

1 **H. B. 4310**

2
3 (By Delegates R. Phillips, Marcum, White,
4 Barker, Tomblin, Craig, A. Evans, Ashley,
5 Sponaugle, R. Smith and Diserio)

6
7 [Introduced January 24, 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 making gun permits and
12 applications confidential except for law enforcement purposes.

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

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

16 **ARTICLE 7. DANGEROUS WEAPONS.**

17 **§61-7-4. License to carry deadly weapons; how obtained.**

18 (a) Except as provided in subsection (h) of this section, any
19 person desiring to obtain a state license to carry a concealed
20 deadly weapon shall apply to the sheriff of his or her county for
21 the license, and shall pay to the sheriff, at the time of
22 application, a fee of \$75, of which \$15 of that amount shall be
23 deposited in the Courthouse Facilities Improvement Fund created by
24 section six, article twenty-six, chapter twenty-nine of this code.
25 Concealed weapons permits may only be issued for pistols or

1 revolvers. Each applicant shall file with the sheriff a complete
2 application, as prepared by the superintendent of the West Virginia
3 State Police, in writing, duly verified, which sets forth only the
4 following licensing requirements:

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

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

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

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

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

12 (A) Residential or court-ordered treatment for alcoholism or
13 alcohol detoxification or drug treatment; or

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

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

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

24 (7) That the applicant has not been convicted of a misdemeanor

1 crime of domestic violence as defined in 18 U. S. C. §921(a)(33),
2 or a misdemeanor offense of assault or battery either under the
3 provisions of section twenty-eight, article two of this chapter or
4 the provisions of subsection (b) or (c), section nine, article two
5 of this chapter in which the victim was a current or former spouse,
6 current or former sexual or intimate partner, person with whom the
7 defendant cohabits or has cohabited, a parent or guardian, the
8 defendant's child or ward or a member of the defendant's household
9 at the time of the offense, or a misdemeanor offense with similar
10 essential elements in a jurisdiction other than this state;

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

18 (9) That the applicant has not been adjudicated to be mentally
19 incompetent or involuntarily committed to a mental institution. If
20 the applicant has been adjudicated mentally incompetent or
21 involuntarily committed the applicant must provide a court order
22 reflecting that the applicant is no longer under such disability
23 and the applicant's right to possess or receive a firearm has been
24 restored.

1 (10) That the applicant has qualified under the minimum
2 requirements set forth in subsection (d) of this section for
3 handling and firing the weapon: *Provided*, That this requirement
4 shall be waived in the case of a renewal applicant who has
5 previously qualified; and

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

9 (b) For both initial and renewal applications, the sheriff
10 shall conduct an investigation including a nationwide criminal
11 background check consisting of inquiries of the National Instant
12 Criminal Background Check System, the West Virginia criminal
13 history record responses and the National Interstate Identification
14 Index and shall review the information received in order to verify
15 that the information required in subsection (a) of this section is
16 true and correct.

17 (c) Sixty dollars of the application fee and any fees for
18 replacement of lost or stolen licenses received by the sheriff
19 shall be deposited by the sheriff into a Concealed Weapons License
20 Administration Fund. The fund shall be administered by the sheriff
21 and shall take the form of an interest-bearing account with any
22 interest earned to be compounded to the fund. Any funds deposited
23 in this Concealed Weapon License Administration Fund are to be
24 expended by the sheriff to pay for the costs associated with

1 issuing concealed weapons licenses. Any surplus in the fund on hand
2 at the end of each fiscal year may be expended for other law-
3 enforcement purposes or operating needs of the sheriff's office, as
4 the sheriff may consider appropriate.

5 (d) All persons applying for a license must complete a
6 training course in handling and firing a handgun. The successful
7 completion of any of the following courses fulfills this training
8 requirement:

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

11 (2) Any handgun safety or training course or class available
12 to the general public offered by an official law-enforcement
13 organization, community college, junior college, college or private
14 or public institution or organization or handgun training school
15 utilizing instructors duly certified by the institution;

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

19 (4) Any handgun training or safety course or class conducted
20 by any branch of the United States Military, Reserve or National
21 Guard or proof of other handgun qualification received while
22 serving in any branch of the United States Military, Reserve or
23 National Guard.

24 A photocopy of a certificate of completion of any of the

1 courses or classes or an affidavit from the instructor, school,
2 club, organization or group that conducted or taught said course or
3 class attesting to the successful completion of the course or class
4 by the applicant or a copy of any document which shows successful
5 completion of the course or class shall constitute evidence of
6 qualification under this section.

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

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

20 (g) Before any approved license shall be issued or become
21 effective, the applicant shall pay to the sheriff a fee in the
22 amount of \$25 which the sheriff shall forward to the Superintendent
23 of the West Virginia State Police within thirty days of receipt.
24 The license shall be valid for five years throughout the state,

1 unless sooner revoked.

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

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

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

1 findings of fact and conclusions of law. If the final order upholds
2 the denial, the applicant may file an appeal in accordance with the
3 Rules of Appellate Procedure of the Supreme Court of Appeals.

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

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

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

22 (n) Except when subject to an exception under section six,
23 article seven of this chapter, all licensees must carry with them
24 a state-issued photo identification card with the concealed weapons

1 license whenever the licensee is carrying a concealed weapon. Any
2 licensee who, in violation of this subsection, fails to have in his
3 or her possession a state-issued photo identification card and a
4 current concealed weapons license while carrying a concealed weapon
5 is guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not less than \$50 or more than \$200 for each offense.

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

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

15 (q) Notwithstanding the provisions of subsection (a) of this
16 section, with respect to application by a former law-enforcement
17 officer honorably retired from agencies governed by article
18 fourteen, chapter seven of this code; article fourteen, chapter
19 eight of this code; article two, chapter fifteen of this code; and
20 article seven, chapter twenty of this code, an honorably retired
21 officer is exempt from payment of fees and costs as otherwise
22 required by this section. All other application and background
23 check requirements set forth in this shall be applicable to these
24 applicants.

1 (r) Except as restricted or prohibited by the provisions of
2 this article or as otherwise prohibited by law, the issuance of a
3 concealed weapon permit issued in accordance with the provisions of
4 this section authorizes the holder of the permit to carry a
5 concealed pistol or revolver on the lands or waters of this state.

6 (s) Applications permits and renewal applications are
7 confidential and not subject to disclosure under chapter twenty-
8 nine-b of this code and may only be used for law enforcement
9 purposes.

NOTE: The purpose of this bill is to ensure that gun permits and applications are confidential except for law enforcement purposes.

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