

1 **H. B. 4186**

2
3 (By Delegates R. Phillips, White,
4 Tomblin, Marcum, Hamilton, Evans, A.,
5 Ashley, Barker, Boggs, Hartman and Sponaugle)
6

7 [Introduced January 15, 2014; referred to the
8 Committee on the Judiciary.]
9

10 A BILL to amend and reenact §61-7-4 of the Code of West Virginia,
11 1931, as amended, relating to the procedures for issuing a
12 concealed weapon license; adding requirements to ensure that
13 an applicant is not prohibited under the provisions of state
14 or federal law from the receipt or possession of a firearm.

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

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

18 **ARTICLE 7. DANGEROUS WEAPONS.**

19 **§61-7-4. License to carry deadly weapons; how obtained.**

20 (a) Except as provided in subsection (h) of this section, any
21 person desiring to obtain a state license to carry a concealed
22 deadly weapon shall apply to the sheriff of his or her county for
23 the license, and ~~shall~~ pay to the sheriff, at the time of
24 application, a fee of \$75, of which \$15 of that amount shall be
25 deposited in the Courthouse Facilities Improvement Fund created by

1 section six, article twenty-six, chapter twenty-nine of this code.
2 Concealed weapons permits may only be issued for pistols or
3 revolvers. Each applicant shall file with the sheriff a complete
4 application, as prepared by the Superintendent of the West Virginia
5 State Police, in writing, duly verified, which sets forth only the
6 following licensing requirements:

7 (1) The applicant's full name, date of birth, Social Security
8 number, a description of the applicant's physical features, the
9 applicant's place of birth, the applicant's country of citizenship
10 and, if the applicant is not a United States citizen, any alien or
11 admission number issued by the United States Bureau of Immigration
12 and Customs enforcement, and any basis, if applicable, for an
13 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
15 is a bona fide resident of this state and of the county in which
16 the application is made and has a valid driver's license or other
17 state-issued photo identification showing the residence;

18 (3) That the applicant is twenty-one years of age or older:
19 *Provided*, That any individual who is less than twenty-one years of
20 age and possesses a properly issued concealed weapons license as of
21 the effective date of this article shall be licensed to maintain
22 his or her concealed weapons license notwithstanding the provisions
23 of this section requiring new applicants to be at least twenty-one
24 years of age: *Provided, however*, That upon a showing of any

1 applicant who is eighteen years of age or older that he or she is
2 required to carry a concealed weapon as a condition for employment,
3 and presents satisfactory proof to the sheriff thereof, then he or
4 she shall be issued a license upon meeting all other conditions of
5 this section. Upon discontinuance of employment that requires the
6 concealed weapons license, if the individual issued the license is
7 not yet twenty-one years of age, then the individual issued the
8 license is no longer eligible and must return his or her license to
9 the issuing sheriff;

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

14 (A) Residential or court-ordered treatment for alcoholism or
15 alcohol detoxification or drug treatment; or

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

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

22 (6) That the applicant has not been convicted of a misdemeanor
23 crime of violence other than an offense set forth in subsection (7)
24 of this section in the five years immediately preceding the

1 application;

2 (7) That the applicant has not been convicted of a misdemeanor
3 crime of domestic violence as defined in 18 U. S. C. § 921(a)(33),
4 or a misdemeanor offense of assault or battery either under the
5 provisions of section twenty-eight, article two of this chapter or
6 the provisions of subsection (b) or (c), section nine, article two
7 of this chapter in which the victim was a current or former spouse,
8 current or former sexual or intimate partner, person with whom the
9 defendant cohabits or has cohabited, a parent or guardian, the
10 defendant's child or ward or a member of the defendant's household
11 at the time of the offense, or a misdemeanor offense with similar
12 essential elements in a jurisdiction other than this state;

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

20 (9) That the applicant has not been adjudicated to be mentally
21 incompetent or involuntarily committed to a mental institution. If
22 the applicant has been adjudicated mentally incompetent or
23 involuntarily committed the applicant must provide a court order
24 reflecting that the applicant is no longer under such disability

1 and the applicant's right to possess or receive a firearm has been
2 restored;

3 (10) That the applicant is not prohibited under the provisions
4 of section seven of this article or federal law, including
5 18 U.S.C. § 922(q) or (n), from receiving, possessing or
6 transporting a firearm;

7 ~~(10)~~ (11) That the applicant has qualified under the minimum
8 requirements set forth in subsection (d) of this section for
9 handling and firing the weapon: *Provided*, That this requirement
10 shall be waived in the case of a renewal applicant who has
11 previously qualified; and

12 ~~(11)~~ (12) That the applicant authorizes the sheriff of the
13 county, or his or her designee, to conduct an investigation
14 relative to the information contained in the application.

15 (b) For both initial and renewal applications, the sheriff
16 shall conduct an investigation including a nationwide criminal
17 background check consisting of inquiries of the National Instant
18 Criminal Background Check System, the West Virginia criminal
19 history record responses and the National Interstate Identification
20 Index and shall review the information received in order to verify
21 that the information required in subsection (a) of this section is
22 true and correct. A license may not be issued unless the issuing
23 sheriff has verified through the National Instant Criminal
24 Background Check System that the information available to him or

1 her does not indicate that receipt or possession of a firearm by
2 the applicant would be in violation of the provisions of section
3 seven of this article or federal law, including 18 U.S.C. § 922(g)
4 or (n).

