Official documentation recording the theft of a
3 recovered weapon may be maintained no longer than the balance of the
4 year entered, plus two years;

5 (4) Firearm records that must be retained by licensed firearm
6 dealers under federal law, including copies of such records
7 transmitted to law-enforcement agencies. However, no public agency
8 or any other person, private or public, may accumulate, compile,
9 computerize or otherwise collect or convert such written records
10 into any form of list, registry or database for any purpose;

11 (5) Records of an insurer that, as a condition to providing
12 insurance against theft or loss of a firearm or concealable weapons,
13 identify the weapon. These records may not be sold, commingled with
14 records relating to other weapons or transferred to any other person
15 or entity. The insurer may not keep a record of such weapon more
16 than sixty days after the policy of insurance expires or after
17 notification by the insured that the insured is no longer the owner
18 of the weapon;

19 (6) Lists of customers of a dealer in firearms or concealable
20 weapons retained by the dealer, provided that the lists do not
21 disclose the particular weapons purchased and the lists, or any

1 parts thereof, are not to be sold, commingled with records relating
2 to other weapons or transferred to any other person or entity;

3 (7) Sales receipts retained by the seller of firearms or
4 concealable weapons or by a person providing credit for the
5 purchase, provided that the receipts may not serve as or be used for
6 the creation of a database for registration of firearms or
7 concealable weapons;

8 (8) Personal records of firearms or concealable weapons
9 maintained by the owner of such firearms or concealable weapons;

10 (9) Records maintained by a business that stores or acts as the
11 selling agent of firearms or concealable weapons on behalf of the
12 lawful owner of the weapons;

13 (10) Membership lists of organizations comprised of owners of
14 firearms or concealable weapons;

15 (11) Records maintained by an employer or contracting entity of
16 the firearms or concealable weapons owned by its officers, employees
17 or agents, if the weapons are used in the course of business
18 performed on behalf of the employer;

19 (12) Records maintained pursuant to sections four and five of
20 this article pertaining to any person who is or was a licensee or
21 applicant under section four or five of this article;

1 (13) Records of weapons involved in criminal investigations,
2 criminal prosecutions, criminal appeals and postconviction motions,
3 civil proceedings relating to the surrender or seizure of firearms
4 or concealable weapons including protective injunctions, commitments
5 to mental institutions and sheriff's levies pursuant to court
6 judgments, and voluntary surrender by the owner or custodian of the
7 weapon;

8 (14) (A) Records relating to purchases, sales, trades,
9 consignments or other acquisitions or dispositions of firearms or
10 concealable weapons on the secondhand market by any pawn shop,
11 licensed firearm dealer or other business dealing in secondhand
12 goods, created or maintained pursuant to any municipal ordinance
13 described in subdivision (3), subsection (d), section sixteen of
14 this article. Records described in this subdivision may be
15 maintained for not more than one year after the firearm or
16 concealable weapon was transferred from the pawn shop, licensed
17 firearm dealer or other business dealing in secondhand goods.

18 (B) Except as required by federal law, any firearm records kept
19 pursuant to paragraph (A) of this subdivision may not, at any time,
20 be electronically transferred to any public or private entity,
21 agency, business or enterprise, nor may any such records be copied

1 or transferred for purposes of accumulation of such records into
2 lists, registries, or databases.

3 (15) Paper documents relating to weapons involved in criminal
4 cases, criminal investigations and criminal prosecutions, civil
5 proceedings relating to the surrender or seizure of weapons
6 including protective injunctions, commitments to mental institutions
7 and sheriff's levies pursuant to court judgments, and voluntary
8 surrender by the owner or custodian of the weapon; or

9 (16) Noncriminal records relating to the receipt, storage or
10 return of concealable weapons, including, but not limited to,
11 records relating to weapons impounded for storage or safekeeping,
12 receipts proving that a weapon was returned to the rightful owner
13 and supporting records of identification and proof of ownership, or
14 records relating to weapons impounded pursuant to levies or court
15 orders: *Provided*, That these records may not be compiled, sorted,
16 or otherwise arranged into any lists, indexes or registries of
17 concealable weapons or owners thereof.

18 (d) *Civil and criminal penalties and other remedies.--*

19 (1) Any person who willfully violates subsection (b) of this
20 section is guilty of a felony and, upon conviction thereof, shall be
21 imprisoned in a state correctional facility for not less than one

1 year nor more than five years or fined not more than \$50,000, or
2 both fined and imprisoned. Any person who otherwise violates any
3 provision of this section is guilty of a misdemeanor and, upon
4 conviction thereof, shall be confined in jail for not more than one
5 year or fined not more than \$10,000, or both fined and confined. In
6 all cases, any public officer who is convicted of any violation of
7 this section shall forfeit his or her office pursuant to section
8 nine, article six, chapter six of this code.

9 (2) Except as required by the provisions of the state
10 Constitution or the United States Constitution, no public funds may
11 be used to defend the unlawful conduct of any person charged with a
12 violation of this section, except where such funds are obligated or
13 paid after the final dismissal of charges against such person or
14 acquittal at trial. Notwithstanding the foregoing provisions of
15 this subdivision, public funds may be expended to provide the
16 services of the office of public defender or court-appointed counsel
17 as otherwise provided by law.

18 (3) The public agency, or the designee of a public agency, in
19 whose service or employ, a list, record or registry was compiled in
20 violation of this section may be assessed a civil penalty of not
21 more than \$5 million if the court determines that the evidence shows

1 that the list, record or registry was compiled or maintained with
2 the knowledge or complicity of the management of the public agency.
3 The Attorney General, any person aggrieved by a violation of this
4 section or any organization whose members have been aggrieved by a
5 violation of this section may bring a civil action to enforce the
6 civil penalties assessed under this 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 (5) In addition to any other persons who may have proper
12 standing to sue, the prosecuting attorney of any county where a
13 violation of this section has been alleged, the Attorney General,
14 any person aggrieved by any alleged violation of this section and
15 any organization whose members are adversely affected by any alleged
16 violation of this section shall have concurrent power to bring a
17 civil action to enforce this section and obtain declaratory and
18 injunctive relief, actual and consequential damages attributable to
19 any violation of this section, attorney's fees pursuant to section
20 twenty of this article, liquidated damages of three times the
21 attorney's fees awarded pursuant to section twenty of this article

1 and any other relief to which the plaintiff may be entitled under
2 any other law of this state. The court shall, except when otherwise
3 requested by the plaintiff, assign any civil action brought under
4 this section a high priority on its civil docket and hear the case
5 on an expedited basis.

