

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 353**

(SENATORS UNGER, KESSLER (MR. PRESIDENT),  
BROWNING, LAIRD, KLEMPA AND SNYDER, *original sponsors*)

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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to possession of firearms generally; clarifying what constitutes carrying a handgun concealed in or on a motor vehicle; procedures for obtaining a license to carry a concealed handgun; providing application requirements; requiring investigations of applicants through a national criminal background check system and the West Virginia database; providing definitions; prohibiting certain persons from possessing or receiving firearms; providing exceptions; allowing licenses to be transferable within the state; requiring reporting of new address; and penalties.

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

That §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-2. Definitions.**

1 As used in this article, unless the context otherwise  
2 requires:

3 (1) "Blackjack" means a short bludgeon consisting, at the  
4 striking end, of an encased piece of lead or some other heavy  
5 substance and, at the handle end, a strap or springy shaft  
6 which increases the force of impact when a person or object  
7 is struck. The term "blackjack" shall include, but not be  
8 limited to, a billy, billy club, sand club, sandbag or slapjack.

9 (2) "Gravity knife" means any knife that has a blade  
10 released from the handle by the force of gravity or the  
11 application of centrifugal force and when so released is  
12 locked in place by means of a button, spring, lever or other  
13 locking or catching device.

14 (3) "Knife" means an instrument, intended to be used or  
15 readily adaptable to be used as a weapon, consisting of a  
16 sharp-edged or sharp-pointed blade, usually made of steel,  
17 attached to a handle which is capable of inflicting cutting,  
18 stabbing or tearing wounds. The term "knife" shall include,  
19 but not be limited to, any dagger, dirk, poniard or stiletto,  
20 with a blade over three and one-half inches in length, any  
21 switchblade knife or gravity knife and any other instrument  
22 capable of inflicting cutting, stabbing or tearing wounds. A  
23 pocket knife with a blade three and one-half inches or less in  
24 length, a hunting or fishing knife carried for hunting,  
25 fishing, sports or other recreational uses or a knife designed  
26 for use as a tool or household implement shall not be in-  
27 cluded within the term "knife" as defined herein unless such  
28 knife is knowingly used or intended to be used to produce  
29 serious bodily injury or death.

30 (4) "Switchblade knife" means any knife having a  
31 spring-operated blade which opens automatically upon  
32 pressure being applied to a button, catch or other releasing  
33 device in its handle.

34 (5) "Nunchuka" means a flailing instrument consisting  
35 of two or more rigid parts, connected by a chain, cable, rope

36 or other nonrigid, flexible or springy material, constructed  
37 in such a manner as to allow the rigid parts to swing freely  
38 so that one rigid part may be used as a handle and the other  
39 rigid part may be used as the striking end.

40 (6) "Metallic or false knuckles" means a set of finger  
41 rings attached to a transverse piece to be worn over the front  
42 of the hand for use as a weapon and constructed in such a  
43 manner that, when striking another person with the fist or  
44 closed hand, considerable physical damage may be inflicted  
45 upon the person struck. The terms "metallic or false knuck-  
46 les" shall include any such instrument without reference to  
47 the metal or other substance or substances from which the  
48 metallic or false knuckles are made.

49 (7) "Pistol" means a short firearm having a chamber  
50 which is integral with the barrel, designed to be aimed and  
51 fired by the use of a single hand.

52 (8) "Revolver" means a short firearm having a cylinder  
53 of several chambers that are brought successively into line  
54 with the barrel to be discharged, designed to be aimed and  
55 fired by the use of a single hand.

