

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 353**

4 (By Senators Unger, Kessler (Mr. President), Browning, Laird,
5 Klempa and Snyder)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 16, 2012.]
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11
12 A BILL to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the
13 Code of West Virginia, 1931, as amended, all relating to
14 possession of firearms generally; clarifying what constitutes
15 carrying a handgun concealed in or on a motor vehicle;
16 procedures for obtaining a license to carry a concealed
17 handgun; providing application requirements; requiring
18 investigations of applicants through a national criminal
19 background check system and the West Virginia database;
20 providing definitions; prohibiting certain persons from
21 possessing or receiving firearms; providing exceptions;
22 allowing licenses to be transferable within the state;
23 requiring reporting of new address; and penalties.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §61-7-2, §61-7-4 and §61-7-7 of the Code of West
26 Virginia, 1931, as amended, be amended and reenacted, all to read

1 as follows:

2 **ARTICLE 7. DANGEROUS WEAPONS.**

3 **§61-7-2. Definitions.**

4 As used in this article, unless the context otherwise
5 requires:

6 (1) "Blackjack" means a short bludgeon consisting, at the
7 striking end, of an encased piece of lead or some other heavy
8 substance and, at the handle end, a strap or springy shaft which
9 increases the force of impact when a person or object is struck.
10 The term "blackjack" shall include, but not be limited to, a billy,
11 billy club, sand club, sandbag or slapjack.

12 (2) "Gravity knife" means any knife that has a blade released
13 from the handle by the force of gravity or the application of
14 centrifugal force and when so released is locked in place by means
15 of a button, spring, lever or other locking or catching device.

16 (3) "Knife" means an instrument, intended to be used or
17 readily adaptable to be used as a weapon, consisting of a sharp-
18 edged or sharp-pointed blade, usually made of steel, attached to a
19 handle which is capable of inflicting cutting, stabbing or tearing
20 wounds. The term "knife" shall include, but not be limited to, any
21 dagger, dirk, poniard or stiletto, with a blade over three and one-
22 half inches in length, any switchblade knife or gravity knife and
23 any other instrument capable of inflicting cutting, stabbing or
24 tearing wounds. A pocket knife with a blade three and one-half
25 inches or less in length, a hunting or fishing knife carried for
26 hunting, fishing, sports or other recreational uses or a knife

1 designed for use as a tool or household implement shall not be
2 included within the term "knife" as defined herein unless such
3 knife is knowingly used or intended to be used to produce serious
4 bodily injury or death.

5 (4) "Switchblade knife" means any knife having a spring-
6 operated blade which opens automatically upon pressure being
7 applied to a button, catch or other releasing device in its handle.

8 (5) "Nunchuka" means a flailing instrument consisting of two
9 or more rigid parts, connected by a chain, cable, rope or other
10 nonrigid, flexible or springy material, constructed in such a
11 manner as to allow the rigid parts to swing freely so that one
12 rigid part may be used as a handle and the other rigid part may be
13 used as the striking end.

14 (6) "Metallic or false knuckles" means a set of finger rings
15 attached to a transverse piece to be worn over the front of the
16 hand for use as a weapon and constructed in such a manner that,
17 when striking another person with the fist or closed hand,
18 considerable physical damage may be inflicted upon the person
19 struck. The terms "metallic or false knuckles" shall include any
20 such instrument without reference to the metal or other substance
21 or substances from which the metallic or false knuckles are made.

22 (7) "Pistol" means a short firearm having a chamber which is
23 integral with the barrel, designed to be aimed and fired by the use
24 of a single hand.

25 (8) "Revolver" means a short firearm having a cylinder of
26 several chambers that are brought successively into line with the

1 barrel to be discharged, designed to be aimed and fired by the use
2 of a single hand.

3 (9) "Deadly weapon" means an instrument which is designed to
4 be used to produce serious bodily injury or death or is readily
5 adaptable to such use. The term "deadly weapon" shall include, but
6 not be limited to, the instruments defined in subdivisions (1)
7 through (8), inclusive, of this section or other deadly weapons of
8 like kind or character which may be easily concealed on or about
9 the person. For the purposes of section one-a, article five,
10 chapter eighteen-a of this code and section eleven-a, article seven
11 of this chapter, in addition to the definition of "knife" set forth
12 in subdivision (3) of this section, the term "deadly weapon" also
13 includes any instrument included within the definition of "knife"
14 with a blade of three and one-half inches or less in length.
15 Additionally, for the purposes of section one-a, article five,
16 chapter eighteen-a of this code and section eleven-a, article seven
17 of this chapter, the term "deadly weapon" includes explosive,
18 chemical, biological and radiological materials. Notwithstanding
19 any other provision of this section, the term "deadly weapon" does
20 not include any item or material owned by the school or county
21 board, intended for curricular use, and used by the student at the
22 time of the alleged offense solely for curricular purposes.