6 (6) In addition to any other remedies available by law for a
7 violation of this section, any violation of subsection (b) of this
8 section is, for the purposes of article six, chapter six of this
9 code, *per se* official misconduct by every person subject to the
10 provisions of that article who engages in conduct that violates
11 subsection (b) of this section.

12 (e) *Construction.* -- This section shall be liberally construed
13 to effectuate its remedial and deterrent purposes. This section may
14 not be construed to grant any substantive, procedural or privacy
15 right or civil claim to any criminal defendant, and a violation of
16 this section may not be grounds for the suppression of evidence in
17 any criminal case.

18 (f) *Closed Records.* -- Information specified in subdivisions (3),
19 (4), (11), (12), (13), (14) and (15), subsection (c) of this section
20 is exempt from disclosure pursuant to chapter twenty-nine-b of this
21 code and shall be kept confidential. However, this subsection may

1 not be construed to prevent:

2 (1) The inspection or copying of any record or other
3 information made confidential by this subsection:

4 (A) By the person to whom the record pertains;

5 (B) By the duly qualified conservator or guardian of a person
6 to whom the record pertains;

7 (C) By the duly qualified personal representative of a deceased
8 person to whom the record pertains or, if a personal representative
9 has not qualified, the next of kin of a deceased person to whom the
10 record pertains;

11 (D) By an attorney, attorney-in-fact or other agent or
12 representative acting pursuant to a written power of attorney or
13 other written authorization signed by the person to whom the record
14 pertains;

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

20 (F) (i) Pursuant to an order of any court based upon a finding
21 of the court that the information is sufficiently necessary to a

1 proceeding before the court to substantially outweigh the importance
2 of maintaining the confidentiality of records established by this
3 subsection.

4 (ii) Before any court may grant access to any records pursuant
5 to this paragraph, the court shall order the party seeking access to
6 those records to give each affected person notice of the
7 proceedings, the request for confidential records under this
8 paragraph and the opportunity of affected persons to confidentially
9 intervene and object to the request by:

10 (I) Publishing a Class III-O legal advertisement in accordance
11 with the provisions of article three, chapter fifty-nine of this
12 code, whose publication area shall be every county in which any
13 person affected by the request is known to reside. For this
14 purpose, the custodian of records shall provide the court and the
15 party seeking access to those records a list, in writing, verified
16 under oath, of all counties in which the custodian of records has
17 information indicating that persons affected by the request reside;
18 and

19 (II) Directing any applicable custodian of records to print and
20 mail by first-class mail to each affected person, if any are known,
21 the costs for which the moving party shall prepay in full to the

1 sheriff or other applicable custodian of records, and perform this
2 notification in a manner not inconsistent with the confidentiality
3 provisions of this subsection.

4 (iii) Any affected person may, either in person or by counsel,
5 enter a confidential appearance before the court to object to the
6 request for disclosure and present evidence and arguments against
7 the proposed disclosure. The court shall take appropriate measures
8 to protect the confidentiality of individuals entering appearances
9 and objections to disclosures pursuant to this subparagraph;

10 (2) The disclosure of any information pertaining to current or
11 former applicants or licensees under section four or five of this
12 article in a manner expressly authorized by those sections; or

13 (3) Disclosure or publication of statistical summaries,
14 abstracts or other records containing information in an aggregate or
15 statistical form that does not disclose any personally-identifying
16 information.

17 (g) *Grace Periods.*--

18 (1) Any list, record or registry maintained or under
19 construction on the effective date of this section shall, unless
20 prohibited by law, be destroyed not later than midnight, September
21 30, 2011. Thereafter, failure to destroy any list, record or

1 registry maintained or under construction on the effective date of
2 this section shall result in civil and criminal liability under this
3 section.

4 (2) When any list, record or registry exempt under subsection
5 (c) of this section ceases to qualify for its exemption, it shall be
6 destroyed within sixty days of becoming nonexempt. Thereafter,
7 failure to destroy any such list, record or registry shall result in
8 civil and criminal liability under this section.

9 **§61-7-18. Seizures of weapons during law-enforcement contacts;
10 restrictions; exceptions; preservation and care of
11 seized weapons.**

12 (a) In addition to any other restrictions imposed by the
13 Constitution of the United States, federal law, the Constitution of
14 this state or any other law of this state, a law-enforcement officer
15 may disarm a person who is lawfully carrying a deadly weapon in
16 connection with any stop or detention only when that person is
17 contacted by a law-enforcement officer, as defined in section two of
18 this article.

19 (b) If a person who is contacted by a law-enforcement officer
20 surrenders a firearm or concealable weapon to the officer, either
21 voluntarily or pursuant to a request or demand of the officer, the

1 officer does not charge the person with a violation of this article
2 or arrest the person for any offense, the person is not otherwise
3 prohibited by law from possessing the firearm or concealable weapon
4 and the firearm or concealable weapon is not contraband, the officer
5 shall return the firearm or concealable weapon to the person at the
6 termination of the stop in the same condition and configuration as
7 it was at the time of surrender.

8 (c) If a person surrenders a firearm or concealable weapon to
9 a law-enforcement officer, either voluntarily or pursuant to a
10 request or demand of the officer and the law-enforcement officer did
11 not return the firearm or concealable weapon to the person at the
12 termination of the stop or otherwise promptly return the firearm or
13 concealable weapon to the person after the seizure of the firearm or
14 concealable weapon, the officer or other personnel at the officer's
15 law-enforcement agency having custody of the firearm or concealable
16 weapon shall maintain the integrity and identity of the firearm or
17 concealable weapon in such a manner that if the firearm or
18 concealable weapon subsequently is to be returned to the person from
19 which it was seized, it can be identified and returned to the person
20 in the same condition as when it was seized.

21 (d) The court shall, except when otherwise requested by the

1 plaintiff, assign any civil action brought under this section a high
2 priority on its civil docket and hear the case on an expedited
3 basis.

