

HB 4077

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. Sub. For

HOUSE BILL No. 4077

(By Delegate *s* Linch, Staton, Manuel,
Amores, J. Marten, Riggs and Thomas)



Passed March 8, 1996

In Effect From Passage



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COMMITTEE SUBSTITUTE
FOR
H. B. 4077

(BY DELEGATES LINCH, STATON, MANUEL, AMORES, J. MARTIN,
RIGGS AND THOMAS)

[Passed March 8, 1996; in effect from passage.]

AN ACT to amend and reenact sections four, five and six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licensing requirements for carrying concealed deadly weapons; shifting concealed deadly weapons licensing authority from circuit judges to sheriffs; changing license issuance requirements; preventing those persons either adjudicated mentally incompetent, with criminal charges pending, charged or serving sentences for domestic violence, or subject to a domestic violence petition from receiving concealed weapons licenses; modifying applicants background check verification requirements; requiring all concealed weapons applicants to receive training; modifying the appeal process for denied concealed weapons licenses; establishing authority of sheriffs to revoke concealed weapons licenses; directing that certain license fees paid to the sheriff be deposited in a special fund to be administered by the sheriff; providing a portion of the licensing fee be distributed to the state police; directing the state police to develop concealed weapons license cards and application forms; creating a criminal penalty for false swearing for falsifying a permit application; allowing military handgun training to be utilized in meeting training requirements for concealed handgun or revolver license; modifying training program requirements; creating criminal penalties for

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concealed weapons licensee for failure to have identification and concealed weapon license in his or her possession when carrying a concealed weapon; allowing certain current licensees to renew their license without paying application fees; excluding retired state police officers from certain licensing requirements; and adding certain retired circuit judges to persons who can carry a concealed weapon without a license.

Be it enacted by the Legislature of West Virginia:

That sections four, five and six of article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, 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
2 section, any person desiring to obtain a state license to
3 carry a concealed deadly weapon shall apply to the sheriff
4 of his or her county for such license, and shall pay to the
5 sheriff, at the time of application, a fee of sixty dollars.
6 Each applicant shall file with the sheriff, a complete
7 application, as prepared by the superintendent of the West
8 Virginia state police, in writing, duly verified, which sets
9 forth only the following licensing requirements:

10 (1) The applicant's full name, date of birth, social
11 security number and a description of the applicant's
12 physical features;

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

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

20 (4) That the applicant is not addicted to alcohol, a
21 controlled substance or a drug, and is not an unlawful user
22 thereof;

23 (5) That the applicant has not been convicted of a
24 felony or of an act of violence involving the misuse of a
25 deadly weapon;

26 (6) That the applicant has no criminal charges
27 pending and is not currently serving a sentence of
28 confinement, parole, probation or other court ordered
29 supervision, because of a charge of domestic violence as
30 provided for in section twenty-eight, article two of this
31 chapter, or is the subject of a restraining order as a result
32 of a domestic violence act as defined in that section, or
33 because of a verified petition of domestic violence as
34 provided for in article two-a, chapter forty-eight of this
35 code or is subject to a protective order as provided for in
36 that article;

37 (7) That the applicant is physically and mentally
38 competent to carry such weapon;

39 (8) That the applicant has not been adjudicated to be
40 mentally incompetent;

41 (9) That the applicant has qualified under the
42 minimum requirements set forth in subsection (d) of this
43 section for handling and firing such weapon: *Provided,*
44 That this requirement shall be waived in the case of a
45 renewal applicant who has previously qualified.

46 (10) That the applicant authorizes the sheriff of the
47 county, or his or her designee, to conduct an investigation
48 relative to the information contained in the application.

49 (b) The sheriff shall conduct an investigation which
50 shall verify that the information required in subdivisions
51 (1), (2), (3), (5), (6), (8) and (9) of subsection (a) are true
52 and correct.

53 (c) The sixty dollar application fee and any fees for
54 replacement of lost or stolen licenses received by the
55 sheriff shall be deposited by the sheriff into a concealed
56 weapons license administration fund. Such fund shall be
57 administered by the sheriff and shall take the form of an
58 interest bearing account with any interest earned to be
59 compounded to the fund. Any funds deposited in this
60 concealed weapon license administration fund are to be
61 expended by the sheriff to pay for the costs associated

62 with issuing concealed weapons licenses. Any surplus in
63 the fund on hand at the end of each fiscal year may be
64 expended for other law enforcement purposes or
65 operating needs of the sheriffs office, as the sheriff may
66 deem appropriate.

