

HB 2431

2013 MAY -1 PM 4: 01

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

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**SECOND
ENROLLMENT**

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2431

(Delegate(s) R. Phillips, Cowles, Hunt, Marcum,
Moye, Pethtel and Stowers)



Amended and again passed, as a result of the objections of the Governor,

April 17, 2013

In effect ninety days from passage.

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HOUSE OF DELEGATES
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H. B. 2431

(BY DELEGATE(S) R. PHILLIPS, COWLES, HUNT, MARCUM,
MOYE, PETHTEL AND STOWERS)

[Amended and again passed, as a result of the objections of the Governor,
April 17, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to the process for obtaining a state license to carry a concealed deadly weapon; conforming state licensure law to meet federal "Brady Exemption" requirements; clarifying certain restrictions and prohibitions; clarifying effect of expungement, pardons or reversal of prior offenses on permit applications; clarifying training and certification requirements; and clarifying background check requirements.

Be it enacted by the Legislature of West Virginia:

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

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

13 (1) The applicant's full name, date of birth, Social Security
14 number, a description of the applicant's physical features, the
15 applicant's place of birth, the applicant's country of citizenship
16 and, if the applicant is not a United States citizen, any alien or
17 admission number issued by the United States Bureau of
18 Immigration and Customs enforcement, and any basis, if
19 applicable, for an exception to the prohibitions of 18 U. S. C.
20 §922(g)(5)(B);

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

25 (3) That the applicant is twenty-one years of age or older:
26 *Provided*, That any individual who is less than twenty-one years
27 of age and possesses a properly issued concealed weapons
28 license as of the effective date of this article shall be licensed to
29 maintain his or her concealed weapons license notwithstanding
30 the provisions of this section requiring new applicants to be at

31 least twenty-one years of age: *Provided, however,* That upon a
32 showing of any applicant who is eighteen years of age or older
33 that he or she is required to carry a concealed weapon as a
34 condition for employment, and presents satisfactory proof to the
35 sheriff thereof, then he or she shall be issued a license upon
36 meeting all other conditions of this section. Upon discontinuance
37 of employment that requires the concealed weapons license, if
38 the individual issued the license is not yet twenty-one years of
39 age, then the individual issued the license is no longer eligible
40 and must return his or her license to the issuing sheriff;

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

45 (A) Residential or court-ordered treatment for alcoholism or
46 alcohol detoxification or drug treatment; or

47 (B) Two or more convictions for driving while under the
48 influence or driving while impaired:

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

53 (6) That the applicant has not been convicted of a
54 misdemeanor crime of violence other than an offense set forth in
55 subsection (7) of this section in the five years immediately
56 preceding the application.

57 (7) That the applicant has not been convicted of a
58 misdemeanor crime of domestic violence as defined in 18 U. S.
59 C. §921(a)(33), or a misdemeanor offense of assault or battery
60 either under the provisions of section twenty-eight, article two of
61 this chapter or the provisions of subsection (b) or (c), section

62 nine, article two of this chapter in which the victim was a current
63 or former spouse, current or former sexual or intimate partner,
64 person with whom the defendant cohabits or has cohabited, a
65 parent or guardian, the defendant's child or ward or a member of
66 the defendant's household at the time of the offense, or a
67 misdemeanor offense with similar essential elements in a
68 jurisdiction other than this state;

69 (8) That the applicant is not under indictment for a felony
70 offense or is not currently serving a sentence of confinement,
71 parole, probation or other court-ordered supervision imposed by
72 a court of any jurisdiction or is the subject of an emergency or
73 temporary domestic violence protective order or is the subject of
74 a final domestic violence protective order entered by a court of
75 any jurisdiction;

76 (9) That the applicant has not been adjudicated to be
77 mentally incompetent or involuntarily committed to a mental
78 institution. If the applicant has been adjudicated mentally
79 incompetent or involuntarily committed the applicant must
80 provide a court order reflecting that the applicant is no longer
81 under such disability and the applicant's right to possess or
82 receive a firearm has been restored.

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

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

91 (b) For both initial and renewal applications, the sheriff shall
92 conduct an investigation including a nationwide criminal
93 background check consisting of inquiries of the National Instant

94 Criminal Background Check System, the West Virginia criminal
95 history record responses and the National Interstate
96 Identification Index and shall review the information received in
97 order to verify that the information required in subsection (a) of
98 this section is true and correct.