4 (e) In this section, "law-enforcement officer" means any
5 law-enforcement officer, as defined in section two of this article,
6 who is employed by a West Virginia law-enforcement agency, or any
7 other officer, agent or employee of this state or any political
8 subdivision of this state who possesses arrest powers.

9 **§61-7-19. Requirements for public agency gun buy-back programs;**
10 **disposition of firearms by public agencies.**

11 (a) A county, county commission, sheriff or any employee, agent
12 or any other instrumentality of any county, county commission or
13 sheriff may not participate in a gun buy-back program unless the
14 county commission of that county has enacted an ordinance
15 authorizing the participation of the county, county commission,
16 sheriff or applicable employee or agent in the program.

17 (b) A municipality or any employee, agent or other
18 instrumentality of a municipality may not participate in a gun
19 buy-back program unless the governing body of that municipality has
20 enacted an ordinance authorizing the participation of that
21 municipality or applicable employee or agent in the program.

1 (c) Every public agency that participates in a gun buy-back
2 program or other program in which firearms or ammunition are
3 purchased or voluntarily surrendered for any purpose shall assure
4 that:

5 (1) The firearm is transferred to a West Virginia
6 law-enforcement agency, which shall check the serial number of each
7 firearm that is purchased or surrendered to the program against
8 local, state and federal records of stolen firearms and, if the West
9 Virginia law-enforcement agency finds that the firearm is a stolen
10 firearm, prevent the firearm from being sold or otherwise disposed
11 of as required by subsection (e) of this section without the express
12 written permission of the lawful owner of the firearm and, if the
13 lawful owner of the firearm does not give express written permission
14 for the firearm to be sold or otherwise disposed of as required by
15 subsection (e) of this section, return the firearm to its lawful
16 owner except as otherwise required by subsection (d) of this
17 section;

18 (2) If the West Virginia law-enforcement agency determines that
19 a firearm that is purchased by, or surrendered to, the gun buy-back
20 program is stolen, the West Virginia law-enforcement agency, in
21 cooperation with the prosecuting attorneys of the appropriate

1 counties and other law-enforcement agencies with appropriate
2 jurisdiction, shall make a reasonable and diligent effort to
3 identify, arrest and prosecute any person who committed any offense
4 under section thirteen, eighteen or nineteen, article three of this
5 chapter, or any other criminal offense under the laws of this state,
6 the United States or any other state, with respect to the stolen
7 firearm;

8 (3) Prior to the disposition of any firearm that is purchased
9 by or surrendered to a gun buy-back program, the West Virginia
10 law-enforcement agency shall make a written determination as to
11 whether probable cause exists to believe the firearm was used in a
12 crime, and if the West Virginia law-enforcement agency finds
13 probable cause to believe the firearm was used in a crime, retain
14 the firearm for evidence, or, if the West Virginia law-enforcement
15 agency does not find probable cause to believe the firearm was used
16 in a crime and the firearm is a rifled firearm, fire a test bullet
17 from the firearm and retain the fired bullet and fired cartridge
18 case for possible use as evidence, or, if the firearm is a smooth
19 bore firearm, fire a test bullet from the firearm and retain the
20 fired cartridge case for possible use as evidence; and

21 (4) The firearm is disposed of as required by subsections (d)

1 and (e) of this section.

2 (d) Prior to returning a stolen firearm to its owner, the West
3 Virginia law-enforcement agency shall determine whether the owner of
4 the firearm is prohibited from possessing a firearm under federal
5 law and the laws of the state in which the owner resides. If the
6 owner of the firearm is prohibited from possessing a firearm under
7 federal law or the laws of the state in which the owner resides, the
8 law-enforcement agency shall take appropriate actions to permit the
9 owner of the firearm to direct its sale or other lawful disposition
10 and protect the owner's property rights in the firearm in light of
11 the applicable prohibition on possession.

12 (e) Every public agency that disposes of any firearm, including
13 any firearm owned by that agency or which was acquired through a gun
14 buy-back program or forfeiture, shall offer that firearm for sale by
15 public auction or sealed bids to a licensed firearm dealer. The
16 public agency shall publish a Class III-O legal advertisement in
17 accordance with the provisions of article three, chapter fifty-nine
18 of this code, whose last publication shall be at least 21 days but
19 not more than 28 days before the date of the auction or the opening
20 of sealed bids, whose publication area shall be the county in which
21 the firearms to be sold are located. Each advertisement shall

1 include a notice of the sale, the name, address, telephone number
2 and electronic contact information of the agency conducting the sale
3 and the availability of a list of the firearms to be sold and the
4 opportunity to inspect the firearms to be sold prior to the date of
5 the auction or opening of sealed bids. Any firearm remaining in
6 possession of the public agency after not less than three attempts
7 to sell at public auction or by sealed bids may be disposed of in
8 any lawful manner. This subsection does not apply to any firearm
9 that is transferred to an honorably retired law-enforcement officer,
10 as authorized by any provision of this code providing for the sale
11 or other transfer of the service weapon of an honorably-retired
12 law-enforcement officer to that officer.

13 (f) A court or law-enforcement agency may not improperly retain
14 a firearm for an alleged official use for the purpose or intent of
15 evading the required sale of the firearm to a licensed firearm
16 dealer pursuant to subsection (e) of this section. Any firearm that
17 is not in active use for official law-enforcement purposes or
18 retained for evidentiary purposes in an active criminal
19 investigation or pending civil or criminal case shall be presumed,
20 subject to rebuttal by clear and convincing evidence, to be subject
21 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

1 compel a sheriff to perform any duty under section four or five of
2 this article or any other action to compel a sheriff to comply with
3 section four or five of this article;

4 (2) Prevails in a civil action brought pursuant to paragraph
5 (I), subdivision (1), subsection (p), section four of this article;

6 (3) Is a licensee under section four or five of this article
7 who prevails against a civil action brought pursuant to subdivision
8 (9), subsection (q), section four of this article;

9 (4) Prevails in a petition under subsection (f), section nine
10 of this article or in a petition for a writ of mandamus or any other
11 civil action to enforce subsections (c) through (e), section nine of
12 this article;

13 (5) Prevails in a civil action to enforce subsections (b), (c),
14 (d) or (f), section ten of this article;

15 (6) Is a private property owner or employer who prevails
16 against a civil action based upon the immunity from liability
17 conferred by subsection (i) or (j), section fourteen of this
18 article;

