

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2951

2015 Carryover

(BY DELEGATES PUSHKIN, IHLE, J. NELSON, FAIRCLOTH,
AZINGER, FOLK, BLAIR AND FAST)

[Introduced January 13, 2016; referred to the
Committee on Veterans= Affairs and Homeland
Security then the Judiciary.]

1 A BILL to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating
 2 to recognizing those in active military service as residents for the purpose of obtaining
 3 concealed carry permits while stationed at a West Virginia military installation.

Be it enacted by the Legislature of West Virginia:

1 That §61-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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 person desiring to obtain a
 2 state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for
 3 the license, and pay to the sheriff, at the time of application, a fee of \$75, of which \$15 of that
 4 amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six,
 5 article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be
 6 issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application,
 7 as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which
 8 sets forth only the following licensing requirements:

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

17 spouse is in the Armed Forces of the United States, the applicant shall be considered a resident
18 of this state for purposes of this section if the applicant is stationed at a military installation in this
19 state but maintains a residence in another state and claims that residence for voting or tax
20 purposes:

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

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

35 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
36 treatment; or

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

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

41 (6) That the applicant has not been convicted of a misdemeanor crime of violence other
42 than an offense set forth in subsection (7) of this section in the five years immediately preceding
43 the application;

44 (7) That the applicant has not been convicted of a misdemeanor crime of domestic
45 violence as defined in 18 U. S. C. § 921(a)(33), or a misdemeanor offense of assault or battery
46 either under the provisions of section twenty-eight, article two of this chapter or the provisions of
47 subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or
48 former spouse, current or former sexual or intimate partner, person with whom the defendant
49 cohabits or has cohabited, a parent or guardian, the defendant=s child or ward or a member of
50 the defendant=s household at the time of the offense, or a misdemeanor offense with similar
51 essential elements in a jurisdiction other than this state;

52 (8) That the applicant is not under indictment for a felony offense or is not currently serving
53 a sentence of confinement, parole, probation or other court-ordered supervision imposed by a
54 court of any jurisdiction or is the subject of an emergency or temporary domestic violence
55 protective order or is the subject of a final domestic violence protective order entered by a court
56 of any jurisdiction;

57 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily
58 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or
59 involuntarily committed the applicant must provide a court order reflecting that the applicant is no
60 longer under such disability and the applicant=s right to possess or receive a firearm has been
61 restored;

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

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

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

70 (b) For both initial and renewal applications, the sheriff shall conduct an investigation
71 including a nationwide criminal background check consisting of inquiries of the National Instant
72 Criminal Background Check System, the West Virginia criminal history record responses and the
73 National Interstate Identification Index and shall review the information received in order to verify
74 that the information required in subsection (a) of this section is true and correct. A license may
75 not be issued unless the issuing sheriff has verified through the National Instant Criminal
76 Background Check System that the information available to him or her does not indicate that
77 receipt or possession of a firearm by the applicant would be in violation of the provisions of section
78 seven of this article or federal law, including 18 U.S.C. § 922(g) or (n).

79 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen
80 licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license
81 administration fund. The fund shall be administered by the sheriff and shall take the form of an
82 interest-bearing account with any interest earned to be compounded to the fund. Any funds
83 deposited in this concealed weapon license administration fund are to be expended by the sheriff
84 to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund
85 on hand at the end of each fiscal year may be expended for other law-enforcement purposes or
86 operating needs of the sheriff=s office, as the sheriff considers appropriate.

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

89 requirement:

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

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

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

97 (4) Any handgun training or safety course or class conducted by any branch of the United
98 States Military, Reserve or National Guard or proof of other handgun qualification received while
99 serving in any branch of the United States Military, Reserve or National Guard.

100 A photocopy of a certificate of completion of any of the courses or classes or an affidavit
101 from the instructor, school, club, organization or group that conducted or taught the course or
102 class attesting to the successful completion of the course or class by the applicant or a copy of
103 any document which shows successful completion of the course or class is evidence of
104 qualification under this section.

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

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

113 background checks authorized by this section are completed.

114 (g) Before any approved license is issued or is effective, the applicant shall pay to the
115 sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West
116 Virginia State Police within thirty days of receipt. The license is valid for five years throughout
117 the state, unless sooner revoked.

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

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

126 (j) If an application is denied, the specific reasons for the denial shall be stated by the
127 sheriff denying the application. Any person denied a license may file, in the circuit court of the
128 county in which the application was made, a petition seeking review of the denial. The petition
129 shall be filed within thirty days of the denial. The court shall then determine whether the applicant
130 is entitled to the issuance of a license under the criteria set forth in this section. The applicant
131 may be represented by counsel, but in no case is the court required to appoint counsel for an
132 applicant. The final order of the court shall include the court's findings of fact and conclusions
133 of law. If the final order upholds the denial, the applicant may file an appeal in accordance with
134 the Rules of Appellate Procedure of the Supreme Court of Appeals.

135 (k) If a license is lost or destroyed, the person to whom the license was issued may obtain
136 a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff

137 indicating that the license has been lost or destroyed.

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

143 (m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the
144 Superintendent of the West Virginia State Police a certified copy of the approved application.
145 The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so
146 requested a certified list of all licenses issued in the county. The Superintendent of the West
147 Virginia State Police shall maintain a registry of all persons who have been issued concealed
148 weapons licenses.

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

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

159 (p) A person who is engaged in the receipt, review or in the issuance or revocation of a
160 concealed weapon license does not incur any civil liability as the result of the lawful performance

161 of his or her duties under this article.

162 (q) Notwithstanding the provisions of subsection (a) of this section, with respect to
163 application by a former law-enforcement officer honorably retired from agencies governed by
164 article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two,
165 chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired
166 officer is exempt from payment of fees and costs as otherwise required by this section. All other
167 application and background check requirements set forth in this shall be applicable to these
168 applicants.

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

NOTE: The purpose of this bill is to allow those in active military service, and their spouses, while stationed at a West Virginia military installation to be considered as residents of this state for the purpose of obtaining concealed carry permits.

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