99 (c) Sixty dollars of the application fee and any fees for
100 replacement of lost or stolen licenses received by the sheriff
101 shall be deposited by the sheriff into a Concealed Weapons
102 License Administration Fund. The fund shall be administered by
103 the sheriff and shall take the form of an interest-bearing account
104 with any interest earned to be compounded to the fund. Any
105 funds deposited in this Concealed Weapon License
106 Administration Fund are to be expended by the sheriff to pay for
107 the costs associated with issuing concealed weapons licenses.
108 Any surplus in the fund on hand at the end of each fiscal year
109 may be expended for other law-enforcement purposes or
110 operating needs of the sheriff's office, as the sheriff may
111 consider appropriate.

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

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

118 (2) Any handgun safety or training course or class available
119 to the general public offered by an official law-enforcement
120 organization, community college, junior college, college or
121 private or public institution or organization or handgun training
122 school utilizing instructors duly certified by the institution;

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

126 (4) Any handgun training or safety course or class conducted
127 by any branch of the United States Military, Reserve or National
128 Guard or proof of other handgun qualification received while
129 serving in any branch of the United States Military, Reserve or
130 National Guard.

131 A photocopy of a certificate of completion of any of the
132 courses or classes or an affidavit from the instructor, school,
133 club, organization or group that conducted or taught said course
134 or class attesting to the successful completion of the course or
135 class by the applicant or a copy of any document which shows
136 successful completion of the course or class shall constitute
137 evidence of qualification under this section.

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

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

151 (g) Before any approved license shall be issued or become
152 effective, the applicant shall pay to the sheriff a fee in the
153 amount of \$25 which the sheriff shall forward to the
154 Superintendent of the West Virginia State Police within thirty
155 days of receipt. The license shall be valid for five years
156 throughout the state, unless sooner revoked.

157 (h) Each license shall contain the full name and address of
158 the licensee and a space upon which the signature of the licensee

159 shall be signed with pen and ink. The issuing sheriff shall sign
160 and attach his or her seal to all license cards. The sheriff shall
161 provide to each new licensee a duplicate license card, in size
162 similar to other state identification cards and licenses, suitable
163 for carrying in a wallet, and the license card is considered a
164 license for the purposes of this section.

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

170 (j) If an application is denied, the specific reasons for the
171 denial shall be stated by the sheriff denying the application. Any
172 person denied a license may file, in the circuit court of the
173 county in which the application was made, a petition seeking
174 review of the denial. The petition shall be filed within thirty days
175 of the denial. The court shall then determine whether the
176 applicant is entitled to the issuance of a license under the criteria
177 set forth in this section. The applicant may be represented by
178 counsel, but in no case may the court be required to appoint
179 counsel for an applicant. The final order of the court shall
180 include the court's findings of fact and conclusions of law. If the
181 final order upholds the denial, the applicant may file an appeal
182 in accordance with the Rules of Appellate Procedure of the
183 Supreme Court of Appeals.

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

188 (l) Whenever any person after applying for and receiving a
189 concealed handgun license moves from the address named in the
190 application to another county within the state, the license
191 remains valid for the remainder of the five years: *Provided, That*

192 the licensee within twenty days thereafter notifies the sheriff in
193 the new county of residence in writing of the old and new
194 addresses.

195 (m) The sheriff shall, immediately after the license is
196 granted as aforesaid, furnish the Superintendent of the West
197 Virginia State Police a certified copy of the approved
198 application. The sheriff shall furnish to the Superintendent of the
199 West Virginia State Police at any time so requested a certified
200 list of all licenses issued in the county. The Superintendent of the
201 West Virginia State Police shall maintain a registry of all
202 persons who have been issued concealed weapons licenses.

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

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

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

221 (q) Notwithstanding the provisions of subsection (a) of this
222 section, with respect to application by a former law-enforcement
223 officer honorably retired from agencies governed by article

224 fourteen, chapter seven of this code; article fourteen, chapter
225 eight of this code; article two, chapter fifteen of this code; and
226 article seven, chapter twenty of this code, an honorably retired
227 officer is exempt from payment of fees and costs as otherwise
228 required by this section. All other application and background
229 check requirements set forth in this shall be applicable to these
230 applicants.