19 (7) Is a private property owner or employer who prevails
20 against a civil action based upon the immunity from liability
21 conferred by subsection (c), section fourteen-a of this article;

1 (8) Prevails in a civil action against any public or private
2 employer or property owner to enforce subsections (b) through (d),
3 section fourteen of this article or section fourteen-a or fifteen of
4 this article;

5 (9) Prevails in a challenge to any ordinance, resolution,
6 motion, rule, policy, administrative action or any other act of any
7 public agency as being in conflict with section sixteen of this
8 article;

9 (10) Prevails in an action for a writ of mandamus to compel a
10 prosecuting attorney to act pursuant to subdivision (4), subsection
11 (e), section fourteen-a of this article, subdivision (4), subsection
12 (f), section sixteen of this article or subdivision (4), subsection
13 (d), section seventeen of this article;

14 (11) Prevails in a civil action to enforce section seventeen or
15 eighteen of this article;

16 (12) Prevails in a civil action under subsection (g), section
17 nineteen of this article, to enforce subsections (e) or (f) of that
18 section;

19 (13) Prevails in an action to remove a public officer from
20 office under article six, chapter six of this code based upon any
21 act of official misconduct or neglect of duty arising from any

1 violation of sections sixteen or seventeen of this article or any
2 other act that violated an individual's right to keep and bear arms
3 under the Constitution of the United States or the Constitution or
4 laws of this state; or

5 (14) Prevails against any public agency in a civil action to
6 vindicate his or her individual right to keep and bear arms under
7 the Constitution of the United States or the Constitution or laws of
8 this state.

9 (b) This section shall be liberally construed to promote the
10 vigorous pursuit of civil litigation to enforce the individual
11 rights described in subsection (a) of this section.

12 (c) This section shall apply retroactively to all cases pending
13 on the effective date of this section, including without limitation
14 any cases which may have been rendered moot by the enactment of this
15 legislation during the 2011 Regular Session of the Legislature,
16 including without limitation, any cases in which any act of any
17 state or local governmental entity that was being challenged on
18 federal law or Constitutional grounds was resolved on new state law
19 grounds under section sixteen of this article or any other provision
20 of this legislation as enacted during the 2011 Regular Session of
21 the Legislature.

1 **ARTICLE 7A. CENTRAL STATE MENTAL HEALTH REGISTRY OF PERSONS**
2 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**
3 **CONDITION.**

4 **§61-7A-2. Definitions.**

5 ~~As used In this article: and as the terms are deemed to mean in~~
6 ~~18 U. S. C. §922(g) and section seven, article seven of this chapter~~
7 ~~as each exists as of the thirty-first day of January, two thousand~~
8 ~~eight~~

9 (1) ~~"A person Adjudicated as a mental defective" means a person~~
10 ~~who has been determined by a duly authorized court, tribunal, board~~
11 ~~or other entity to be mentally ill to the point where he or she has~~
12 ~~to:~~

13 (A) Have been found by the final order of a court to be
14 incompetent to stand trial due to mental illness or insanity, has as
15 provided in section three, article six-a, chapter twenty-seven of
16 this code, unless the person is subsequently restored to competency
17 to stand trial and completes the proceedings in a state of
18 competence;

19 (B) Have been found not guilty in a criminal proceeding by
20 reason of mental illness or insanity or has been determined to be
21 unable to handle his or her own affairs due to mental illness or

1 insanity as provided in section four, article six-a, chapter
2 twenty-seven of this code;

3 (C) Presently be a mentally incompetent ward under article
4 fifteen, chapter forty-four of this code;

5 (D) Presently be a protected person under guardianship pursuant
6 to a final order of guardianship entered by a circuit court pursuant
7 to section thirteen, article two, chapter forty-four-a of this code;
8 or

9 (E) Have been found by a court or mental hygiene commissioner
10 in a proceeding under section six, article five, chapter
11 twenty-seven of this code, to be prohibited by 18 U.S.C. §922(g) (4)
12 or subdivision (4), subsection (a), section seven, article seven of
13 this chapter, from possessing firearms or ammunition.

14 (2) "Involuntarily committed to a mental institution" means to
15 have been involuntarily committed to a mental health facility, as
16 defined in section nine, article one, chapter twenty-seven of this
17 code, for treatment pursuant to the provisions of a final commitment
18 order issued by a circuit court in a proceeding under section four,
19 article five, chapter twenty-seven of this code.

20 ~~(3) "Mental institution" means any facility or part of a~~
21 ~~facility used for the treatment of persons committed for treatment~~

1 ~~of mental illness or addiction.~~

2 **§61-7A-3. Persons whose names are to be supplied to the central**
3 **state mental health registry.**

4 (a) The Superintendent of the West Virginia State Police and
5 the Secretary of the Department of Health and Human Resources, or
6 their designees, shall cooperate with the circuit clerk of each
7 county and Administrator of the West Virginia Supreme Court of
8 Appeals in compiling and maintaining a database containing the names
9 and identifying information of persons who ~~have~~ are currently
10 prohibited from possessing firearms by 18 U.S.C. §922(g)(4) or
11 subdivision (4), subsection (a), section seven, article seven of
12 this chapter, by reason of having been adjudicated to be mentally as
13 a mental defective or ~~who have been~~ involuntarily committed for
14 ~~treatment of~~ to a mental illness pursuant to the provisions of
15 ~~chapter twenty-seven of this code~~ institution. The ~~registry shall be~~
16 ~~maintained by the Administrator of the Supreme Court of Appeals or~~
17 the Superintendent of the West Virginia State Police shall maintain
18 this registry.

19 (b) The name of any person who ~~has~~ is prohibited from
20 possessing firearms by 18 U.S.C. §922(g)(4) or subdivision (4),
21 subsection (a), section seven, article seven of this chapter, by

1 reason of having been adjudicated to be mentally as a mental
2 defective or who has been involuntarily committed for treatment of
3 to a mental illness pursuant to the provisions of chapter
4 twenty-seven of this code which institution, shall be provided to
5 the Superintendent of the West Virginia State Police for inclusion
6 in the central state mental health registry. Upon receipt of the
7 information ~~being received~~ by the central state mental health
8 registry, it may be transmitted to the National Instant Criminal
9 Background Check System and ~~to~~ county sheriffs.