56 (9) "Deadly weapon" means an instrument which is  
57 designed to be used to produce serious bodily injury or death  
58 or is readily adaptable to such use. The term "deadly  
59 weapon" shall include, but not be limited to, the instruments  
60 defined in subdivisions (1) through (8), inclusive, of this  
61 section or other deadly weapons of like kind or character  
62 which may be easily concealed on or about the person. For  
63 the purposes of section one-a, article five, chapter eighteen-a  
64 of this code and section eleven-a, article seven of this  
65 chapter, in addition to the definition of "knife" set forth in  
66 subdivision (3) of this section, the term "deadly weapon" also  
67 includes any instrument included within the definition of  
68 "knife" with a blade of three and one-half inches or less in  
69 length. Additionally, for the purposes of section one-a,  
70 article five, chapter eighteen-a of this code and section  
71 eleven-a, article seven of this chapter, the term "deadly  
72 weapon" includes explosive, chemical, biological and

73 radiological materials. Notwithstanding any other provision  
74 of this section, the term “deadly weapon” does not include  
75 any item or material owned by the school or county board,  
76 intended for curricular use, and used by the student at the  
77 time of the alleged offense solely for curricular purposes.

78 (10) “Concealed” means hidden from ordinary observa-  
79 tion so as to prevent disclosure or recognition. A deadly  
80 weapon is concealed when it is carried on or about the  
81 person in such a manner that another person in the ordinary  
82 course of events would not be placed on notice that the  
83 deadly weapon was being carried. For purposes of concealed  
84 handgun licensees, a licensee shall be deemed to be carrying  
85 on or about his or her person while in or on a motor vehicle  
86 if the firearm is located in a storage area in or on the motor  
87 vehicle.

88 (11) “Firearm” means any weapon which will expel a  
89 projectile by action of an explosion.

90 (12) “Controlled substance” has the same meaning as is  
91 ascribed to that term in subsection (d), section one hundred  
92 one, article one, chapter sixty-a of this code.

93 (13) “Drug” has the same meaning as is ascribed to that  
94 term in subsection (1), section one hundred one, article one,  
95 chapter sixty-a of this code.

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

1 (a) Except as provided in subsection (h) of this section,  
2 any person desiring to obtain a state license to carry a  
3 concealed deadly weapon shall apply to the sheriff of his or  
4 her county for the license, and shall pay to the sheriff, at the  
5 time of application, a fee of \$75, of which \$15 of that amount  
6 shall be deposited in the Courthouse Facilities Improvement  
7 Fund created by section six, article twenty-six, chapter  
8 twenty-nine of this code. Concealed weapons permits may  
9 only be issued for pistols or revolvers. Each applicant shall  
10 file with the sheriff a complete application, as prepared by  
11 the Superintendent of the West Virginia State Police, in

12 writing, duly verified, which sets forth only the following  
13 licensing requirements:

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

22 (2) That, on the date the application is made, the appli-  
23 cant is a bona fide resident of this state and of the county in  
24 which the application is made and has a valid driver's license  
25 or other state-issued photo identification showing the  
26 residence;

27 (3) That the applicant is twenty-one years of age or older:  
28 *Provided*, That any individual who is less than twenty-one  
29 years of age and possesses a properly issued concealed  
30 weapons license as of the effective date of this article shall  
31 be licensed to maintain his or her concealed weapons license  
32 notwithstanding the provisions of this section requiring new  
33 applicants to be at least twenty-one years of age: *Provided*,  
34 *however*, That upon a showing of any applicant who is  
35 eighteen years of age or older that he or she is required to  
36 carry a concealed weapon as a condition for employment,  
37 and presents satisfactory proof to the sheriff thereof, then he  
38 or she shall be issued a license upon meeting all other  
39 conditions of this section. Upon discontinuance of employ-  
40 ment that requires the concealed weapons license, if the  
41 individual issued the license is not yet twenty-one years of  
42 age, then the individual issued the license is no longer  
43 eligible and must return his or her license to the issuing  
44 sheriff;

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

49 (A) Residential or court-ordered treatment for alcoholism  
50 or alcohol detoxification or drug treatment; or

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

53 (5) That the applicant has not been convicted of a felony  
54 or of an act of a misdemeanor crime of violence involving the  
55 misuse of a deadly weapon within the five years immediately  
56 preceding the application;