67 (d) All persons applying for a license must complete a
68 training course in handling and firing a handgun. The
69 successful completion of any of the following courses
70 fulfills this training requirement:

71 (1) Any official national rifle association handgun
72 safety or training course;

73 (2) Any handgun safety or training course or class
74 available to the general public offered by an official
75 law-enforcement organization, community college, junior
76 college, college, or private or public institution or
77 organization or handgun training school utilizing
78 instructors duly certified by such institution;

79 (3) Any handgun training or safety course or class
80 conducted by a handgun instructor certified as such by
81 the state or by the national rifle association;

82 (4) Any handgun training or safety course or class
83 conducted by any branch of the United States military,
84 reserve or national guard.

85 A photocopy of a certificate of completion of any of
86 the courses or classes or an affidavit from the instructor,
87 school, club, organization, or group that conducted or
88 taught said course or class attesting to the successful
89 completion of the course or class by the applicant or a
90 copy of any document which shows successful completion
91 of the course or class, shall constitute evidence of
92 qualification under this section.

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

99 (f) If the information in the application is found to be

100 true and correct, the sheriff shall issue a license. The
101 sheriff shall issue or deny the license within thirty days
102 after the application is filed if all required background
103 checks authorized by this section are completed, and no
104 later than forty-five days regardless of whether these
105 background checks have been completed.

106 (g) Before any approved license shall be issued or
107 become effective, the applicant shall pay to the sheriff a
108 fee in the amount of fifteen dollars which the sheriff shall
109 forward to the superintendent of the West Virginia state
110 police within thirty days of receipt. Any such license shall
111 be valid for five years throughout the state, unless sooner
112 revoked.

113 (h) All persons holding a current and valid concealed
114 weapons license as of December 16, 1995, shall continue
115 to hold a valid concealed weapons license until his or her
116 license expires or is revoked as provided for in this article:
117 *Provided*, That all reapplication fees shall be waived for
118 applications received by January 1, 1997, for any person
119 holding a current and valid concealed weapons license as
120 of December 16, 1995 which contains use restrictions
121 placed upon the license as a condition of issuance by the
122 issuing circuit court. Any licenses reissued pursuant to
123 this subsection will be issued for the time period of the
124 original license.

125 (i) Each license shall contain the full name, social
126 security number and address of the licensee and a space
127 upon which the signature of the licensee shall be signed
128 with pen and ink. The issuing sheriff shall sign and attach
129 his or her seal to all license cards.

130 (j) The superintendent of the West Virginia state police
131 shall prepare uniform applications for licenses and license
132 cards showing that such license has been granted and shall
133 do any other act required to be done to protect the state
134 and see to the enforcement of this section.

135 (k) In the event an application is denied, the specific
136 reasons for the denial shall be stated by the sheriff
137 denying the application. Any person denied a license
138 may file, in the circuit court of the county in which the
139 application was made, a petition seeking review of the

140 denial. Such petition shall be filed within thirty days of
141 the denial. The court shall then determine whether the
142 applicant is entitled to the issuance of a license under the
143 criteria set forth in this section. The applicant may be
144 represented by counsel, but in no case shall the court be
145 required to appoint counsel for an applicant. The final
146 order of the court shall include the court's findings of fact
147 and conclusions of law. If the final order upholds the
148 denial, the applicant may file an appeal in accordance with
149 the rules of appellate procedure of the supreme court of
150 appeals.

151 (l) In the event a license is lost or destroyed, the person
152 to whom the license was issued may obtain a duplicate or
153 substitute license for a fee of five dollars by filing a
154 notarized statement with the sheriff indicating that the
155 license has been lost or destroyed.

156 (m) The sheriff shall, immediately after the license is
157 granted as aforesaid, furnish the superintendent of the
158 West Virginia state police a certified copy of the approved
159 application. It shall be the duty of the sheriff to furnish to
160 the superintendent of the West Virginia state police at any
161 time so requested, a certified list of all such licenses issued
162 in the county. The superintendent of the West Virginia
163 state police shall maintain a registry of all persons who
164 have been issued concealed weapons licenses.

