

H. B. 2980

(By Delegates Householder, A. Evans, Hamilton, Overington,
Hill and Cadle)

[Introduced February 24, 2015; referred to the
Committee on the Judiciary.]

A BILL to repeal §61-7-3 and §61-7-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §20-2-6a of said code; and to amend and reenact §61-7-4 of said code, all relating to the right to bear arms in West Virginia; providing that a concealed weapon license is not required when carrying a concealed handgun for self defense while hunting, hiking, camping or in a motor vehicle; repealing criminal penalty provision for carrying a deadly weapon without license or other authorization; repealing provision relating to exceptions to prohibitions against carrying concealed handguns and from licensing fees; removing requirement that a holder of a license to carry a deadly weapon carry a state issued identification with the weapons license while carrying a concealed weapon and the criminal penalty for violation; and providing the availability of a license does not create a general prohibition on the unlicensed transport or carrying of a deadly weapon.

Be it enacted by the Legislature of West Virginia:

That §61-7-3 and §61-7-6 of the Code of West Virginia, 1931, as amended, be repealed; that §20-2-6a of said code be amended and reenacted; and that §61-7-4 of said code be amended and

1 reenacted, all to read as follows:

2 **CHAPTER 20. NATURAL RESOURCES.**

3 **ARTICLE 2. WILDLIFE RESOURCES.**

4 **§20-2-6a. Carrying a concealed handgun.**

5 (a) Notwithstanding any provision of this code to the contrary, a person ~~licensed to carry a~~
6 ~~concealed weapon pursuant to the provisions of section four, article seven, chapter sixty-one of this~~
7 ~~code~~ who is not prohibited at the time from possessing a firearm pursuant to the provisions of section
8 seven, article seven, chapter sixty-one of this code or by any applicable federal law may carry a
9 handgun in a concealed manner for self defense purposes while afield hunting, hiking, camping or
10 in or on a motor vehicle.

11 (b) The provisions of this section shall not exempt any person from obtaining any hunting
12 or fishing license or stamp required by the Division of Natural Resources.

13 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

14 **ARTICLE 7. DANGEROUS WEAPONS.**

15 **§61-7-4. License to carry deadly weapons; how obtained.**

16 (a) Except as provided in subsection (h) of this section, any person desiring to obtain a state
17 license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the
18 license, and pay to the sheriff, at the time of application, a fee of \$75, of which \$15 of that amount
19 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article
20 twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for
21 pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by
22 the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only

1 the following licensing requirements:

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

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

10 (3) That the applicant is twenty-one years of age or older: *Provided*, That any individual who
11 is less than twenty-one years of age and possesses a properly issued concealed weapons license as
12 of the effective date of this article shall be licensed to maintain his or her concealed weapons license
13 notwithstanding the provisions of this section requiring new applicants to be at least twenty-one
14 years of age: *Provided, however*, That upon a showing of any applicant who is eighteen years of age
15 or older that he or she is required to carry a concealed weapon as a condition for employment, and
16 presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting
17 all other conditions of this section. Upon discontinuance of employment that requires the concealed
18 weapons license, if the individual issued the license is not yet twenty-one years of age, then the
19 individual issued the license is no longer eligible and must return his or her license to the issuing
20 sheriff;

21 (4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not
22 an unlawful user thereof as evidenced by either of the following within the three years immediately

1 prior to the application:

2 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
3 treatment; or

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

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

8 (6) That the applicant has not been convicted of a misdemeanor crime of violence other than
9 an offense set forth in subsection (7) of this section in the five years immediately preceding the
10 application;

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

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

1 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily
2 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or
3 involuntarily committed the applicant must provide a court order reflecting that the applicant is no
4 longer under such disability and the applicant's right to possess or receive a firearm has been
5 restored;

6 (10) That the applicant is not prohibited under the provisions of section seven of this article
7 or federal law, including 18 U.S.C. § 922(q) or (n), from receiving, possessing or transporting a
8 firearm;

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

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

14 (b) For both initial and renewal applications, the sheriff shall conduct an investigation
15 including a nationwide criminal background check consisting of inquiries of the National Instant
16 Criminal Background Check System, the West Virginia criminal history record responses and the
17 National Interstate Identification Index and shall review the information received in order to verify
18 that the information required in subsection (a) of this section is true and correct. A license may not
19 be issued unless the issuing sheriff has verified through the National Instant Criminal Background
20 Check System that the information available to him or her does not indicate that receipt or
21 possession of a firearm by the applicant would be in violation of the provisions of section seven of
22 this article or federal law, including 18 U.S.C. § 922(g) or (n).

1 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses
2 received by the sheriff shall be deposited by the sheriff into a concealed weapons license
3 administration fund. The fund shall be administered by the sheriff and shall take the form of an
4 interest-bearing account with any interest earned to be compounded to the fund. Any funds
5 deposited in this concealed weapon license administration fund are to be expended by the sheriff to
6 pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand
7 at the end of each fiscal year may be expended for other law-enforcement purposes or operating
8 needs of the sheriff's office, as the sheriff considers appropriate.

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

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

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

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

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

22 A photocopy of a certificate of completion of any of the courses or classes or an affidavit

1 from the instructor, school, club, organization or group that conducted or taught the course or class
2 attesting to the successful completion of the course or class by the applicant or a copy of any
3 document which shows successful completion of the course or class is evidence of qualification
4 under this section.

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

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

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

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

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

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

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

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

20 (m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the
21 Superintendent of the West Virginia State Police a certified copy of the approved application. The
22 sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested

1 a certified list of all licenses issued in the county. The Superintendent of the West Virginia State
2 Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

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

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

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

15 ~~(q)~~ (p) Notwithstanding the provisions of subsection (a) of this section, with respect to
16 application by a former law-enforcement officer honorably retired from agencies governed by article
17 fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter
18 fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is
19 exempt from payment of fees and costs as otherwise required by this section. All other application
20 and background check requirements set forth in this shall be applicable to these applicants.

21 ~~(r)~~ (q) Except as restricted or prohibited by the provisions of this article or as otherwise
22 prohibited by law, the issuance of a concealed weapon permit issued in accordance with the

1 provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver
2 on the lands or waters of this state.

3 (r) The availability of a license under this section does not impose a general prohibition on
4 the unlicensed transport or unlicensed carrying of a deadly weapon.

NOTE: The purpose of this bill is to provide additional rights to bear arms in West Virginia. The bill provides that a concealed weapon license is not required when carrying a concealed handgun for self defense while hunting, hiking, camping or in a motor vehicle. It repeals the criminal penalty provision for carrying a deadly weapon without license or other authorization and repeals the provision relating to exceptions to prohibitions against carrying concealed handguns and from licensing fees. The bill removes the requirement that a holder of a license to carry a deadly weapon carry a state issued identification with the weapons license while carrying a concealed weapon and the criminal penalty for violation. And the bill provides that the availability of a license does not create a general prohibition on the unlicensed transport or unlicensed carrying of a deadly weapon.

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

§61-7-3 and §61-7-6 are repealed.