57 (6) That the applicant has not been convicted of a  
58 misdemeanor crime of domestic violence as defined in 18 U.  
59 S. C. §921(a)(33), or a misdemeanor offense of assault or  
60 battery either under the provisions of section twenty-eight,  
61 article two of this chapter or the provisions of subsection (b)  
62 or (c), section nine, article two of this chapter in which the  
63 victim was a current or former spouse, current or former  
64 sexual or intimate partner, person with whom the defendant  
65 cohabits or has cohabited, a parent or guardian, the defen-  
66 dant's child or ward or a member of the defendant's house-  
67 hold at the time of the offense, or a misdemeanor offense  
68 with similar essential elements in a jurisdiction other than  
69 this state;

70 (7) That the applicant is not under indictment for a  
71 felony offense or is not currently serving a sentence of  
72 confinement, parole, probation or other court-ordered  
73 supervision imposed by a court of any jurisdiction or is the  
74 subject of an emergency or temporary domestic violence  
75 protective order or is the subject of a final domestic violence  
76 protective order entered by a court of any jurisdiction;

77 (8) That the applicant has not been adjudicated to be  
78 mentally incompetent. If the applicant has been adjudicated  
79 mentally incompetent the applicant must provide a court  
80 order reflecting that the applicant is no longer under such  
81 disability;

82 (9) That the applicant has qualified under the minimum  
83 requirements set forth in subsection (d) of this section for  
84 handling and firing the weapon: *Provided*, That this require-

85 ment shall be waived in the case of a renewal applicant who  
86 has previously qualified; and

87 (10) That the applicant authorizes the sheriff of the  
88 county, or his or her designee, to conduct an investigation  
89 relative to the information contained in the application.

90 (b) For both initial and renewal applications, the sheriff  
91 shall conduct an investigation including a nationwide  
92 criminal background check consisting of checking the  
93 National Instant Criminal Background Check System and  
94 the West Virginia criminal history record responses in order  
95 to verify that the information required in subsection (a) of  
96 this section is true and correct.

97 (c) \$60 of the application fee and any fees for replace-  
98 ment of lost or stolen licenses received by the sheriff shall be  
99 deposited by the sheriff into a Concealed Weapons License  
100 Administration Fund. The fund shall be administered by the  
101 sheriff and shall take the form of an interest-bearing account  
102 with any interest earned to be compounded to the fund. Any  
103 funds deposited in this Concealed Weapon License Adminis-  
104 tration Fund are to be expended by the sheriff to pay for the  
105 costs associated with issuing concealed weapons licenses.  
106 Any surplus in the fund on hand at the end of each fiscal  
107 year may be expended for other law-enforcement purposes  
108 or operating needs of the sheriff's office, as the sheriff may  
109 consider appropriate.

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

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

116 (2) Any handgun safety or training course or class  
117 available to the general public offered by an official  
118 law-enforcement organization, community college, junior  
119 college, college or private or public institution or organiza-  
120 tion or handgun training school utilizing instructors duly  
121 certified by the institution;

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

125 (4) Any handgun training or safety course or class  
126 conducted by any branch of the United States Military,  
127 Reserve or National Guard.

128 A photocopy of a certificate of completion of any of the  
129 courses or classes or an affidavit from the instructor, school,  
130 club, organization or group that conducted or taught said  
131 course or class attesting to the successful completion of the  
132 course or class by the applicant or a copy of any document  
133 which shows successful completion of the course or class  
134 shall constitute evidence of qualification under this section.

135 (e) All concealed weapons license applications must be  
136 notarized by a notary public duly licensed under article four,  
137 chapter twenty-nine of this code. Falsification of any portion  
138 of the application constitutes false swearing and is punish-  
139 able under the provisions of section two, article five, chapter  
140 sixty-one of this code.

141 (f) The sheriff shall issue a license unless he or she  
142 determines that the application is incomplete, that it con-  
143 tains statements that are materially false or incorrect or that  
144 applicant otherwise does not meet the requirements set forth  
145 in this section. The sheriff shall issue, reissue or deny the  
146 license within forty-five days after the application is filed if  
147 all required background checks authorized by this section  
148 are completed.

149 (g) Before any approved license shall be issued or become  
150 effective, the applicant shall pay to the sheriff a fee in the  
151 amount of \$25 which the sheriff shall forward to the Super-  
152 intendent of the West Virginia State Police within thirty  
153 days of receipt. The license shall be valid for five years  
154 throughout the state, unless sooner revoked.

