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H. B. 2431

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

[Introduced February 13, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §61-7-4 of the Code of West Virginia,
1931, as amended, relating to the application process for
obtaining a state license to carry a concealed deadly weapon.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

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

(a) Except as provided in subsection (h) of this section, any
person desiring to obtain a state license to carry a concealed
deadly weapon shall apply to the sheriff of his or her county for
the license, and shall pay to the sheriff, at the time of
application, a fee of \$75, of which \$15 of that amount shall be
deposited in the Courthouse Facilities Improvement Fund created by
section six, article twenty-six, chapter twenty-nine of this code.

1 Concealed weapons permits may only be issued for pistols or
2 revolvers. Each applicant shall file with the sheriff a complete
3 application, as prepared by the Superintendent of the West Virginia
4 State Police, in writing, duly verified, which sets forth only the
5 following licensing requirements:

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

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

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

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

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

13 (A) Residential or court-ordered treatment for alcoholism or
14 alcohol detoxification or drug treatment; or

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

17 (5) That the applicant has not been convicted of a felony, ~~or~~
18 of an act unless the conviction has been expunged or set aside or
19 the applicant's civil rights have been restored or the applicant
20 has been pardoned for the offense;

21 (6) That the applicant has not been convicted of a misdemeanor
22 crime of violence involving the misuse of a deadly weapon within
23 the five years immediately preceding the application, other than a
24 crime described in subdivision (7) of this subsection;

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

16 ~~(7)~~ (8) That the applicant is not under indictment for a
17 felony offense or is not currently serving a sentence of
18 confinement, parole, probation or other court-ordered supervision
19 imposed by a court of any jurisdiction or is the subject of an
20 emergency or temporary domestic violence protective order or is the
21 subject of a final domestic violence protective order entered by a
22 court of any jurisdiction;

23 ~~(8)~~ (9) That the applicant has not been adjudicated to be
24 mentally incompetent. If the applicant has been adjudicated

1 mentally incompetent the applicant must provide a court order
2 reflecting that the applicant is no longer under such disability or
3 is not otherwise prohibited from possessing or receiving a firearm
4 by 18 U.S.C. § 922(g) or (n) or by section seven of this article;

5 ~~(9)~~ (10) That the applicant has qualified under the minimum
6 requirements set forth in subsection (d) of this section for
7 handling and firing the weapon: *Provided*, That this requirement
8 shall be waived in the case of a renewal applicant who has
9 previously qualified; and

10 ~~(10)~~ (11) That the applicant authorizes the sheriff of the
11 county, or his or her designee, to conduct an investigation
12 relative to the information contained in the application.

13 (b) For both initial and renewal applications, the sheriff
14 shall conduct an investigation including ~~a nationwide criminal~~
15 ~~background check consisting of checking~~ an inquiry of the National
16 Instant Criminal Background Check System and the West Virginia
17 criminal history record responses, and shall review the information
18 received in order to verify that the information required in
19 subsection (a) of this section is true and correct.

20 (c) Sixty dollars of the application fee and any fees for
21 replacement of lost or stolen licenses received by the sheriff
22 shall be deposited by the sheriff into a Concealed Weapons License
23 Administration Fund. The fund shall be administered by the sheriff
24 and shall take the form of an interest-bearing account with any

1 interest earned to be compounded to the fund. Any funds deposited
2 in this Concealed Weapon License Administration Fund are to be
3 expended by the sheriff to pay for the costs associated with
4 issuing concealed weapons licenses. Any surplus in the fund on
5 hand at the end of each fiscal year may be expended for other
6 law-enforcement purposes or operating needs of the sheriff's
7 office, as the sheriff may consider appropriate.

8 (d) All persons applying for a license must complete a
9 training course in handling and firing a handgun. The successful
10 completion of any of the following courses fulfills this training
11 requirement:

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

14 (2) Any handgun safety or training course or class available
15 to the general public offered by an official law-enforcement
16 organization, community college, junior college, college or private
17 or public institution or organization or handgun training school
18 utilizing instructors duly certified by the institution;

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

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

1 A photocopy of a certificate of completion of any of the
2 courses or classes or an affidavit from the instructor, school,
3 club, organization or group that conducted or taught said course or
4 class attesting to the successful completion of the course or class
5 by the applicant or a copy of any document which shows successful
6 completion of the course or class shall constitute evidence of
7 qualification under this section.

