

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2221

BY DELEGATE BARRETT

[Introduced January 10, 2019; Referred
to the Committee on Finance.]

1 A BILL to amend and reenact §61-7-4 and §61-7-4a of the Code of West Virginia, 1931, as
 2 amended, all relating to reducing the cost of the fee for a state license to carry a concealed
 3 weapon.

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~~ \$25. ~~of which \$15 of that~~
 4 ~~amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six,~~
 5 ~~article twenty-six, chapter twenty-nine of this code~~ Concealed weapons license may only be
 6 issued for pistols and revolvers. Each applicant shall file with the sheriff a complete application,
 7 as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which
 8 sets forth only the following licensing 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;

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

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

21 immediately prior to the application:

22 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
23 treatment; or

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

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

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

31 (7) That the applicant has not been convicted of a misdemeanor crime of domestic
32 violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery
33 either under §61-2-28(b) or §61-2-28(c) of this code in which the victim was a current or former
34 spouse, current or former sexual or intimate partner, person with whom the defendant cohabits
35 or has cohabited, a parent or guardian, the defendant's child or ward or a member of the
36 defendant's household at the time of the offense, or a misdemeanor offense with similar essential
37 elements in a jurisdiction other than this state;

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

43 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily
44 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or
45 involuntarily committed the applicant must provide a court order reflecting that the applicant is no
46 longer under such disability and the applicant's right to possess or receive a firearm has been

47 restored;

48 (10) That the applicant is not prohibited under ~~the provisions of~~ §61-5-7 of this code or
49 federal law, including 18 U. S. C. §922(g) or (n), from receiving, possessing or transporting a
50 firearm;

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

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

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

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

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

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

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

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

84 (4) Any handgun training or safety course or class conducted by any branch of the United
85 States military, Reserve or National Guard or proof of other handgun qualification received while
86 serving in any branch of the United States military, Reserve or National Guard.

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

93 (e) All concealed weapons license applications must be notarized by a notary public duly
94 licensed under §29-4-1 et seq. of this code. Falsification of any portion of the application
95 constitutes false swearing and is punishable under §61-5-2 of this code.

96 (f) The sheriff shall issue a license unless he or she determines that the application is
97 incomplete, that it contains statements that are materially false or incorrect or that applicant
98 otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue

99 or deny the license within 45 days after the application is filed if all required background checks
100 authorized by this section are completed.

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

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

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

116 (j) If an application is denied, the specific reasons for the denial shall be stated by the
117 sheriff denying the application. Any person denied a license may file, in the circuit court of the
118 county in which the application was made, a petition seeking review of the denial. The petition
119 shall be filed within 30 days of the denial. The court shall then determine whether the applicant is
120 entitled to the issuance of a license under the criteria set forth in this section. The applicant may
121 be represented by counsel, but in no case is the court required to appoint counsel for an applicant.
122 The final order of the court shall include the court's findings of fact and conclusions of law. If the
123 final order upholds the denial, the applicant may file an appeal in accordance with the Rules of
124 Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of

125 law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and
126 attorney's fees, payable by the sheriff's office which issued the denial.

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

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

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

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

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

149 (p) Notwithstanding subsection (a) of this section, with respect to application by a former
150 law-enforcement officer honorably retired from agencies governed by §7-14-1 et seq.; §8-14-1 et

151 seq.; §15-2-1 et seq.; and §20-7-1 et seq. of this code, an honorably retired officer is exempt from
 152 payment of fees and costs as otherwise required by this section. All other application and
 153 background check requirements set forth in this section are applicable to these applicants.

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

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

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

§61-7-4a. Provisional license to carry deadly weapons; how obtained.

1 (a) Any person who is at least 18 years of age and less than 21 years of age who desires
 2 to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her
 3 county for a provisional license, and pay to the sheriff, at the time of application, a fee of ~~\$25~~ \$15.
 4 ~~of which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund~~
 5 ~~created by section six, article twenty-six, chapter twenty-nine of this code~~ Provisional licenses
 6 may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete
 7 application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly

8 verified, which sets forth only the following licensing 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 resident of this
15 state and of the county in which 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 at least 18 years of age and less than 21 years of age;

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

21 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
22 treatment; or

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

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

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

30 (7) That the applicant has not been convicted of a misdemeanor crime of domestic
31 violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery
32 under either §61-2-28(b), §61-2-28(c), §61-2-9 (b) or §61-2-9 of this code in which the victim was
33 a current or former spouse, current or former sexual or intimate partner, person with whom the

34 defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a
35 member of the defendant's household at the time of the offense, or a misdemeanor offense with
36 similar essential elements in a jurisdiction other than this state;

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

42 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily
43 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or
44 involuntarily committed, the applicant must provide a court order reflecting that the applicant is no
45 longer under such disability and the applicant's right to possess or receive a firearm has been
46 restored;

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

49 (11) That the applicant has qualified under the minimum requirements set forth in
50 subsection (d) of this section for handling and firing the weapon;

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

53 (b) For provisional license applications, the sheriff shall conduct an investigation including
54 a nationwide criminal background check consisting of inquiries of the National Instant Criminal
55 Background Check System, the West Virginia criminal history record responses and the National
56 Interstate Identification Index, and shall review the information received in order to verify that the
57 information required in subsection (a) of this section is true and correct. A provisional license may
58 not be issued unless the issuing sheriff has verified through the National Instant Criminal
59 Background Check System that the information available does not indicate that receipt of or

60 possession of a firearm by the applicant would be in violation of the provisions of section seven
61 of this article or federal law, including 18 U. S. C. §922(g) or (n).

