

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 2431**

5
6 (By Delegates R. Phillips, Cowles, Hunt, Marcum,
7 Moye, Pethtel and Stowers)

8 (Passed April 13, 2013; in effect ninety days from passage.)
9

10 AN ACT to amend and reenact §61-7-2 and §61-7-7 of the Code of West
11 Virginia, 1931, as amended, all relating to the process for
12 obtaining a state license to carry a concealed deadly weapon;
13 conforming state licensure law to meet federal "Brady
14 Exemption" requirements; clarifying certain restrictions and
15 prohibitions; clarifying effect of expungement, pardons or
16 reversal of prior offenses on permit applications; clarifying
17 training and certification requirements; and clarifying
18 background check requirements.

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

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

22 **ARTICLE 7. DANGEROUS WEAPONS.**

23 **§61-7-4. License to carry deadly weapons; how obtained.**

24 (a) Except as provided in subsection (h) of this section, any
25 person desiring to obtain a state license to carry a concealed
26 deadly weapon shall apply to the sheriff of his or her county for

1 the license, and shall pay to the sheriff, at the time of
2 application, a fee of \$75, of which \$15 of that amount shall be
3 deposited in the Courthouse Facilities Improvement Fund created by
4 section six, article twenty-six, chapter twenty-nine of this code.
5 Concealed weapons permits may only be issued for pistols or
6 revolvers. Each applicant shall file with the sheriff a complete
7 application, as prepared by the Superintendent of the West Virginia
8 State Police, in writing, duly verified, which sets forth only the
9 following licensing requirements:

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

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

21 (3) That the applicant is twenty-one years of age or older:
22 *Provided*, That any individual who is less than twenty-one years of
23 age and possesses a properly issued concealed weapons license as of
24 the effective date of this article shall be licensed to maintain
25 his or her concealed weapons license notwithstanding the provisions
26 of this section requiring new applicants to be at least twenty-one

1 years of age: *Provided, however,* That upon a showing of any
2 applicant who is eighteen years of age or older that he or she is
3 required to carry a concealed weapon as a condition for employment,
4 and presents satisfactory proof to the sheriff thereof, then he or
5 she shall be issued a license upon meeting all other conditions of
6 this section. Upon discontinuance of employment that requires the
7 concealed weapons license, if the individual issued the license is
8 not yet twenty-one years of age, then the individual issued the
9 license is no longer eligible and must return his or her license to
10 the issuing sheriff;

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

15 (A) Residential or court-ordered treatment for alcoholism or
16 alcohol detoxification or drug treatment; or

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

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

23 (6) That the applicant has not been convicted of a misdemeanor
24 crime of violence other than an offense set forth in subsection (7)
25 of this section in the five years immediately preceding the
26 application.

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

12 (8) That the applicant is not under indictment for a felony
13 offense or is not currently serving a sentence of confinement,
14 parole, probation or other court-ordered supervision imposed by a
15 court of any jurisdiction or is the subject of an emergency or
16 temporary domestic violence protective order or is the subject of
17 a final domestic violence protective order entered by a court of
18 any jurisdiction;

19 (9) That the applicant has not been adjudicated to be mentally
20 incompetent or involuntarily committed to a mental institution. If
21 the applicant has been adjudicated mentally incompetent or
22 involuntarily committed the applicant must provide a court order
23 reflecting that the applicant is no longer under such disability
24 and the applicant's right to possess or receive a firearm has been
25 restored.

26 (10) That the applicant has qualified under the minimum

1 requirements set forth in subsection (d) of this section for
2 handling and firing the weapon: *Provided*, That this requirement
3 shall be waived in the case of a renewal applicant who has
4 previously qualified; and

5 (11) That the applicant authorizes the sheriff of the county,
6 or his or her designee, to conduct an investigation relative to the
7 information contained in the application.

8 (b) For both initial and renewal applications, the sheriff
9 shall conduct an investigation including a nationwide criminal
10 background check consisting of inquiries of the National Instant
11 Criminal Background Check System, the West Virginia criminal
12 history record responses and the National Interstate Identification
13 Index and shall review the information received in order to verify
14 that the information required in subsection (a) of this section is
15 true and correct.

16 (c) Sixty dollars of the application fee and any fees for
17 replacement of lost or stolen licenses received by the sheriff
18 shall be deposited by the sheriff into a Concealed Weapons License
19 Administration Fund. The fund shall be administered by the sheriff
20 and shall take the form of an interest-bearing account with any
21 interest earned to be compounded to the fund. Any funds deposited
22 in this Concealed Weapon License Administration Fund are to be
23 expended by the sheriff to pay for the costs associated with
24 issuing concealed weapons licenses. Any surplus in the fund on
25 hand at the end of each fiscal year may be expended for other
26 law-enforcement purposes or operating needs of the sheriff's

1 office, as the sheriff may consider appropriate.

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

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

8 (2) Any handgun safety or training course or class available
9 to the general public offered by an official law-enforcement
10 organization, community college, junior college, college or private
11 or public institution or organization or handgun training school
12 utilizing instructors duly certified by the institution;

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

16 (4) Any handgun training or safety course or class conducted
17 by any branch of the United States Military, Reserve or National
18 Guard or proof of other handgun qualification received while
19 serving in any branch of the United States Military, Reserve or
20 National Guard.