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

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

21 (g) Before any approved license shall be issued or become
22 effective, the applicant shall pay to the sheriff a fee in the
23 amount of \$25 which the sheriff shall forward to the Superintendent
24 of the West Virginia State Police within thirty days of receipt.

1 The license shall be valid for five years throughout the state,
2 unless sooner revoked.

3 (h) Each license shall contain the full name and address of
4 the licensee and a space upon which the signature of the licensee
5 shall be signed with pen and ink. The issuing sheriff shall sign
6 and attach his or her seal to all license cards. The sheriff shall
7 provide to each new licensee a duplicate license card, in size
8 similar to other state identification cards and licenses, suitable
9 for carrying in a wallet, and the license card is considered a
10 license for the purposes of this section.

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

16 (j) If an application is denied, the specific reasons for the
17 denial shall be stated by the sheriff denying the application. Any
18 person denied a license may file, in the circuit court of the
19 county in which the application was made, a petition seeking review
20 of the denial. The petition shall be filed within thirty days of
21 the denial. The court shall then determine whether the applicant
22 is entitled to the issuance of a license under the criteria set
23 forth in this section. The applicant may be represented by
24 counsel, but in no case may the court be required to appoint

1 counsel for an applicant. The final order of the court shall
2 include the court's findings of fact and conclusions of law. If
3 the final order upholds the denial, the applicant may file an
4 appeal in accordance with the Rules of Appellate Procedure of the
5 Supreme Court of Appeals.

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

10 (l) Whenever any person after applying for and receiving a
11 concealed handgun license moves from the address named in the
12 application to another county within the state, the license remains
13 valid for the remainder of the five years: *Provided*, That the
14 licensee within twenty days thereafter notifies the sheriff in the
15 new county of residence in writing of the old and new addresses.

16 (m) The sheriff shall, immediately after the license is
17 granted as aforesaid, furnish the Superintendent of the West
18 Virginia State Police a certified copy of the approved application.
19 The sheriff shall furnish to the Superintendent of the West
20 Virginia State Police at any time so requested a certified list of
21 all licenses issued in the county. The Superintendent of the West
22 Virginia State Police shall maintain a registry of all persons who
23 have been issued concealed weapons licenses.

24 (n) Except when subject to an exception under section six,

1 article seven of this chapter, all licensees must carry with them
2 a state-issued photo identification card with the concealed weapons
3 license whenever the licensee is carrying a concealed weapon. Any
4 licensee who, in violation of this subsection, fails to have in his
5 or her possession a state-issued photo identification card and a
6 current concealed weapons license while carrying a concealed weapon
7 is guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not less than \$50 or more than \$200 for each offense.

9 (o) The sheriff shall deny any application or revoke any
10 existing license upon determination that any of the licensing
11 application requirements established in this section have been
12 violated by the licensee.

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

17 (q) Notwithstanding the provisions of subsection (a) of this
18 section, with respect to application by a former law-enforcement
19 officer honorably retired from agencies governed by article
20 fourteen, chapter seven of this code; article fourteen, chapter
21 eight of this code; article two, chapter fifteen of this code; and
22 article seven, chapter twenty of this code, an honorably retired
23 officer is exempt from payment of fees and costs as otherwise
24 required by this section. All other application and background

1 check requirements specified in this section apply to these
2 applicants.

3 (r) Except as restricted or prohibited by the provisions of
4 this article or as otherwise prohibited by law, the issuance of a
5 concealed weapon permit issued in accordance with the provisions of
6 this section authorizes the holder of the permit to carry a
7 concealed pistol or revolver on the lands or waters of this state.

NOTE: The purpose of this bill is to modify the application process for obtaining a state license to carry a concealed deadly weapon.

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