10 (c) The Secretary of the Department of Health and Human
11 Resources and the circuit clerk of each county shall as soon as
12 practicable after the effective date of this article, supply to the
13 Superintendent of the West Virginia State Police for inclusion in
14 the central state mental health registry the name and identifying
15 information required by the provisions of subsection (d) of this
16 section of all persons ~~covered by the provisions of this article~~
17 known to be currently prohibited from possessing firearms by 18
18 U.S.C. §922(g)(4) or subdivision (4), subsection (a), section seven,
19 article seven of this chapter, by reason of having been adjudicated
20 as a mental defective or involuntarily committed to a mental
21 institution, and shall, on an ongoing basis, continue to provide

1 ~~such~~ and update this information as it is developed.

2 (d) The central state mental health registry shall contain the
3 name, address at the time of commitment or adjudication, date of
4 birth, date of commitment or adjudication and of all persons who
5 ~~have~~ are currently prohibited from possessing firearms by 18 U.S.C.
6 §922(g)(4) or subdivision (4), subsection (a), section seven,
7 article seven of this chapter, by reason of having been adjudicated
8 ~~to be mentally~~ as a mental defective or ~~who have been~~ involuntarily
9 ~~committed for treatment of~~ to a mental illness pursuant to the
10 ~~provisions of chapter twenty-seven of this code~~ institution.

11 (e) The central state mental health registry shall provide only
12 such information about a person on the registry to county sheriffs
13 and the National Instant Criminal Background Check System as is
14 necessary to identify registrants. ~~and~~

15 (f) ~~On or before the first day of January, two thousand ten,~~
16 The central state mental health registry shall contain the name,
17 address at the time of commitment or adjudication, date of birth,
18 date of commitment or adjudication and any other identifying
19 characteristics of all persons who ~~have~~ are currently prohibited
20 from possessing firearms by 18 U.S.C. §922(g)(4) or subdivision (4),
21 subsection (a), section seven, article seven of this chapter, by

1 reason of having been adjudicated ~~to be mentally~~ as a mental
 2 defective or ~~who have been~~ involuntarily committed ~~for treatment of~~
 3 to a mental illness ~~pursuant to the provisions of chapter~~
 4 ~~twenty-seven of this code~~ institution. Under no circumstances shall
 5 may the registry contain any information relating to any person's
 6 diagnosis or treatment. ~~provided~~

7 **§61-7A-4. Confidentiality; limits on use of registry information.**

8 (a) Notwithstanding any provision of this code to the contrary,
 9 the Superintendent of the State Police, the Secretary of the
 10 Department of Health and Human Resources and the circuit clerks and
 11 the Administrator of the Supreme Court of Appeals may provide notice
 12 to the central state mental health registry and the National Instant
 13 Criminal Background Check System established pursuant to Section
 14 103(d) of the Brady Handgun Violence Protection Act, Public Law
 15 103-159, §103, 107 Stat. 1536 (1993), reprinted in 18 U.S.C. §922
 16 notes, that a person:

17 ~~(i)~~ (1) Has been involuntarily committed ~~as provided in chapter~~
 18 ~~twenty-seven of this code~~ to a mental institution;

19 ~~(ii)~~ (2) Has been adjudicated ~~mentally incompetent in a~~
 20 ~~proceeding under article six-a, of this chapter~~ as a mental
 21 defective; or

1 ~~(iii)~~ (3) Has ~~regained the ability to possess a firearm~~ been
2 granted relief from disability by order of a circuit court in a
3 proceeding under subsection (e), section seven, article seven of
4 this chapter or the former enactment of section five of this
5 article, as it existed between June 8, 2008, and its repeal and
6 consolidation with the current enactment of subsection (e), section
7 seven, article seven of this chapter, as enacted concurrent with the
8 amendments to this section enacted during the 2011 Regular Session
9 of the Legislature.

10 (b) The information contained in the central state mental
11 health registry ~~is to~~ shall be used solely for the purpose of
12 records checks related to federal firearm licenses, firearms
13 purchases and for eligibility for ~~a state~~ any license or permit in
14 this state or any other state to purchase, possess, ~~or~~ carry or
15 transport a concealed firearm or concealed weapon, or to determine
16 in the course of a legitimate law-enforcement investigation whether
17 a specific, named individual who has possessed a firearm or carried
18 a concealed weapon is prohibited by subdivision (4), subsection (a),
19 section seven, article seven of this chapter or 18 U.S.C. §922(g) (4)
20 from possessing or carrying the weapon.

21 (c) Whenever a person's name and other identifying information

1 ~~has~~ have been added to the central state mental health registry, ~~a~~
2 the Superintendent of the State Police shall review of the state
3 concealed handgun weapons license registry shall be undertaken
4 maintained pursuant to subdivision (2), subsection (1), section
5 four, article seven of this chapter and, if such this review reveals
6 that the person possesses a current concealed handgun license to
7 carry concealed weapons, the superintendent shall immediately notify
8 the issuing sheriff of the county issuing the concealed handgun
9 license shall be informed of the person's change in status
10 licensee's addition to the central state mental health registry and
11 probable disqualification from continued licensure. Before the
12 sheriff may initiate suspension or revocation proceedings against
13 the named licensee, the sheriff shall independently verify that the
14 information provided by the superintendent pertains to the named
15 licensee and not another person and that the information proves the
16 named licensee is actually disqualified from continued licensure, as
17 required by subsection (q), section four, article seven of this
18 chapter.

19 **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

20 **§61-11-9. Limitation of prosecution; lost indictment.**

21 (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,

1 lost or destroyed, another indictment for the same offense may be
 2 found at the first term of the court after such theft, loss or
 3 destruction is discovered, or at the next term thereafter. ~~and~~ The
 4 court shall, in every case where any ~~such~~ indictment has been
 5 stolen, lost or destroyed, enter ~~such~~ the fact of the theft, loss or
 6 destruction on its record. Whenever ~~such~~ a new indictment is found,
 7 the clerk shall add to the entry of the finding thereof the
 8 following: "This is the second (or third, etc., as the case may be)
 9 indictment found against the said for the same
 10 offense"; and the same proceedings shall be had in all respects on
 11 any such new indictment as might have been had on the first
 12 indictment if it had not been stolen, lost or destroyed. ~~And~~ If the
 13 offense mentioned in any ~~such~~ replacement indictment is barred by
 14 the statute of limitations, the time between the finding of the
 15 first and last of such indictments shall not be computed or taken
 16 into consideration in the computation of the time in which any such
 17 indictment, after the first, should have been found.