23 (10) "Concealed" means hidden from ordinary observation so as
24 to prevent disclosure or recognition. A deadly weapon is concealed
25 when it is carried on or about the person in such a manner that
26 another person in the ordinary course of events would not be placed

1 on notice that the deadly weapon was being carried. For purposes
2 of concealed handgun licensees, a licensee shall be deemed to be
3 carrying on or about his or her person while in or on a motor
4 vehicle if the firearm is located in a storage area in or on the
5 motor vehicle.

6 (11) "Firearm" means any weapon which will expel a projectile
7 by action of an explosion.

8 (12) "Controlled substance" has the same meaning as is
9 ascribed to that term in subsection (d), section one hundred one,
10 article one, chapter sixty-a of this code.

11 (13) "Drug" has the same meaning as is ascribed to that term
12 in subsection (1), section one hundred one, article one, chapter
13 sixty-a of this code.

14 **§61-7-4. License to carry deadly weapons; how obtained.**

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

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

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

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

1 the issuing sheriff;

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

6 (A) Residential or court-ordered treatment for alcoholism or
7 alcohol detoxification or drug treatment; or

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

10 (5) That the applicant has not been convicted of a felony or
11 of an act of a misdemeanor crime of violence involving the misuse
12 of a deadly weapon within the five years immediately preceding the
13 application: Provided, That a person convicted of a misdemeanor
14 crime of domestic violence as defined in 18 U. S. C. §921(a)(33),
15 or a misdemeanor offense of assault or battery either under the
16 provisions of section twenty-eight, article two of this chapter or
17 the provisions of subsection (b) or (c), section nine, article two
18 of this chapter in which the victim was a current or former spouse,
19 current or former sexual or intimate partner, person with whom the
20 defendant cohabits or has cohabited, a parent or guardian, the
21 defendant's child or ward or a member of the defendant's household
22 at the time of the offense, or a misdemeanor offense with similar
23 essential elements in a jurisdiction other than the state the
24 applicant prohibited from possessing a firearm;

25 ~~(6) That the applicant has not been convicted of a misdemeanor~~
26 ~~offense of assault or battery either under the provisions of~~

~~1 section twenty-eight, article two of this chapter or the provisions
2 of subsection (b) or (c), section nine, article two of this chapter
3 in which the victim was a current or former spouse, current or
4 former sexual or intimate partner, person with whom the defendant
5 has a child in common, person with whom the defendant cohabits or
6 has cohabited, a parent or guardian, the defendant's child or ward
7 or a member of the defendant's household at the time of the
8 offense; or a misdemeanor offense with similar essential elements
9 in a jurisdiction other than this state.~~

10 ~~(7)~~ (6) That the applicant is not under indictment for a
11 felony offense or is not currently serving a sentence of
12 confinement, parole, probation or other court-ordered supervision
13 imposed by a court of any jurisdiction or is the subject of an
14 emergency or temporary domestic violence protective order or is the
15 subject of a final domestic violence protective order entered by a
16 court of any jurisdiction;

17 ~~(8)~~ That the applicant is physically and mentally competent to
18 carry the weapon;

19 ~~(9)~~ (7) That the applicant has not been adjudicated to be
20 mentally incompetent. If the applicant has been adjudicated
21 mentally incompetent the applicant must provide a court order
22 reflecting that the applicant is no longer under such disability;

23 ~~(10)~~ (8) That the applicant has qualified under the minimum
24 requirements set forth in subsection (d) of this section for
25 handling and firing the weapon: *Provided*, That this requirement
26 shall be waived in the case of a renewal applicant who has

1 previously qualified; and

2 ~~(11)~~ (9) That the applicant authorizes the sheriff of the
3 county, or his or her designee, to conduct an investigation
4 relative to the information contained in the application.

5 (b) For both initial and renewal applications, the sheriff
6 shall conduct an investigation including a nationwide criminal
7 background check consisting of checking the National Instant
8 Criminal Background Check System and the West Virginia criminal
9 history record responses in order to verify that the information
10 required in ~~subdivisions (1), (2), (3), (5), (6), (8) and (9),~~
11 subsection (a) of this section is true and correct.