155 (h) Each license shall contain the full name and address  
156 of the licensee and a space upon which the signature of the  
157 licensee shall be signed with pen and ink. The issuing sheriff

158 shall sign and attach his or her seal to all license cards. The  
159 sheriff shall provide to each new licensee a duplicate license  
160 card, in size similar to other state identification cards and  
161 licenses, suitable for carrying in a wallet, and the license  
162 card is considered a license for the purposes of this section.

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

168 (j) If an application is denied, the specific reasons for the  
169 denial shall be stated by the sheriff denying the application.  
170 Any person denied a license may file, in the circuit court of  
171 the county in which the application was made, a petition  
172 seeking review of the denial. The petition shall be filed  
173 within thirty days of the denial. The court shall then deter-  
174 mine whether the applicant is entitled to the issuance of a  
175 license under the criteria set forth in this section. The  
176 applicant may be represented by counsel, but in no case may  
177 the court be required to appoint counsel for an applicant.  
178 The final order of the court shall include the court's findings  
179 of fact and conclusions of law. If the final order upholds the  
180 denial, the applicant may file an appeal in accordance with  
181 the Rules of Appellate Procedure of the Supreme Court of  
182 Appeals.

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

187 (l) Whenever any person after applying for and receiving  
188 a concealed handgun license moves from the address named  
189 in the application to another county within the state, the  
190 license remains valid for the remainder of the five years:  
191 *Provided*, That the licensee within twenty days thereafter  
192 notifies the sheriff in the new county of residence in writing  
193 of the old and new addresses.

194 (m) The sheriff shall, immediately after the license is  
195 granted as aforesaid, furnish the Superintendent of the West  
196 Virginia State Police a certified copy of the approved  
197 application. The sheriff shall furnish to the Superintendent  
198 of the West Virginia State Police at any time so requested a  
199 certified list of all licenses issued in the county. The Superin-  
200 tendent of the West Virginia State Police shall maintain a  
201 registry of all persons who have been issued concealed  
202 weapons licenses.

203 (n) Except when subject to an exception under section  
204 six, article seven of this chapter, all licensees must carry  
205 with them a state-issued photo identification card with the  
206 concealed weapons license whenever the licensee is carrying  
207 a concealed weapon. Any licensee who, in violation of this  
208 subsection, fails to have in his or her possession a  
209 state-issued photo identification card and a current con-  
210 cealed weapons license while carrying a concealed weapon  
211 is guilty of a misdemeanor and, upon conviction thereof,  
212 shall be fined not less than \$50 or more than \$200 for each  
213 offense.

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

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

222 (q) Notwithstanding the provisions of subsection (a) of  
223 this section, with respect to application by a former  
224 law-enforcement officer honorably retired from agencies  
225 governed by article fourteen, chapter seven of this code;  
226 article fourteen, chapter eight of this code; article two,  
227 chapter fifteen of this code; and article seven, chapter twenty  
228 of this code, an honorably retired officer is exempt from  
229 payment of fees and costs as otherwise required by this  
230 section.

231 (r) Except as restricted or prohibited by the provisions of  
232 this article or as otherwise prohibited by law, the issuance of  
233 a concealed weapon permit issued in accordance with the  
234 provisions of this section authorizes the holder of the permit  
235 to carry a concealed pistol or revolver on the lands or waters  
236 of this state.