18 **§61-11-27. Set aside and expungement of convictions of certain**
 19 **misdemeanor crimes of domestic violence; procedures;**
 20 **effect.**

21 (a) Any person convicted of a misdemeanor crime of domestic

1 violence in this state may, pursuant to the provisions of this
2 section, petition the circuit court of the county in which the
3 conviction occurred to set aside and expunge the conviction and the
4 records associated therewith. The petitioner shall, at the time of
5 filing the petition, pay the clerk of the circuit court a filing fee
6 equal to the filing fee for instituting a civil action pursuant to
7 subdivision (1), subsection (a), section eleven, article one,
8 chapter fifty-nine of this code. The petition shall be verified
9 under oath and include the following information:

10 (1) Petitioner's current name and all other legal names or
11 aliases by which petitioner has been known at any time;

12 (2) All of petitioner's addresses from the date of the
13 commission or alleged commission of the offenses for which a set
14 aside and expungement order is sought to the date of the petition;

15 (3) Petitioner's date and place of birth;

16 (4) Petitioner's date of arrest, the court of jurisdiction and
17 criminal complaint, indictment, summons or case number;

18 (5) The statute or statutes and offense or offenses for which
19 petitioner was charged and of which petitioner was convicted;

20 (6) The names of the victim or victims;

21 (7) Whether there is any current order for restitution,

1 protection, restraining order or other, no contact order prohibiting
2 the petitioner from contacting the victims or whether there has ever
3 been a prior order for restitution, protection or restraining order
4 prohibiting the petitioner from contacting the victim. If there is
5 such a current order, petitioner shall attach a copy of that order
6 to the petition;

7 (8) The court's disposition of the matter and punishment
8 imposed, if any;

9 (9) Why the petitioner seeks to have the conviction and
10 associated records set aside and expunged, such as, but not limited
11 to, employment or licensure purposes or regaining the right to
12 possess firearms, and why it should be granted;

13 (10) The steps the petitioner has taken since the time of the
14 offenses toward personal rehabilitation, including treatment, work
15 or other personal history that demonstrates rehabilitation;

16 (11) Whether petitioner has ever been granted expungement or
17 similar relief regarding a criminal conviction by any court in this
18 state, any other state or by any federal court; and

19 (12) Any supporting documents, affidavits or other information
20 supporting the petition to set aside and expunge the conviction.

21 (b) The State of West Virginia shall be named as the respondent

1 to any petition under this section. The petitioner shall serve a
2 copy of the petition and any supporting documentation pursuant to
3 the West Virginia Rules of Civil Procedure and the West Virginia
4 Trial Court Rules upon the prosecuting attorney of the county in
5 which the petitioner was convicted of the offense to which the
6 petition pertains. The prosecuting attorney shall serve by first
7 class mail a copy of the petition, accompanying documentation and
8 any proposed order to any identified victims. The prosecuting
9 attorney shall take reasonable steps to locate any identifiable
10 victims, including but not limited to, searches of driver's license,
11 voter registration and tax databases to which the prosecuting
12 attorney may have access for official purposes. If there are no
13 identifiable victims or the prosecuting attorney cannot locate and
14 serve an identifiable victim, the prosecuting attorney shall notify
15 the court and the petitioner and shall have no further duty with
16 respect to the location and service of any victim.

17 (c) Upon receipt of a petition under this section, the
18 prosecuting attorney, the victim or victims of the offense to which
19 the petition pertains and any other interested person or agency that
20 desires to oppose the petition to set aside and expungement of the
21 conviction shall, within thirty days after receipt of the petition

1 or ten days after receipt of a copy of the results of any
2 fingerprint-based background checks ordered by the court pursuant to
3 subsection (d) of this section, whichever later occurs, file a
4 notice of opposition with the court with supporting documentation
5 and sworn statements setting forth the reasons for opposing the
6 petition. The opponent shall serve a copy of any notice of
7 opposition with supporting documentation and sworn statements upon
8 the petitioner in accordance with trial court rules. The petitioner
9 shall be granted at least ten business days after service of any
10 notice of opposition to the petition for expungement to file a
11 reply.

12 (d) The court may require the petitioner to be fingerprinted
13 and submit to fingerprint-based state and national criminal
14 background checks and pay the costs thereof. If the court requires
15 a petitioner to be fingerprinted, the court shall arrange to have
16 the petitioner fingerprinted by a law-enforcement agency that has
17 the necessary equipment to take fingerprints by electronic imaging
18 to reduce the time and expense required to process the fingerprints.
19 The sheriff shall provide the results of any court-ordered
20 background check to the court, the prosecuting attorney and the
21 petitioner.

1 (e) Not earlier than the expiration of the time period for a
2 party to enter a notice of opposition to the petition and, if
3 applicable, for the petitioner to file a reply with the court, and
4 not later than thirty days after that date, the court shall:

5 (1) Summarily deny the petition if the court determines that
6 the petition is insufficient or, based upon supporting documentation
7 and sworn statements filed in opposition to the petition, the court
8 determines that the petitioner, as a matter of law, is not entitled
9 to relief under this section;

10 (2) Summarily grant the petition if the court does not
11 summarily deny the petition pursuant to paragraph (A) of this
12 subdivision, the petitioner does not request a hearing on the
13 petition, no opposition to the petition has been filed with the
14 court and the court does not desire, upon its own motion, to set the
15 matter for hearing; or

16 (3) Set the matter for hearing.

17 (f) If the court sets the matter for hearing, the clerk of the
18 court shall notify all interested parties who have filed a notice of
19 opposition. At the hearing, the court may inquire into the
20 background of the petitioner and shall have access to any reports or
21 records relating to the petitioner that are on file with any

1 law-enforcement authority and other agency which was in any way
2 involved with the petitioner's arrest, conviction, sentence and
3 post-conviction supervision, including any record of arrest or
4 conviction in any other state or federal court. The court may hear
5 testimony of witnesses and any other matter the court deems proper
6 and relevant to its determination regarding the petition. The court
7 shall enter an order reflecting its ruling on the petition with
8 appropriate findings of fact and conclusions of law. Upon entry of
9 an order granting or denying a petition under this section, the
10 clerk of the court shall transmit certified copies of the order to
11 the petitioner, prosecuting attorney and all parties that entered
12 notices of opposition to the petition.