21 A photocopy of a certificate of completion of any of the
22 courses or classes or an affidavit from the instructor, school,
23 club, organization or group that conducted or taught said course or
24 class attesting to the successful completion of the course or class
25 by the applicant or a copy of any document which shows successful
26 completion of the course or class shall constitute evidence of

1 qualification under this section.

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

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

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

21 (h) Each license shall contain the full name and address of
22 the licensee and a space upon which the signature of the licensee
23 shall be signed with pen and ink. The issuing sheriff shall sign
24 and attach his or her seal to all license cards. The sheriff shall
25 provide to each new licensee a duplicate license card, in size
26 similar to other state identification cards and licenses, suitable

1 for carrying in a wallet, and the license card is considered a
2 license for the purposes of this section.

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

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

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

26 (l) Whenever any person after applying for and receiving a

1 concealed handgun license moves from the address named in the
2 application to another county within the state, the license remains
3 valid for the remainder of the five years: *Provided*, That the
4 licensee within twenty days thereafter notifies the sheriff in the
5 new county of residence in writing of the old and new addresses.

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

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

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

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

5 (q) Notwithstanding the provisions of subsection (a) of this
6 section, with respect to application by a former law-enforcement
7 officer honorably retired from agencies governed by article
8 fourteen, chapter seven of this code; article fourteen, chapter
9 eight of this code; article two, chapter fifteen of this code; and
10 article seven, chapter twenty of this code, an honorably retired
11 officer is exempt from payment of fees and costs as otherwise
12 required by this section. All other application and background
13 check requirements set forth in this shall be applicable to these
14 applicants.

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

20 **§61-7-7. Persons prohibited from possessing firearms;**
21 **classifications; reinstatement of rights to**
22 **possess; offenses; penalties.**

23 (a) Except as provided in this section, no person shall
24 possess a firearm, as such is defined in section two of this
25 article, who:

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

3 (2) Is habitually addicted to alcohol;

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

6 (4) Has been adjudicated to be mentally incompetent or who has
7 been involuntarily committed to a mental institution pursuant to
8 the provisions of chapter twenty-seven of this code or in similar
9 law of another jurisdiction: *Provided*, That once an individual has
10 been adjudicated as a mental defective or involuntarily committed
11 to a mental institution, he or she shall be duly notified that they
12 are to immediately surrender any firearms in their ownership or
13 possession: *Provided, however*, That the mental hygiene commissioner
14 or circuit judge shall first make a determination of the
15 appropriate public or private individual or entity to act as
16 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) Is subject to a domestic violence protective order that:

21 (A) Was issued after a hearing of which such person received
22 actual notice and at which such person had an opportunity to
23 participate;

24 (B) Restrains such person from harassing, stalking or
25 threatening an intimate partner of such person or child of such
26 intimate partner or person, or engaging in other conduct that would

1 place an intimate partner in reasonable fear of bodily injury to
2 the partner or child; and

3 (C)(i) Includes a finding that such person represents a
4 credible threat to the physical safety of such intimate partner or
5 child; or

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

10 (8) Has been convicted of a misdemeanor offense of assault or
11 battery either under the provisions of section twenty-eight,
12 article two of this chapter or the provisions of subsection (b) or
13 (c), section nine of said article or a federal or state statute
14 with the same essential elements in which the victim was a current
15 or former spouse, current or former sexual or intimate partner,
16 person with whom the defendant has a child in common, person with
17 whom the defendant cohabits or has cohabited, a parent or guardian,
18 the defendant's child or ward or a member of the defendant's
19 household at the time of the offense or has been convicted in any
20 court of any jurisdiction of a comparable misdemeanor crime of
21 domestic violence.

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

1 (b) Notwithstanding the provisions of subsection (a) of this
2 section, any person:

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

6 (2) Who has been convicted in this state or any other
7 jurisdiction of a felony controlled substance offense involving a
8 Schedule I controlled substance other than marijuana, a Schedule II
9 or a Schedule III controlled substance as such are defined in
10 sections two hundred four, two hundred five and two hundred six,
11 article two, chapter sixty-a of this code and who possesses a
12 firearm as such is defined in section two of this article shall be
13 guilty of a felony and, upon conviction thereof, shall be confined
14 in a state correctional facility for not more than five years or
15 fined not more than \$5,000, or both. The provisions of subsection
16 (c) of this section shall not apply to persons convicted of
17 offenses referred to in this subsection or to persons convicted of
18 a violation of this subsection.

19 (c) Any person prohibited from possessing a firearm by the
20 provisions of subsection (a) of this section may petition the
21 circuit court of the county in which he or she resides to regain
22 the ability to possess a firearm and if the court finds by clear
23 and convincing evidence that the person is competent and capable of
24 exercising the responsibility concomitant with the possession of a
25 firearm, the court may enter an order allowing the person to
26 possess a firearm if such possession would not violate any federal

1 law: *Provided*, That a person prohibited from possessing a firearm
2 by the provisions of subdivision (4), subsection (a) of this
3 section may petition to regain the ability to possess a firearm in
4 accordance with the provisions of section five, article seven-a of
5 this chapter.

6 (d) Any person who has been convicted of an offense which
7 disqualifies him or her from possessing a firearm by virtue of a
8 criminal conviction whose conviction was expunged or set aside or
9 who subsequent thereto receives an unconditional pardon for said
10 offense shall not be prohibited from possessing a firearm by the
11 provisions of the section.