165 (n) All licensees must carry with them a state issued
166 photo identification card with the concealed weapons
167 license whenever the licensee is carrying a concealed
168 weapon. Any licensee who fails to have in his or her
169 possession a state issued photo identification card and a
170 current concealed weapons license while carrying a
171 concealed weapon shall be guilty of a misdemeanor, and
172 upon conviction thereof, shall be fined not less than fifty
173 or more than two hundred dollars for each offense.

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

178 (p) No person who is engaged in the receipt, review, or
179 in the issuance or revocation of a concealed weapon

180 license shall incur any civil liability as the result of the
181 lawful performance of his or her duties under this article.

182 (q) Notwithstanding the provisions of subsection (a) of
183 this section, with respect to application by a former
184 law-enforcement officer honorably retired from agencies
185 governed by article fourteen, chapter seven; article
186 fourteen, chapter eight; article two, chapter fifteen; and
187 article seven, chapter twenty of this code, an honorably
188 retired officer is exempt from payment of fees and costs
189 as otherwise required by this section, and the application
190 of the honorably retired officer shall be granted without
191 proof or inquiry by the sheriff as to those requirements set
192 forth in subdivision (9) of subsection (b) of this section, if
193 the officer meets the remainder of the requirements of this
194 section and has the approval of the appropriate chief
195 law-enforcement officer.

§61-7-5. Revocation of license.

1 A license to carry a deadly weapon shall be deemed
2 revoked at such time as the person licensed becomes
3 unable to meet the criteria for initial licensure set forth in
4 section four of this article. Any person licensed under the
5 provisions of this article shall immediately surrender his or
6 her license to the issuing sheriff upon becoming ineligible
7 for continued licensure.

**§61-7-6. Exceptions as to prohibitions against carrying
concealed deadly weapons.**

1 The licensure provisions set forth in this article shall
2 not apply to:

3 (1) Any person carrying a deadly weapon upon his
4 own premises; nor shall anything herein prevent a person
5 from carrying any firearm, unloaded, from the place of
6 purchase to his or her home, residence or place of
7 business or to a place of repair and back to his or her
8 home, residence or place of business, nor shall anything
9 herein prohibit a person from possessing a firearm while
10 hunting in a lawful manner or while traveling from his or
11 her home, residence or place of business to a hunting site,
12 and returning to his or her home, residence or place of
13 business;

14 (2) Any person who is a member of a properly
15 organized target-shooting club authorized by law to
16 obtain firearms by purchase or requisition from this state,
17 or from the United States for the purpose of target
18 practice, from carrying any pistol, as defined in this article,
19 unloaded, from his home, residence or place of business to
20 a place of target practice, and from any such place of
21 target practice back to his home, residence or place of
22 business, for using any such weapon at such place of
23 target practice in training and improving his skill in the
24 use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement
26 official as such are defined in section one, article
27 twenty-nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department of
29 corrections duly appointed pursuant to the provisions of
30 section five, article five, chapter twenty-eight of this code
31 while such employee is on duty;

32 (5) Any member of the armed forces of the United
33 States or the militia of this state while such member is on
34 duty;

35 (6) Any circuit judge, including any retired circuit
36 judge designated senior status by the supreme court of
37 appeals of West Virginia, prosecuting attorney, assistant
38 prosecuting attorney or a duly appointed investigator
39 employed by a prosecuting attorney.

40 (7) Any resident of another state, who has been issued
41 a license to carry a concealed weapon by that state or a
42 political subdivision thereof, shall be exempt from the
43 licensing requirements of section four of this article:
44 *Provided*, That such state or political subdivision thereof
45 shall likewise recognize and honor West Virginia licenses
46 issued pursuant to section four of this article.

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

Randy Schoonover
Chairman Senate Committee

Randy Seaman
Chairman House Committee

Originating in the House.

Takes effect from passage.

Darrell Atkins
Clerk of the Senate

Gregory W. Gray
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Robert Taylor
Speaker of the House of Delegates

The within is approved this the 21st
day of March, 1996.

Winston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/96

Time 3:36pm