13 (g) The following presumptions and burdens of proof shall apply
14 to any petition under this section:

15 (1) If fifteen years have elapsed since the date of conviction
16 and the petitioner has not been convicted within the last fifteen
17 years of any misdemeanor crime of domestic violence, there shall be
18 a strong presumption in favor of granting the petition unless an
19 opponent of the petition demonstrates by clear and convincing
20 evidence that the circumstances regarding the conviction and the
21 petitioner's record and reputation are such that the petitioner will

1 likely act in a manner dangerous to public safety and that the
2 granting of the petition would be contrary to the public welfare.

3 (2) If the offense is not subject to subdivision (1) of this
4 subsection, at least ten years have elapsed since the date of
5 conviction, at least five years have elapsed since completion of
6 sentence, probation, payment of all fines, court costs and
7 restitution and discharge from supervision by the court, whichever
8 last occurs, and, subsequent to the conviction, the petitioner has
9 not been convicted within the last ten years of any misdemeanor
10 crime of domestic violence, there shall be a presumption in favor of
11 granting the petition unless an opponent of the petition
12 demonstrates by a preponderance of evidence that the circumstances
13 regarding the conviction and the petitioner's record and reputation
14 are such that the petitioner will likely act in a manner dangerous
15 to public safety and that the granting of the petition would be
16 contrary to the public welfare.

17 (3) If the offense is not subject to subdivisions (1) or (2) of
18 this subsection, at least five years have elapsed since the date of
19 conviction and at least two years have elapsed since completion of
20 sentence, probation, payment of all fines, court costs and
21 restitution and discharge from supervision by the court, whichever

1 last occurs, and the petitioner has not been subsequently convicted
2 of any misdemeanor crime of domestic violence, the petitioner shall
3 demonstrate by a preponderance of evidence that the circumstances
4 regarding the conviction and the petitioner's record and reputation
5 are such that the petitioner not be likely to act in a manner
6 dangerous to public safety and that the granting of the petition
7 would not be contrary to the public welfare.

8 (4) In any other case, there is a presumption against granting
9 the petition unless the petitioner demonstrates by clear and
10 convincing evidence that the circumstances regarding the conviction
11 and the petitioner's record and reputation are such that the
12 petitioner will not be likely to act in a manner dangerous to public
13 safety and that the granting of the petition would not be contrary
14 to the public welfare.

15 (h) If the court grants the petition, the court shall order
16 that the conviction be set aside and that all records in the custody
17 of the court or any other agency or official, including
18 law-enforcement records, be expunged. If the court grants the
19 petition, the clerk of the court shall transmit a certified copy of
20 the order to every federal, state and local agency the court knows
21 or has reason to believe has records relating to the arrest, charge

1 or other matters arising out of the arrest or conviction covered by
2 the expungement order. Every agency with records relating to the
3 arrest, charge or other matters arising out of the arrest or
4 conviction that is ordered to expunge records shall certify to the
5 court within sixty days of the entry of the expungement order that
6 the required expungement has been completed. All orders enforcing
7 the expungement procedure shall be sealed and may be inspected only
8 upon order of the court. However, for the purposes of this section,
9 "records" do not include the records of the Governor, the
10 Legislature or the Secretary of State that pertain to a grant of
11 pardon and records that pertain to a grant of pardon are not subject
12 to an order of expungement.

13 (i) If the court grants a petition pursuant to this section,
14 notwithstanding any provision of this code or other law of this
15 state to the contrary:

16 (1) For all purposes under the laws of this state, the
17 conviction shall be set aside, the criminal proceedings in which the
18 petitioner was convicted of the expunged offense shall be considered
19 as having never occurred and the petitioner shall be treated as if
20 he or she had never been prosecuted for or convicted of the offense
21 to which the petition pertained; and

1 (2) The expungement shall have all necessary force and effect
2 to cause the expunged conviction or convictions to be considered
3 "set aside" and "expunged" in accordance with the usage of those
4 terms in 18 U.S.C. §921(a)(33)(B)(ii).

5 (j) In any appeal of a denial of a petition under this section,
6 all matters appealed by the petitioner shall be reviewed *de novo*.

7 (k) In this section, "misdemeanor crime of domestic violence"
8 means:

9 (1) Any misdemeanor offense of domestic assault or domestic
10 battery under the provisions of section twenty-eight, article two of
11 this chapter;

12 (2) Any misdemeanor offense of assault or battery under the
13 provisions of subsection (b) or (c), section nine, article two of
14 this chapter, brandishing a deadly weapon in violation of section
15 eleven, article seven of this chapter, or any misdemeanor offense
16 that has, as an element, the use or attempted use of physical force
17 or the threatened use of a deadly weapon, in which the victim was a
18 family or household member, as defined in section two hundred four,
19 article twenty-seven, chapter forty-eight of this code, of the
20 petitioner; or

21 (3) Any other offense that arguably constitutes a misdemeanor

1 crime of domestic violence as defined in 18 U.S.C. §921(a)(33)(A),
2 without regard to whether any of the exceptions specified in 18
3 U.S.C. §921(a)(33)(B) apply, for which the record of conviction may
4 reasonably be construed to cast doubt upon the petitioner's
5 eligibility to lawfully possess firearms under 18 U.S.C. §922(g)(9)
6 and subdivision (9), subsection (a), section seven, article seven of
7 this chapter.