**§61-7-7. Persons prohibited from possessing firearms; classifica-  
tions; reinstatement of rights to possess; offenses;  
penalties.**

1 (a) Except as provided in this section, no person shall  
2 possess a firearm, as such is defined in section two of this  
3 article, who:

4 (1) Has been convicted in any court of a crime punishable  
5 by imprisonment for a term exceeding one year;

6 (2) Is habitually addicted to alcohol;

7 (3) Is an unlawful user of or habitually addicted to any  
8 controlled substance;

9 (4) Has been adjudicated as a mental defective or who  
10 has been involuntarily committed to a mental institution  
11 pursuant to the provisions of chapter twenty-seven of this  
12 code: *Provided*, That once an individual has been adjudi-  
13 cated as a mental defective or involuntarily committed to a  
14 mental institution, he or she shall be duly notified that they  
15 are to immediately surrender any firearms in their ownership  
16 or possession: *Provided, however*, That the mental hygiene  
17 commissioner or circuit judge shall first make a determina-  
18 tion of the appropriate public or private individual or entity  
19 to act as conservator for the surrendered property;

20 (5) Is an alien illegally or unlawfully in the United  
21 States;

22 (6) Has been discharged from the armed forces under  
23 dishonorable conditions;

24 (7) Is subject to a domestic violence protective order that:

25 (A) Was issued after a hearing of which such person  
26 received actual notice and at which such person had an  
27 opportunity to participate;

28 (B) Restrains such person from harassing, stalking or  
29 threatening an intimate partner of such person or child of  
30 such intimate partner or person, or engaging in other  
31 conduct that would place an intimate partner in reasonable  
32 fear of bodily injury to the partner or child; and

33 (C)(i) Includes a finding that such person represents a  
34 credible threat to the physical safety of such intimate  
35 partner or child; or

36 (ii) By its terms explicitly prohibits the use, attempted  
37 use or threatened use of physical force against such intimate  
38 partner or child that would reasonably be expected to cause  
39 bodily injury; or

40 (8) Has been convicted of a misdemeanor offense of  
41 assault or battery either under the provisions of section  
42 twenty-eight, article two of this chapter or the provisions of  
43 subsection (b) or (c), section nine of said article or a federal  
44 or state statute with the same essential elements in which the  
45 victim was a current or former spouse, current or former  
46 sexual or intimate partner, person with whom the defendant  
47 has a child in common, person with whom the defendant  
48 cohabits or has cohabited, a parent or guardian, the defen-  
49 dant's child or ward or a member of the defendant's house-  
50 hold at the time of the offense or has been convicted in any  
51 court of any jurisdiction of a comparable misdemeanor crime  
52 of domestic violence.

53 Any person who violates the provisions of this subsection  
54 shall be guilty of a misdemeanor and, upon conviction  
55 thereof, shall be fined not less than \$100 nor more than  
56 \$1,000 or confined in the county jail for not less than ninety  
57 days nor more than one year, or both.

58 (b) Notwithstanding the provisions of subsection (a) of  
59 this section, any person:

60 (1) Who has been convicted in this state or any other  
61 jurisdiction of a felony crime of violence against the person  
62 of another or of a felony sexual offense; or

63 (2) Who has been convicted in this state or any other  
64 jurisdiction of a felony controlled substance offense involv-  
65 ing a Schedule I controlled substance other than marijuana,  
66 a Schedule II or a Schedule III controlled substance as such  
67 are defined in sections two hundred four, two hundred five  
68 and two hundred six, article two, chapter sixty-a of this code  
69 and who possesses a firearm as such is defined in section two  
70 of this article shall be guilty of a felony and, upon conviction  
71 thereof, shall be confined in a state correctional facility for  
72 not more than five years or fined not more than \$5,000, or  
73 both. The provisions of subsection (c) of this section shall not  
74 apply to persons convicted of offenses referred to in this  
75 subsection or to persons convicted of a violation of this  
76 subsection.

77 (c) Any person prohibited from possessing a firearm by  
78 the provisions of subsection (a) of this section may petition  
79 the circuit court of the county in which he or she resides to  
80 regain the ability to possess a firearm and if the court finds  
81 by clear and convincing evidence that the person is compe-  
82 tent and capable of exercising the responsibility concomitant  
83 with the possession of a firearm, the court may enter an  
84 order allowing the person to possess a firearm if such  
85 possession would not violate any federal law: *Provided*, That  
86 a person prohibited from possessing a firearm by the provi-  
87 sions of subdivision (4), subsection (a) of this section may  
88 petition to regain the ability to possess a firearm in accor-  
89 dance with the provisions of section five, article seven-a of  
90 this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

.....  
*Governor*