5 (c) Sixty dollars of the application fee and any fees for
6 replacement of lost or stolen licenses received by the sheriff
7 shall be deposited by the sheriff into a concealed weapons license
8 administration fund. The fund shall be administered by the sheriff
9 and shall take the form of an interest-bearing account with any
10 interest earned to be compounded to the fund. Any funds deposited
11 in this concealed weapon license administration fund are to be
12 expended by the sheriff to pay ~~for~~ the costs associated with
13 issuing concealed weapons licenses. Any surplus in the fund on
14 hand at the end of each fiscal year may be expended for other law-
15 enforcement purposes or operating needs of the sheriff's office, as
16 the sheriff ~~may consider~~ considers appropriate.

17 (d) All persons applying for a license must complete a
18 training course in handling and firing a handgun. The successful
19 completion of any of the following courses fulfills this training
20 requirement:

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

23 (2) Any handgun safety or training course or class available
24 to the general public offered by an official law-enforcement

1 organization, community college, junior college, college or private
2 or public institution or organization or handgun training school
3 utilizing instructors ~~duly~~ certified by the institution;

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

7 (4) Any handgun training or safety course or class conducted
8 by any branch of the United States Military, Reserve or National
9 Guard or proof of other handgun qualification received while
10 serving in any branch of the United States Military, Reserve or
11 National Guard.

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

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

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

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

14 (h) Each license shall contain the full name and address of
15 the licensee and a space upon which the signature of the licensee
16 shall be signed with pen and ink. The issuing sheriff shall sign
17 and attach his or her seal to all license cards. The sheriff shall
18 provide to each new licensee a duplicate license card, in size
19 similar to other state identification cards and licenses, suitable
20 for carrying in a wallet, and the license card is considered a
21 license for the purposes of this section.

22 (i) The Superintendent of the West Virginia State Police shall
23 prepare uniform applications for licenses and license cards showing
24 that the license has been granted and shall do any other act

1 required to be done to protect the state and see to the enforcement
2 of this section.

3 (j) If an application is denied, the specific reasons for the
4 denial shall be stated by the sheriff denying the application. Any
5 person denied a license may file, in the circuit court of the
6 county in which the application was made, a petition seeking review
7 of the denial. The petition shall be filed within thirty days of
8 the denial. The court shall then determine whether the applicant
9 is entitled to the issuance of a license under the criteria set
10 forth in this section. The applicant may be represented by
11 counsel, but in no case ~~may~~ is the court ~~be~~ required to appoint
12 counsel for an applicant. The final order of the court shall
13 include the court's findings of fact and conclusions of law. If
14 the final order upholds the denial, the applicant may file an
15 appeal in accordance with the Rules of Appellate Procedure of the
16 Supreme Court of Appeals.

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

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

1 licensee within twenty days thereafter notifies the sheriff in the
2 new county of residence in writing of the old and new addresses.

3 (m) The sheriff shall, immediately after the license is
4 granted as aforesaid, furnish the Superintendent of the West
5 Virginia State Police a certified copy of the approved application.
6 The sheriff shall furnish to the Superintendent of the West
7 Virginia State Police at any time so requested a certified list of
8 all licenses issued in the county. The Superintendent of the West
9 Virginia State Police shall maintain a registry of all persons who
10 have been issued concealed weapons licenses.

11 (n) Except when subject to an exception under section six,
12 article seven of this chapter, all licensees ~~must~~ shall carry with
13 them a state-issued photo identification card with the concealed
14 weapons license whenever the licensee is carrying a concealed
15 weapon. Any licensee who, in violation of this subsection, fails
16 to have in his or her possession a state-issued photo
17 identification card and a current concealed weapons license while
18 carrying a concealed weapon is guilty of a misdemeanor and, upon
19 conviction thereof, shall be fined not less than \$50 or more than
20 \$200 for each offense.

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

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

5 (q) Notwithstanding the provisions of subsection (a) of this
6 section, with respect to application by a former law-enforcement
7 officer honorably retired from agencies governed by article
8 fourteen, chapter seven of this code; article fourteen, chapter
9 eight of this code; article two, chapter fifteen of this code; and
10 article seven, chapter twenty of this code, an honorably retired
11 officer is exempt from payment of fees and costs as otherwise
12 required by this section. All other application and background
13 check requirements set forth in this shall be applicable to these
14 applicants.

15 (r) Except as restricted or prohibited by the provisions of
16 this article or as otherwise prohibited by law, the issuance of a
17 concealed weapon permit issued in accordance with the provisions of
18 this section authorizes the holder of the permit to carry a
19 concealed pistol or revolver on the lands or waters of this state.

NOTE: The purpose of this bill is to add provisions to current procedures for issuing a concealed weapon license to ensure that an applicant is not prohibited under the provisions of state or federal law from the receipt or possession of a firearm.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.