231 (r) Except as restricted or prohibited by the provisions of this
232 article or as otherwise prohibited by law, the issuance of a
233 concealed weapon permit issued in accordance with the
234 provisions of this section authorizes the holder of the permit to
235 carry a concealed pistol or revolver on the lands or waters of this
236 state.

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

1 (a) Except as provided in this section, no person shall
2 possess a firearm, as such is defined in section two of this article.
3 who:

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

6 (2) Is habitually addicted to alcohol;

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

9 (4) Has been adjudicated to be mentally incompetent or who
10 has been involuntarily committed to a mental institution pursuant
11 to the provisions of chapter twenty-seven of this code or in
12 similar law of another jurisdiction: *Provided*, That once an
13 individual has been adjudicated as a mental defective or
14 involuntarily committed to a mental institution, he or she shall
15 be duly notified that they are to immediately surrender any

16 firearms in their ownership or possession: *Provided, however,*
17 That the mental hygiene commissioner or circuit judge shall first
18 make a determination of the appropriate public or private
19 individual or entity to act as conservator for the surrendered
20 property;

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

22 (6) Has been discharged from the armed forces under
23 dishonorable conditions;

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

25 (A) Was issued after a hearing of which such person
26 received actual notice and at which such person had an
27 opportunity to participate;

28 (B) Restrains such person from harassing, stalking or
29 threatening an intimate partner of such person or child of such
30 intimate partner or person, or engaging in other conduct that
31 would place an intimate partner in reasonable fear of bodily
32 injury to the partner or child; and

33 (C)(i) Includes a finding that such person represents a
34 credible threat to the physical safety of such intimate partner or
35 child; or

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

40 (8) Has been convicted of a misdemeanor offense of assault
41 or battery either under the provisions of section twenty-eight,
42 article two of this chapter or the provisions of subsection (b) or
43 (c), section nine of said article or a federal or state statute with
44 the same essential elements in which the victim was a current or
45 former spouse, current or former sexual or intimate partner,

46 person with whom the defendant has a child in common, person
47 with whom the defendant cohabits or has cohabited, a parent or
48 guardian, the defendant's child or ward or a member of the
49 defendant's household at the time of the offense or has been
50 convicted in any court of any jurisdiction of a comparable
51 misdemeanor crime of domestic violence.

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

57 (b) Notwithstanding the provisions of subsection (a) of this
58 section, any person:

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

62 (2) Who has been convicted in this state or any other
63 jurisdiction of a felony controlled substance offense involving a
64 Schedule I controlled substance other than marijuana, a Schedule
65 II or a Schedule III controlled substance as such are defined in
66 sections two hundred four, two hundred five and two hundred
67 six, article two, chapter sixty-a of this code and who possesses
68 a firearm as such is defined in section two of this article shall be
69 guilty of a felony and, upon conviction thereof, shall be confined
70 in a state correctional facility for not more than five years or
71 fined not more than \$5,000, or both. The provisions of
72 subsection (c) of this section shall not apply to persons convicted
73 of offenses referred to in this subsection or to persons convicted
74 of a violation of this subsection.

75 (c) Any person prohibited from possessing a firearm by the
76 provisions of subsection (a) of this section may petition the
77 circuit court of the county in which he or she resides to regain

78 the ability to possess a firearm and if the court finds by clear and
79 convincing evidence that the person is competent and capable of
80 exercising the responsibility concomitant with the possession of
81 a firearm, the court may enter an order allowing the person to
82 possess a firearm if such possession would not violate any
83 federal law: *Provided*, That a person prohibited from possessing
84 a firearm by the provisions of subdivision (4), subsection (a) of
85 this section may petition to regain the ability to possess a firearm
86 in accordance with the provisions of section five, article seven-a
87 of this chapter.

88 (d) Any person who has been convicted of an offense which
89 disqualifies him or her from possessing a firearm by virtue of a
90 criminal conviction whose conviction was expunged or set aside
91 or who subsequent thereto receives an unconditional pardon for
92 said offense shall not be prohibited from possessing a firearm by
93 the provisions of the section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rocky Ferguson
Member ~~Chairman, House Committee~~
Senate

Danny Wells
Chairman, Senate Committee
House

Originating in the House.

In effect ninety days from passage.

Stacy A. Sal
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates
[Signature]
President of the Senate

The within *is approved* this the *1st*
day of *May*, 2013.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 10:27 am