

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2223

BY DELEGATE PUSHKIN

[Introduced January 10, 2019; Referred
to the Committee on Veterans' Affairs and Homeland
Security then the Judiciary.]

1 A BILL to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating
 2 to recognizing those in active military service as residents for the purpose of obtaining
 3 concealed permits to licenses while stationed at a West Virginia military installation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

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

1 (a) Except as provided in subsection (h) of this section, any person desiring to obtain a
 2 state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for
 3 the license, and pay to the sheriff, at the time of application, a fee of \$75, of which \$15 of that
 4 amount shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6
 5 of this code. Concealed weapons license may only be issued for pistols and revolvers. Each
 6 applicant shall file with the sheriff a complete application, as prepared by the Superintendent of
 7 the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing
 8 requirements:

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

14 (2) That, on the date the application is made, the applicant is a bona fide United States
 15 citizen or legal resident thereof and resident of this state and of the county in which the application
 16 is made and has a valid driver's license or other state-issued photo identification showing the
 17 residence: Provided, That if the applicant or spouse is in the Armed Forces of the United States,
 18 the applicant shall be considered a resident of this state for purposes of this section if the applicant
 19 is stationed at a military installation in this state but maintains a residence in another state and
 20 claims that residence for voting or tax purposes;

21 (3) That the applicant is 21 years of age or older;

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

25 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
26 treatment; or

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

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

31 (6) That the applicant has not been convicted of a misdemeanor crime of violence other
32 than an offense set forth in subdivision (7) of this section in the five years immediately preceding
33 the application;

34 (7) That the applicant has not been convicted of a misdemeanor crime of domestic
35 violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery
36 either under section 28, article two of this chapter or subsection (b) or (c), section nine, article
37 two of this chapter in which the victim was a current or former spouse, current or former sexual
38 or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or
39 guardian, the defendant's child or ward or a member of the defendant's household at the time of
40 the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than
41 this state;

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

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

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

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

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

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

69 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen
70 licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license
71 administration fund. The fund shall be administered by the sheriff and shall take the form of an
72 interest-bearing account with any interest earned to be compounded to the fund. Any funds

73 deposited in this concealed weapon license administration fund are to be expended by the sheriff
74 to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on
75 hand at the end of each fiscal year may be expended for other law-enforcement purposes or
76 operating needs of the sheriff's office, as the sheriff considers appropriate.

77 (d) All persons applying for a license must complete a training course in handling and firing
78 a handgun, which includes the actual live firing of ammunition by the applicant. The successful
79 completion of any of the following courses fulfills this training requirement: *Provided*, That the
80 completed course includes the actual live firing of ammunition by the applicant:

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

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

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

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

91 A photocopy of a certificate of completion of any of the courses or classes or an affidavit
92 from the instructor, school, club, organization or group that conducted or taught the course or
93 class attesting to the successful completion of the course or class by the applicant or a copy of
94 any document which shows successful completion of the course or class is evidence of
95 qualification under this section and shall include the instructor's name, signature and NRA or state
96 instructor identification number, if applicable.

97 (e) All concealed weapons license applications must be notarized by a notary public duly
98 licensed under article four, chapter 29 of this code. Falsification of any portion of the application

99 constitutes false swearing and is punishable under §61-5-2, of this code.

100 (f) The sheriff shall issue a license unless he or she determines that the application is
101 incomplete, that it contains statements that are materially false or incorrect or that applicant
102 otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue
103 or deny the license within 45 days after the application is filed if all required background checks
104 authorized by this section are completed.

105 (g) Before any approved license is issued or is effective, the applicant shall pay to the
106 sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West
107 Virginia State Police within 30 days of receipt. The license is valid for five years throughout the
108 state, unless sooner revoked.

109 (h) Each license shall contain the full name and address of the licensee and a space upon
110 which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign
111 and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a
112 duplicate license card, in size similar to other state identification cards and licenses, suitable for
113 carrying in a wallet, and the license card is considered a license for the purposes of this section.
114 All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties
115 in size, appearance and information and shall feature a photograph of the licensee.

116 (i) The Superintendent of the West Virginia State Police, in cooperation with the West
117 Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for licenses
118 and license cards showing that the license has been granted and shall do any other act required
119 to be done to protect the state and see to the enforcement of this section.

120 (j) If an application is denied, the specific reasons for the denial shall be stated by the
121 sheriff denying the application. Any person denied a license may file, in the circuit court of the
122 county in which the application was made, a petition seeking review of the denial. The petition
123 shall be filed within 30 days of the denial. The court shall then determine whether the applicant is
124 entitled to the issuance of a license under the criteria set forth in this section. The applicant may

125 be represented by counsel, but in no case is the court required to appoint counsel for an applicant.
126 The final order of the court shall include the court's findings of fact and conclusions of law. If the
127 final order upholds the denial, the applicant may file an appeal in accordance with the Rules of
128 Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of
129 law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and
130 attorney's fees, payable by the sheriff's office which issued the denial.

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

134 (l) Whenever any person after applying for and receiving a concealed weapon license
135 moves from the address named in the application to another county within the state, the license
136 remains valid for the remainder of the five years unless the sheriff of the new county has
137 determined that the person is no longer eligible for a concealed weapon license under this article,
138 and the sheriff shall issue a new license bearing the person's new address and the original
139 expiration date for a fee not to exceed \$5: *Provided*, That the licensee, within 20 days thereafter,
140 notifies the sheriff in the new county of residence in writing of the old and new addresses.

141 (m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the
142 Superintendent of the West Virginia State Police a certified copy of the approved application. The
143 sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so
144 requested a certified list of all licenses issued in the county. The Superintendent of the West
145 Virginia State Police shall maintain a registry of all persons who have been issued concealed
146 weapons licenses.

147 (n) The sheriff shall deny any application or revoke any existing license upon
148 determination that any of the licensing application requirements established in this section have
149 been violated by the licensee.

150 (o) A person who is engaged in the receipt, review or in the issuance or revocation of a

151 concealed weapon license does not incur any civil liability as the result of the lawful performance
152 of his or her duties under this article.

153 (p) Notwithstanding subsection (a) of this section, with respect to application by a former
154 law-enforcement officer honorably retired from agencies governed by article 14, chapter seven of
155 this code; article 14, chapter eight of this code; article two, chapter 15 of this code; and article
156 seven, chapter 20 of this code, an honorably retired officer is exempt from payment of fees and
157 costs as otherwise required by this section. All other application and background check
158 requirements set forth in this section are applicable to these applicants.

159 (q) Information collected under this section, including applications, supporting documents,
160 permits, renewals or any other information that would identify an applicant for or holder of a
161 concealed weapon license, is confidential: *Provided:* That this information may be disclosed to a
162 law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a
163 criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person
164 who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be
165 fined not less than \$50 or more than \$200 for each offense.

166 (r) A person who pays fees for training or application pursuant to this article after the
167 effective date of this section is entitled to a tax credit equal to the amount actually paid for training
168 not to exceed \$50: *Provided,* That if such training was provided for free or for less than \$50, then
169 such tax credit may be applied to the fees associated with the initial application.

170 (s) Except as restricted or prohibited by the provisions of this article or as otherwise
171 prohibited by law, the issuance of a concealed weapon license issued in accordance with the
172 provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver
173 on the lands or waters of this state.

NOTE: The purpose of this bill is to allow those in active military service, and their spouses,
while stationed at a West Virginia military installation to be considered as residents of this
state for the purpose of obtaining concealed carry permits.

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