62 (c) ~~Twenty dollars~~ Fifteen Dollars of the application fee and any fees for replacement of
63 lost or stolen provisional licenses received by the sheriff shall be deposited by the sheriff into a
64 Concealed Weapons License Administration Fund. The fund shall be administered by the sheriff
65 and shall take the form of an interest-bearing account with any interest earned to be compounded
66 to the fund. Any funds deposited in said fund are to be expended by the sheriff to pay the costs
67 associated with issuing concealed weapons provisional licenses. Any surplus in the fund on hand
68 at the end of each fiscal year may be expended for other law-enforcement purposes or operating
69 needs of the sheriff's office, as the sheriff considers appropriate.

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

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

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

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

81 (4) Any proof of current or former service in the United States Armed Forces, Reserves or
82 National Guard.

83 A photocopy of a certificate of completion of any of the courses or classes or an affidavit
84 from the instructor, school, club, organization or group that conducted or taught the course or
85 class attesting to the successful completion of the course or class by the applicant, or a copy of

86 any document which shows successful completion of the course or class, is evidence of
87 qualification under this section. Certificates, affidavits or other documents submitted to show
88 completion of a course or class shall include instructor information and proof of instructor
89 certification, including, if applicable, the instructor's NRA instructor certification number.

90 (e) All provisional license applications must be notarized by a notary public duly licensed
91 under §29-4-1 et seq. of this code. Falsification of any portion of the application constitutes false
92 swearing and is punishable under §61-5-2 of this code.

93 (f) The sheriff shall issue a provisional license unless the sheriff determines that the
94 application is incomplete, that it contains statements that are materially false or incorrect or that
95 applicant otherwise does not meet the requirements set forth in this section. The sheriff shall
96 issue, reissue or deny the license within 45 days after the application is filed once all required
97 background checks authorized by this section are completed.

98 (g) Before any approved license is issued or is effective, the applicant shall pay to the
99 sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West
100 Virginia State Police within 30 days of receipt. The provisional license is valid until the licensee
101 turns 21 years of age, unless sooner revoked.

102 (h) Each provisional license shall contain the full name and address of the licensee and a
103 space upon which the signature of the licensee shall be signed with pen and ink. The issuing
104 sheriff shall sign and attach his or her seal to all provisional license cards. The sheriff shall provide
105 to each new licensee a duplicate license card, in size similar to other state identification cards
106 and licenses, suitable for carrying in a wallet, and the license card is considered a license for the
107 purposes of this section. Duplicate license cards issued shall be uniform across all 55 counties in
108 size, appearance and information and must feature a photograph of the licensee. The provisional
109 license shall be readily distinguishable from a license issued pursuant to §61-7-4 of this code and
110 shall state: "NOT NICS EXEMPT. This license confers the same rights and privileges to carry a
111 concealed pistol or revolver on the lands or waters of this state as a license issued pursuant to

112 §61-7-4 of this code, except that this license does not satisfy the requirements of 18 U. S. C.
113 §922(t)(3). A NICS check must be performed prior to purchase of a firearm from a federally
114 licensed firearm dealer.”

115 (i) The Superintendent of the West Virginia State Police, in coordination with the West
116 Virginia Sheriffs’ Bureau of Professional Standards, shall prepare uniform applications for
117 provisional licenses and license cards showing that the license has been granted and shall
118 perform any other act required to protect the state and to enforce of section.

119 (j) If an application is denied, the specific reasons for the denial shall be stated by the
120 sheriff denying the application. Any person denied a provisional license may file, in the circuit
121 court of the county in which the application was made, a petition seeking review of the denial. The
122 petition shall be filed within 30 days of the denial. The court shall then determine whether the
123 applicant is entitled to the issuance of a provisional license under the criteria set forth in this
124 section. The applicant may be represented by counsel, but in no case is the court required to
125 appoint counsel for an applicant. The final order of the court shall include the court’s findings of
126 fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal
127 in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the
128 findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be
129 entitled to reasonable costs and attorney’s fees, payable by the sheriff’s office which issued the
130 denial.

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

134 (l) Whenever any person after applying for and receiving a provisional concealed weapon
135 license moves from the address named in the application to another county within the state, the
136 license remains valid until the licensee turns 21 years of age unless the sheriff of the new county
137 has determined that the person is no longer eligible for a provisional concealed weapon license

138 under this article, and the sheriff shall issue a new provisional license bearing the person's new
139 address and the original expiration date for a fee not to exceed \$5: *Provided*, That the licensee
140 within 20 days thereafter notifies the sheriff in the new county of residence in writing of the old
141 and new addresses.

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

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

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

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

161 (q) Except as restricted or prohibited by the provisions of this article or as otherwise
162 prohibited by law, the issuance of a provisional concealed weapon license issued in accordance
163 with the provisions of this section authorizes the holder of the license to carry a concealed pistol

164 or revolver on the lands or waters of this state.

NOTE: The purpose of this bill is to reduce the cost of the fee for a state license to carry a concealed weapon.

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