

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 393

By Senator Tarr

[Introduced January 12, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-7-4 of the Code of West Virginia 1931, as amended, relating to
 2 clarity regarding placing limitations on a concealed carry permit; excluding an individual
 3 from being charged with a crime in certain circumstances; and adding a severability
 4 clause.

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) (1) Except as provided in §61-7-4(q) of this code, a legal resident or citizen of West
 2 Virginia desiring to obtain a state resident license to carry a concealed deadly weapon shall apply
 3 to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a
 4 fee of \$50. A concealed weapons license may only be issued for pistols and revolvers.

5 (2) A legal resident or citizen of another state of the United States desiring to obtain a
 6 nonresident state license to carry a concealed deadly weapon shall apply to a sheriff of any county
 7 in this state for the license, and pay to the sheriff, at the time of application, a fee of \$100. A
 8 concealed weapons license may only be issued for pistols and revolvers.

9 (b) Each applicant for a state resident license or nonresident license to carry a concealed
 10 deadly weapon shall file with the sheriff a complete application, as prepared by the Superintendent
 11 of the West Virginia State Police, in writing, duly verified, which sets forth only the following
 12 licensing requirements:

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

18 (2) That, on the date the application is made, the applicant is a bona fide United States
 19 citizen or legal resident thereof and either a resident of this state and of the county in which the

20 application is made or a resident of another state in the United States and has a valid driver's
21 license or other state-issued or federally issued photo identification showing the residence;

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

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

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

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

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

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

35 (7) That the applicant has not been convicted of a misdemeanor crime of domestic
36 violence as defined in 18 U.S.C. §921(a)(33), or a misdemeanor offense of assault or battery
37 either under §61-2-28 of this code or §61-2-9(b) or §61-2-9(c) of this code, in which the victim was
38 a current or former spouse, current or former sexual or intimate partner, person with whom the
39 defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a
40 member of the defendant's household at the time of the offense, or a misdemeanor offense with
41 similar essential elements in a jurisdiction other than 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, is the subject of an emergency or temporary domestic violence protective
45 order, or is the subject of a final domestic violence protective order entered by a court of any

46 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 shall 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 §61-7-7 of this code or
53 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 (e) 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 (c) 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 (b) of this section is true and correct. A license may not
65 be issued unless the issuing sheriff has verified through the National Instant Criminal Background
66 Check System that the information available to him or her does not indicate that receipt or
67 possession of a firearm by the applicant would be in violation of the provisions of §61-7-7 of this
68 code or federal law, including 18 U.S.C. §922(g) or (n).

69 (d)(1) Twenty-five dollars of the resident license application fee shall be deposited into the
70 State Treasury and credited to the account of the State Police, and \$25 of the application fee and
71 any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the

72 sheriff into a concealed weapons license administration fund. The fund shall be administered by
73 the sheriff and shall take the form of an interest-bearing account with any interest earned to be
74 compounded to the fund. Any funds deposited in this concealed weapon license administration
75 fund are to be expended by the sheriff to pay the costs associated with issuing concealed
76 weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended
77 for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff
78 considers appropriate.

79 (2) Fifteen dollars of the nonresident license application fee shall be deposited in the
80 Courthouse Facilities Improvement Fund created by §29-26-6 of this code; \$25 of the application
81 fee shall be deposited into the State Treasury and credited to the account of the State Police for
82 the purchase of vehicles, equipment for vehicles, and maintenance of vehicles; and \$60 of the
83 application fee shall be deposited in the concealed weapons license administration fund to be
84 administered as provided in subsection (d) of this section.

85 (e) All persons applying for a license shall complete a training course in handling and firing
86 a handgun, which includes the actual live firing of ammunition by the applicant. The successful
87 completion of any of the following courses fulfills this training requirement: *Provided*, That the
88 completed course includes the actual live firing of ammunition by the applicant:

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

90 (2) Any handgun safety or training course or class available to the general public offered by
91 an official law-enforcement organization, community college, junior college, college, or private or
92 public institution or organization, or handgun training school using instructors certified by the
93 institution;

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

96 (4) Any handgun training or safety course or class conducted by any branch of the United
97 States military, reserve, or National Guard, or proof of other handgun qualification received while

98 serving in any branch of the United States military, reserve, or National Guard.

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

105 (f) All concealed weapons license applications must be notarized by a notary public duly
106 licensed under §39-4-1 *et seq.* of this code. Falsification of any portion of the application
107 constitutes false swearing and is punishable under §61-5-2 of this code.

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

113 (h) A license in effect as of the effective date of the amendments to this section enacted
114 during the 2019 regular session of the Legislature shall, subject to revocation for cause, be valid
115 until the licensee's birthday during the fifth year from the date of issuance or five years from the
116 date of issuance, whichever is later in time. Renewals of such licenses and licenses newly issued
117 after the effective date of the amendments to this section enacted during the 2019 regular session
118 of the Legislature, subject to revocation for cause, are valid for a period of five years from the
119 licensees' most recent birthday.

120 (i) Each license shall contain the full name and address of the licensee and a space upon
121 which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign
122 and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a
123 duplicate license card, in size similar to other state identification cards and licenses, suitable for

124 carrying in a wallet, and the license card is considered a license for the purposes of this section. All
125 duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties in
126 size, appearance, and information and shall feature a photograph of the licensee.

127 (j) The Superintendent of the West Virginia State Police, in cooperation with the West
128 Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for both
129 resident and nonresident licenses and license cards showing that the license has been granted
130 and shall do any other act required to be done to protect the state and see to the enforcement of
131 this section.