12 (c) \$60 of the application fee and any fees for replacement of
13 lost or stolen licenses received by the sheriff shall be deposited
14 by the sheriff into a Concealed Weapons License Administration
15 Fund. The fund shall be administered by the sheriff and shall take
16 the form of an interest-bearing account with any interest earned to
17 be compounded to the fund. Any funds deposited in this Concealed
18 Weapon License Administration Fund are to be expended by the
19 sheriff to pay for the costs associated with issuing concealed
20 weapons licenses. Any surplus in the fund on hand at the end of
21 each fiscal year may be expended for other law-enforcement purposes
22 or operating needs of the sheriff's office, as the sheriff may
23 consider appropriate.

24 (d) All persons applying for a license must complete a
25 training course in handling and firing a handgun. The successful
26 completion of any of the following courses fulfills this training

1 requirement:

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

4 (2) Any handgun safety or training course or class available
5 to the general public offered by an official law-enforcement
6 organization, community college, junior college, college or private
7 or public institution or organization or handgun training school
8 utilizing instructors duly certified by the institution;

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

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

15 A photocopy of a certificate of completion of any of the
16 courses or classes or an affidavit from the instructor, school,
17 club, organization or group that conducted or taught said course or
18 class attesting to the successful completion of the course or class
19 by the applicant or a copy of any document which shows successful
20 completion of the course or class shall constitute evidence of
21 qualification under this section.

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

1 this code.

2 (f) ~~If the information in the application is found to be true~~
3 ~~and correct,~~ The sheriff shall issue a license unless he or she
4 determines that the application is incomplete, that it contains
5 statements that are materially false or incorrect or that applicant
6 otherwise does not meet the requirements set forth in this section.
7 The sheriff shall issue, reissue or deny the license within
8 forty-five days after the application is filed if all required
9 background checks authorized by this section are completed.

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

16 ~~(h) All persons holding a current and valid concealed weapons~~
17 ~~license as of December 16, 1995, shall continue to hold a valid~~
18 ~~concealed weapons license until his or her license expires or is~~
19 ~~revoked as provided in this article: *Provided, That all*~~
20 ~~reapplication fees shall be waived for applications received by~~
21 ~~January 1, 1997, for any person holding a current and valid~~
22 ~~concealed weapons license as of December 16, 1995, which contains~~
23 ~~use restrictions placed upon the license as a condition of issuance~~
24 ~~by the issuing circuit court. Any licenses reissued pursuant to~~
25 ~~this subsection will be issued for the time period of the original~~
26 ~~license.~~

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

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

14 ~~(k)~~ (j) If an application is denied, the specific reasons for
15 the denial shall be stated by the sheriff denying the application.
16 Any person denied a license may file, in the circuit court of the
17 county in which the application was made, a petition seeking review
18 of the denial. The petition shall be filed within thirty days of
19 the denial. The court shall then determine whether the applicant
20 is entitled to the issuance of a license under the criteria set
21 forth in this section. The applicant may be represented by
22 counsel, but in no case may the court be required to appoint
23 counsel for an applicant. The final order of the court shall
24 include the court's findings of fact and conclusions of law. If
25 the final order upholds the denial, the applicant may file an
26 appeal in accordance with the Rules of Appellate Procedure of the

1 Supreme Court of Appeals.

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

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

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

20 (n) Except when subject to an exception under section six,
21 article seven of this chapter, all licensees must carry with them
22 a state-issued photo identification card with the concealed weapons
23 license whenever the licensee is carrying a concealed weapon. Any
24 licensee who, in violation of this subsection, fails to have in his
25 or her possession a state-issued photo identification card and a
26 current concealed weapons license while carrying a concealed weapon

1 is guilty of a misdemeanor and, upon conviction thereof, shall be
2 fined not less than \$50 or more than \$200 for each offense.

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

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

11 (q) Notwithstanding the provisions of subsection (a) of this
12 section, with respect to application by a former law-enforcement
13 officer honorably retired from agencies governed by article
14 fourteen, chapter seven of this code; article fourteen, chapter
15 eight of this code; article two, chapter fifteen of this code; and
16 article seven, chapter twenty of this code, an honorably retired
17 officer is exempt from payment of fees and costs as otherwise
18 required by this section. ~~and the application of the honorably~~
19 ~~retired officer shall be granted without proof or inquiry by the~~
20 ~~sheriff as to those requirements set forth in subdivision (9),~~
21 ~~subsection (a) of this section, if the officer meets the remainder~~
22 ~~of the requirements of this section and has the approval of the~~
23 ~~appropriate chief law-enforcement officer.~~

