

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 149

BY SENATORS AZINGER AND WELD

[Introduced January 9, 2019; Referred
to the Committee on Military; and then to the Committee on
Finance]

1 A BILL to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating
2 to dangerous weapons; license to carry deadly weapons; and exempting honorably
3 discharged veterans of the armed forces of the United States from payment of fees and
4 costs required to get a license to carry deadly weapons.

Be it enacted by the Legislature of West Virginia:

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 §29-26-6
5 of this code. Concealed weapons licenses may only be issued for pistols and revolvers. Each
6 applicant shall file with the sheriff a complete application, as prepared by the Superintendent of
7 the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing
8 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 United States
15 citizen or legal resident thereof and resident of this state and of the county in which the application
16 is made and has a valid driver's license or other state-issued photo identification showing the
17 residence;

18 (3) That the applicant is 21 years of age or older;

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

22 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
23 treatment; or

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

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

28 (6) That the applicant has not been convicted of a misdemeanor crime of violence other
29 than an offense set forth in subdivision (7) of this subsection in the five years immediately
30 preceding the application;

31 (7) That the applicant has not been convicted of a misdemeanor crime of domestic
32 violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery
33 either under §61-2-28, §61-2-9(b) or §61-2-9(c) of this code in which the victim was a current or
34 former spouse, current or former sexual or intimate partner, person with whom the defendant
35 cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the
36 defendant's household at the time of the offense, or a misdemeanor offense with similar essential
37 elements in a jurisdiction other than this state;

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

43 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily
44 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or

45 involuntarily committed the applicant must provide a court order reflecting that the applicant is no
46 longer under such disability and the applicant's right to possess or receive a firearm has been
47 restored;

48 (10) That the applicant is not prohibited under the provisions of §61-7-4(a)(7) of this code
49 or federal law, including 18 U. S. C. §922(g) or (n), from receiving, possessing or transporting a
50 firearm;

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

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

56 (b) For both initial and renewal applications, the sheriff shall conduct an investigation
57 including a nationwide criminal background check consisting of inquiries of the National Instant
58 Criminal Background Check System, the West Virginia criminal history record responses, and the
59 National Interstate Identification Index and shall review the information received in order to verify
60 that the information required in §61-7-4(a) of this code is true and correct. A license may not be
61 issued unless the issuing sheriff has verified through the National Instant Criminal Background
62 Check System that the information available to him or her does not indicate that receipt or
63 possession of a firearm by the applicant would be in violation of the provisions of §61-7-7 of this
64 code or federal law, including 18 U. S. C. §922(g) or (n).

65 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen
66 licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license
67 administration fund. The fund shall be administered by the sheriff and shall take the form of an
68 interest-bearing account with any interest earned to be compounded to the fund. Any funds
69 deposited in this concealed weapons license administration fund are to be expended by the sheriff
70 to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on

71 hand at the end of each fiscal year may be expended for other law-enforcement purposes or
72 operating needs of the sheriff's office, as the sheriff considers appropriate.

73 (d) All persons applying for a license must complete a training course in handling and firing
74 a handgun, which includes the actual live firing of ammunition by the applicant. The successful
75 completion of any of the following courses fulfills this training requirement: *Provided*, That the
76 completed course includes the actual live firing of ammunition by the applicant:

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

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

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

84 (4) Any handgun training or safety course or class conducted by any branch of the United
85 States military, reserve or National Guard or proof of other handgun qualification received while
86 serving in any branch of the United States military, reserve or National Guard.

87 A photocopy of a certificate of completion of any of the courses or classes or an affidavit
88 from the instructor, school, club, organization, or group that conducted or taught the course or
89 class attesting to the successful completion of the course or class by the applicant or a copy of
90 any document which shows successful completion of the course or class is evidence of
91 qualification under this section and shall include the instructor's name, signature, and NRA or
92 state instructor identification number, if applicable.