132 (k) If an application is denied, the specific reasons for the denial shall be stated by the
133 sheriff denying the application. Any person denied a license may file, in the circuit court of the
134 county in which the application was made, a petition seeking review of the denial. The petition
135 shall be filed within 30 days of the denial. The court shall then determine whether the applicant is
136 entitled to the issuance of a license under the criteria set forth in this section. The applicant may be
137 represented by counsel, but in no case is the court required to appoint counsel for an applicant.
138 The final order of the court shall include the court's findings of fact and conclusions of law. If the
139 final order upholds the denial, the applicant may file an appeal in accordance with the Rules of
140 Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of
141 law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and
142 attorney's fees, payable by the sheriff's office which issued the denial.

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

146 (m) Whenever an applicant or licensee relocates from the address provided in his or her
147 application to another address, he or she shall comply with the following notification requirements:

148 (1) Within 20 days of a resident licensee relocating from the address provided in his or her
149 application to another county in the state, he or she shall provide written notification of the

150 relocation to the sheriff of the county to which he or she moved and provide his or her new
151 address. The sheriff shall then issue a new resident license bearing the licensee's new address
152 and the original expiration date, for a fee not to exceed \$5. The license remains valid for the
153 remainder of the original five-year term, unless the sheriff has determined that the person is no
154 longer eligible for a concealed weapon license under the provisions of this article.

155 (2) Within 20 days of a resident licensee relocating from the address provided in his or her
156 application to an address outside the state, he or she shall provide written notification to the sheriff
157 of the issuing county of the relocation and provide his or her new address. The sheriff shall then
158 issue a new nonresident license bearing the licensee's new address and the original expiration
159 date, for a fee not to exceed \$5. The license remains valid for the remainder of the original five-
160 year term unless the sheriff has determined that the person is no longer eligible for a concealed
161 weapon license under the provisions of this article: *Provided*, That any renewal of the license in the
162 new jurisdiction after expiration requires the payment of a nonresident license fee.

163 (3) Within 20 days of a nonresident licensee relocating from the address provided in his or
164 her application to another address outside of the state, he or she shall provide written notification
165 of the relocation to the sheriff of the issuing county and provide his or her new address. The sheriff
166 shall then issue a new nonresident license bearing the licensee's new address and original
167 expiration date, for a fee not to exceed \$5. This license remains valid for the remainder of the
168 original five-year term, unless the sheriff has determined that the person is no longer eligible for a
169 concealed weapon license under the provisions of this article.

170 (4) Within 20 days of a nonresident licensee relocating to West Virginia from the address
171 provided in his or her application, he or she shall provide written notification of the relocation to the
172 sheriff of the county to which he or she has moved and provide his or her new address. The sheriff
173 shall then issue a new resident license bearing the licensee's new address and the original
174 expiration date, for a fee not to exceed \$5. This license remains valid for the remainder of the
175 original five-year term, unless the sheriff has determined that the person is no longer eligible for a

176 concealed weapon license under the provisions of this article.

177 (n) The sheriff shall, immediately after the license is granted under this section furnish the
178 Superintendent of the West Virginia State Police a certified copy of the approved application. The
179 sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so
180 requested a certified list of all licenses issued in the county. The Superintendent of the West
181 Virginia State Police shall maintain a registry of all persons who have been issued concealed
182 weapons licenses.

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

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

189 (q) Notwithstanding subsection (a) of this section, with respect to application for a resident
190 license by an honorably discharged veteran of the armed forces of the United States, reserve, or
191 National Guard, or a former law-enforcement officer honorably retired from agencies governed by
192 §7-14-1 *et seq.* of this code, §8-14-1 *et seq.* of this code, §15-2-1 *et seq.* of this code, and §20-7-1
193 *et seq.* of this code, an honorably retired officer or an honorably discharged veteran of the armed
194 forces of the United States, reserve, or National Guard, is exempt from payment of fees and costs
195 as otherwise required by this section. All other application and background check requirements
196 set forth in this section are applicable to these applicants.

197 (r) Information collected under this section, including applications, supporting documents,
198 permits, renewals, or any other information that would identify an applicant for, or holder of, a
199 concealed weapon license, is confidential: *Provided*, That this information may be disclosed to a
200 law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a
201 criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person

202 who violates this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not
203 less than \$50 or more than \$200 for each offense.

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

208 (t) Except as restricted or prohibited by the provisions of this article or as otherwise
209 prohibited by law, the issuance of a concealed weapon license issued in accordance with the
210 provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver
211 on the lands or waters of this state. No State entity, agent of the State, agency of the State,
212 municipality, county, or any other political subdivision of state government may restrict the
213 authorization provided in this section by means of ammunition capacity, caliber, firearm
214 modification, accessory, decibel, location of carry, or method of concealed carry: *Provided*, That
215 the provisions of this subdivision do not apply to an individual when a concealed carry firearm
216 carried by an authorized individual is within in a correctional facility building, judicial building, or
217 school building. Nothing in this section shall be construed to limit the ability of any federal law
218 enforcement official to investigate or charge a person with a federal crime for which the person
219 may be in violation.

220 (u) If any provision or any part or clause of any provision of this section, or the application
221 thereof to any person or circumstance, is held unconstitutional or invalid, such unconstitutionality
222 or invalidity shall not affect other provisions, or other parts or other clauses of any provision, or
223 applications of this section, and to this end the provisions of this section are declared to be
224 severable.

NOTE: The purpose of this bill is to clarify the placing of limitations on a concealed carry permit; excluding an individual from being charged with a crime in certain circumstances; and adding a severability clause.

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