24 (r) Except as restricted or prohibited by the provisions of
25 this article or as otherwise prohibited by law, the issuance of a
26 concealed weapon permit issued in accordance with the provisions of

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

3 **§61-7-7. Persons prohibited from possessing firearms;**
4 **classifications; reinstatement of rights to possess; offenses;**
5 **penalties.**

6 (a) Except as provided in this section, no person shall
7 possess a firearm, as such is defined in section two of this
8 article, who:

9 (1) Has been convicted in any court of a crime punishable by
10 imprisonment for a term exceeding one year;

11 (2) Is habitually addicted to alcohol;

12 (3) Is an unlawful user of or habitually addicted to any
13 controlled substance;

14 (4) Has been adjudicated as a mental defective or who has been
15 involuntarily committed to a mental institution pursuant to the
16 provisions of chapter twenty-seven of this code: *Provided, That*
17 once an individual has been adjudicated as a mental defective or
18 involuntarily committed to a mental institution, he or she shall be
19 duly notified that they are to immediately surrender any firearms
20 in their ownership or possession: *Provided, however, That* the
21 mental hygiene commissioner or circuit judge shall first make a
22 determination of the appropriate public or private individual or
23 entity to act as conservator for the surrendered property;

24 (5) Is an alien illegally or unlawfully in the United States;

25 (6) Has been discharged from the armed forces under

1 dishonorable conditions;

2 (7) Is subject to a domestic violence protective order that:

3 (A) Was issued after a hearing of which such person received
4 actual notice and at which such person had an opportunity to
5 participate;

6 (B) Restrains such person from harassing, stalking or
7 threatening an intimate partner of such person or child of such
8 intimate partner or person, or engaging in other conduct that would
9 place an intimate partner in reasonable fear of bodily injury to
10 the partner or child; and

11 (C) (i) Includes a finding that such person represents a
12 credible threat to the physical safety of such intimate partner or
13 child; or

14 (ii) By its terms explicitly prohibits the use, attempted use
15 or threatened use of physical force against such intimate partner
16 or child that would reasonably be expected to cause bodily injury;
17 or

18 (8) Has been convicted of a misdemeanor offense of assault or
19 battery either under the provisions of section twenty-eight,
20 article two of this chapter or the provisions of subsection (b) or
21 (c), section nine of said article or a federal or state statute
22 with the same essential elements in which the victim was a current
23 or former spouse, current or former sexual or intimate partner,
24 person with whom the defendant has a child in common, person with
25 whom the defendant cohabits or has cohabited, a parent or guardian,
26 the defendant's child or ward or a member of the defendant's

1 household at the time of the offense or has been convicted in any
2 court of any jurisdiction of a comparable misdemeanor crime of
3 domestic violence.

4 Any person who violates the provisions of this subsection
5 shall be guilty of a misdemeanor and, upon conviction thereof,
6 shall be fined not less than \$100 nor more than \$1,000 or confined
7 in the county jail for not less than ninety days nor more than one
8 year, or both.

9 (b) Notwithstanding the provisions of subsection (a) of this
10 section, any person:

11 (1) Who has been convicted in this state or any other
12 jurisdiction of a felony crime of violence against the person of
13 another or of a felony sexual offense; or

14 (2) Who has been convicted in this state or any other
15 jurisdiction of a felony controlled substance offense involving a
16 Schedule I controlled substance other than marijuana, a Schedule II
17 or a Schedule III controlled substance as such are defined in
18 sections two hundred four, two hundred five and two hundred six,
19 article two, chapter sixty-a of this code and who possesses a
20 firearm as such is defined in section two of this article shall be
21 guilty of a felony and, upon conviction thereof, shall be confined
22 in a state correctional facility for not more than five years or
23 fined not more than \$5,000, or both. The provisions of subsection
24 (c) of this section shall not apply to persons convicted of
25 offenses referred to in this subsection or to persons convicted of
26 a violation of this subsection.

1 (c) Any person prohibited from possessing a firearm by the
2 provisions of subsection (a) of this section may petition the
3 circuit court of the county in which he or she resides to regain
4 the ability to possess a firearm and if the court finds by clear
5 and convincing evidence that the person is competent and capable of
6 exercising the responsibility concomitant with the possession of a
7 firearm, the court may enter an order allowing the person to
8 possess a firearm if such possession would not violate any federal
9 law: *Provided*, That a person prohibited from possessing a firearm
10 by the provisions of subdivision (4), subsection (a) of this
11 section may petition to regain the ability to possess a firearm in
12 accordance with the provisions of section five, article seven-a of
13 this chapter.