93 (e) All concealed weapons license applications must be notarized by a notary public duly
94 licensed under §29-4-1 *et seq.* of this code. Falsification of any portion of the application
95 constitutes false swearing and is punishable under §61-5-2 of this code.

96 (f) The sheriff shall issue a license unless he or she determines that the application is
97 incomplete, that it contains statements that are materially false or incorrect or that applicant
98 otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue,
99 or deny the license within 45 days after the application is filed if all required background checks
100 authorized by this section are completed.

101 (g) Before any approved license is issued or is effective, the applicant shall pay to the
102 sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West
103 Virginia State Police within the 30 days of receipt. The license is valid for five years throughout
104 the state, unless sooner revoked.

105 (h) Each license shall contain the full name and address of the licensee and a space upon
106 which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign
107 and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a
108 duplicate license card, in size similar to other state identification cards and licenses, suitable for
109 carrying in a wallet, and the license card is considered a license for the purposes of this section.
110 All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties
111 in size, appearance, and information and shall feature a photograph of the licensee.

112 (i) The Superintendent of the West Virginia State Police, in cooperation with the West
113 Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for licenses
114 and license cards showing that the license has been granted and shall do any other act required
115 to be done to protect the state and see to the enforcement of this section.

116 (j) If an application is denied, the specific reasons for the denial shall be stated by the
117 sheriff denying the application. Any person denied a license may file, in the circuit court of the
118 county in which the application was made, a petition seeking review of the denial. The petition
119 shall be filed within 30 days of the denial. The court shall then determine whether the applicant is
120 entitled to the issuance of a license under the criteria set forth in this section. The applicant may
121 be represented by counsel, but in no case is the court required to appoint counsel for an applicant.

122 The final order of the court shall include the court's findings of fact and conclusions of law. If the
123 final order upholds the denial, the applicant may file an appeal in accordance with the Rules of
124 Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of
125 law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and
126 attorney's fees, payable by the sheriff's office which issued the denial.

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

130 (l) Whenever any person after applying for and receiving a concealed weapon license
131 moves from the address named in the application to another county within the state, the license
132 remains valid for the remainder of the five years unless the sheriff of the new county has
133 determined that the person is no longer eligible for a concealed weapon license under this article,
134 and the sheriff shall issue a new license bearing the person's new address and the original
135 expiration date for a fee not to exceed \$5: *Provided*, That the licensee, within 20 days thereafter,
136 notifies the sheriff in the new county of residence in writing of the old and new addresses.

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

143 (n) The sheriff shall deny any application or revoke any existing license upon
144 determination that any of the licensing application requirements established in this section have
145 been violated by the licensee.

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

149 (p) Notwithstanding §61-7-4(a) of this code, with respect to application by an honorably
150 discharged veteran of the armed forces of the United States or a former law-enforcement officer
151 honorably retired from agencies governed by §7-14-1 *et seq.*, §8-14-1 *et seq.*, §15-2-1 *et seq.*,
152 and §20-7-1 *et seq.* of this code, an honorably retired officer or an honorably discharged veteran
153 of the armed forces of the United States is exempt from payment of fees and costs as otherwise
154 required by this section. All other application and background check requirements set forth in this
155 section are applicable to these applicants.

156 (q) Information collected under this section, including applications, supporting documents,
157 permits, renewals, or any other information that would identify an applicant for or holder of a
158 concealed weapon license, is confidential: *Provided*, That this information may be disclosed to a
159 law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a
160 criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person
161 who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be
162 fined not less than \$50 or more than \$200 for each offense.

163 (r) A person who pays fees for training or application pursuant to this article after the
164 effective date of this section is entitled to a tax credit equal to the amount actually paid for training
165 not to exceed \$50: *Provided*, That if such training was provided for free or for less than \$50, then
166 such tax credit may be applied to the fees associated with the initial application.

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

NOTE: The purpose of this bill is to exempt honorably discharged veterans of the armed forces of the United States from payment of fees and costs required by this section for a license to carry deadly weapons. This exemption already applies to former law-enforcement officers who are honorably retired.

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