8 **CHAPTER 62. CRIMINAL PROCEDURE.**

9 **ARTICLE 12. PROBATION AND PAROLE.**

10 **§62-12-6. Powers and duties of probation officers.**

11 (a) Each probation officer shall investigate all cases which
12 the court refers to the officer for investigation and shall report
13 in writing on each case. The probation officer shall furnish to
14 each person released on probation under the officer's supervision a
15 written statement of the probationer's conditions of probation
16 together with a copy of the rules prescribed by the court for the
17 supervision of probationers. The probation officer shall stay
18 informed concerning the conduct and condition of each probationer
19 under the officer's supervision and shall report on the conduct and
20 condition of each probationer in writing as often as the court
21 requires. The probation officer shall use all practicable and

1 suitable methods to aid and encourage the probationer to improve his
2 or her conduct and condition. The probation officer shall maintain
3 detailed work records and shall perform any other duties the court
4 requires. The probation officer has authority, with or without an
5 order or warrant, to arrest any probationer as provided in section
6 ten of this article, and to arrest any person on supervised release
7 when there is reasonable cause to believe that the person on
8 supervised release has violated a condition of release. A person on
9 supervised release so arrested shall be brought before the court for
10 a prompt and summary hearing.

11 ~~(b) Notwithstanding any provision of this code to the contrary:~~

12 (b) (1) ~~Any~~ A probation officer ~~appointed on or after July 1,~~
13 ~~2002,~~ may carry ~~handguns~~ concealed weapons without a license in the
14 course of the officer's official duties after meeting specialized
15 qualifications established by the Governor's Committee on Crime,
16 Delinquency and Correction, which ~~qualifications~~ shall include the
17 successful completion of handgun training, including a minimum of
18 four hours' training in handgun safety and comparable to the handgun
19 training provided to law-enforcement officers by the West Virginia
20 State Police.

21 ~~(2) Probation officers may only carry handguns in the course of~~

1 ~~their official duties after meeting the specialized qualifications~~
2 ~~set forth in~~ Subdivision (1) of this subsection may not be construed
3 to diminish the right of a probation officer to keep and bear arms
4 in the same manner as he or she may lawfully do so as a private
5 citizen.

6 (3) Nothing in this subsection ~~includes~~ may be construed to
7 include probation officers within the meaning of law-enforcement
8 officers as defined in section one, article twenty-nine, chapter
9 thirty of this code.

10 **CHAPTER 64. LEGISLATIVE RULES.**

11 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**
12 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

13 **§64-5-1a. Health and Human Resources; child care centers licensing.**

14 The legislative rule contained in title seventy-eight, series
15 one, and filed in the State Register on April 25, 2007, under the
16 authority of section four, article two-b, chapter forty-nine of this
17 code, relating to Department of Health and Human Resources (Child
18 Care Centers Licensing, 78 CSR 1) is reauthorized with the following
19 amendment:

20 On page seventy, section one, by striking subsection 20.3.a in
21 its entirety and renumbering subsequent subsections.

1 **§64-5-1b. Health and Human Resources; child-care and treatment**
2 **facilities.**

3 The legislative rule contained in title seventy-eight, series
4 three, and filed in the State Register on May 2, 2007, under the
5 authority of section three, article seventeen, chapter twenty-seven,
6 sections four, six and seven of article one-a, chapter twenty-seven
7 and article two-b, chapter forty-nine of this code, relating to the
8 Department of Health and Human Resources (Minimum Licensing
9 Requirements for Residential Child Care and Treatment Facilities for
10 Children and Transitioning Adults in West Virginia, 78 CSR 3) is
11 reauthorized with the following amendment:

12 On page thirty-one, section three, by striking subsection
13 12.5.c in its entirety and renumbering subsequent subsections
14 accordingly.

15 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO**
16 **PROMULGATE LEGISLATIVE RULES.**

17 **§64-7-3a. Lottery Commission; limited gaming facility rule.**

18 The legislative rule contained in title eighty-seven, series
19 four, filed in the State Register on April 20, 2000, under the
20 authority of section five, article twenty-five, chapter twenty-nine
21 of this code, relating to the West Virginia Lottery Commission

1 (Limited Gaming Facility Rule 179 CSR 4) is reauthorized with the
2 following amendment:

3 On page twelve, section four, by striking subsection 3.12 in
4 its entirety and renumbering subsequent subsections accordingly.

5 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE**
6 **LEGISLATIVE RULES.**

7 **§64-10-3a. Division of Natural Resources; commercial whitewater**
8 **outfitters.**

9 The legislative rule contained in title fifty-eight, series
10 twelve and filed in the State Register on March 27, 2008, under the
11 authority of section twenty-three-a, article two, chapter twenty of
12 this code, relating to the Division of Natural Resources (Commercial
13 Whitewater Outfitters 58 CSR 12) is reauthorized with the following
14 amendment:

15 On page seven, section twelve, by striking subsection 9.13 in
16 its entirety and renumbering subsequent subsections accordingly.

17 **§64-10-3b. Division of Natural Resources; public use of state**
18 **parks.**

19 The legislative rule contained in title fifty-eight, series
20 thirty-one and filed in the State Register on May 4, 2006, under the
21 authority of section seven, article one, chapter twenty of this

1 code, relating to the Division of Natural Resources (Public use of
2 West Virginia State Parks, State Forests, and State Wildlife
3 Management Areas Under the Division of Natural Resources 58 CSR 31)
4 is reauthorized with the following amendment:

5 On page two, section thirty-one, subsection 2.14 by striking
6 "uncased firearms," and inserting in lieu thereof "a loaded or
7 uncased rifle, a loaded or uncased shotgun,".

8 **ARTICLE 12. RACING COMMISSION.**

9 **§64-12-1. Thoroughbred racing.**

10 The legislative rule contained in title one hundred
11 seventy-eight, series one and filed in the State Register on April
12 6, 2007, under the authority of sections five, six, eight and
13 thirteen, article twenty-three, chapter nineteen of this code,
14 relating to the Racing Commission (Thoroughbred Racing 178 CSR 1) is
15 reauthorized with the following amendment:

16 On page thirty, section one, subsection 37.6 by striking
17 "firearm, or other deadly weapon".

18 **§64-12-2. Greyhound racing.**

19 The legislative rule contained in title one hundred
20 seventy-eight, series two and filed in the state Register on May 5,
21 2006, under the authority of sections six, article twenty-three,

1 chapter nineteen of this code, relating to the Racing Commission
2 (Greyhound Racing 178 CSR 2) is reauthorized with the following
3 amendment:

4 On page twenty-nine, section two, subsection 40.6 by striking
5 "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, strike-throughs and underscoring have been omitted.

§20-2-2a and §61-7-2 and §61-7-5 have been completely rewritten; therefore, strikethroughs and underscoring have been omitted.