WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 353

(Senators Unger, Kessler (Mr. President), Browning, Laird, Klempa and Snyder, original sponsors)

[Passed March 10, 2012; in effect ninety days from passage.]
AN ACT to amend and reenact §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to possession of firearms generally; clarifying what constitutes carrying a handgun concealed in or on a motor vehicle; procedures for obtaining a license to carry a concealed handgun; providing application requirements; requiring investigations of applicants through a national criminal background check system and the West Virginia database; providing definitions; prohibiting certain persons from possessing or receiving firearms; providing exceptions; allowing licenses to be transferable within the state; requiring reporting of new address; and penalties.

Be it enacted by the Legislature of West Virginia:

That §61-7-2, §61-7-4 and §61-7-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.
§61-7-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" shall include, but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

3 (2) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

4 (3) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing or tearing wounds. The term "knife" shall include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

5 (4) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.

6 (5) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope
or other nonrigid, flexible or springy material, constructed
in such a manner as to allow the rigid parts to swing freely
so that one rigid part may be used as a handle and the other
rigid part may be used as the striking end.

(6) "Metallic or false knuckles" means a set of finger
rings attached to a transverse piece to be worn over the front
of the hand for use as a weapon and constructed in such a
manner that, when striking another person with the fist or
closed hand, considerable physical damage may be inflicted
upon the person struck. The terms "metallic or false knuckles"
shall include any such instrument without reference to
the metal or other substance or substances from which the
metallic or false knuckles are made.

(7) "Pistol" means a short firearm having a chamber
which is integral with the barrel, designed to be aimed and
fired by the use of a single hand.

(8) "Revolver" means a short firearm having a cylinder
of several chambers that are brought successively into line
with the barrel to be discharged, designed to be aimed and
fired by the use of a single hand.

(9) "Deadly weapon" means an instrument which is
designed to be used to produce serious bodily injury or death
or is readily adaptable to such use. The term "deadly
weapon" shall include, but not be limited to, the instruments
defined in subdivisions (1) through (8), inclusive, of this
section or other deadly weapons of like kind or character
which may be easily concealed on or about the person. For
the purposes of section one-a, article five, chapter eighteen-a
of this code and section eleven-a, article seven of this
chapter, in addition to the definition of "knife" set forth in
subdivision (3) of this section, the term "deadly weapon" also
includes any instrument included within the definition of
"knife" with a blade of three and one-half inches or less in
length. Additionally, for the purposes of section one-a,
article five, chapter eighteen-a of this code and section
eleven-a, article seven of this chapter, the term "deadly
weapon" includes explosive, chemical, biological and
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73 radiological materials. Notwithstanding any other provision
74 of this section, the term "deadly weapon" does not include
75 any item or material owned by the school or county board,
76 intended for curricular use, and used by the student at the
77 time of the alleged offense solely for curricular purposes.

78 (10) "Concealed" means hidden from ordinary observa-
79 tion so as to prevent disclosure or recognition. A deadly
80 weapon is concealed when it is carried on or about the
81 person in such a manner that another person in the ordinary
82 course of events would not be placed on notice that the
83 deadly weapon was being carried. For purposes of concealed
84 handgun licensees, a licensee shall be deemed to be carrying
85 on or about his or her person while in or on a motor vehicle
86 if the firearm is located in a storage area in or on the motor
87 vehicle.

88 (11) "Firearm" means any weapon which will expel a
89 projectile by action of an explosion.

90 (12) "Controlled substance" has the same meaning as is
91 ascribed to that term in subsection (d), section one hundred
92 one, article one, chapter sixty-a of this code.

93 (13) "Drug" has the same meaning as is ascribed to that
94 term in subsection (1), section one hundred one, article one,
95 chapter sixty-a of this code.

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

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

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

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

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

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:
(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

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

(5) That the applicant has not been convicted of a felony or of an act of a misdemeanor crime of violence involving the misuse of a deadly weapon within the five years immediately preceding the application;

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

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

(8) That the applicant has not been adjudicated to be mentally incompetent. If the applicant has been adjudicated mentally incompetent the applicant must provide a court order reflecting that the applicant is no longer under such disability;

(9) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon: Provided, That this require-
ment shall be waived in the case of a renewal applicant who
has previously qualified; and

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

(b) For both initial and renewal applications, the sheriff
shall conduct an investigation including a nationwide
criminal background check consisting of checking the
National Instant Criminal Background Check System and
the West Virginia criminal history record responses in order
to verify that the information required in subsection (a) of
this section is true and correct.

(c) $60 of the application fee and any fees for replace-
ment of lost or stolen licenses received by the sheriff shall be
deposited by the sheriff into a Concealed Weapons License
Administration Fund. The fund shall be administered by the
sheriff and shall take the form of an interest-bearing account
with any interest earned to be compounded to the fund. Any
funds deposited in this Concealed Weapon License Admin-
istration Fund are to be expended by the sheriff to pay for the
costs associated with issuing concealed weapons licenses.
Any surplus in the fund on hand at the end of each fiscal
year may be expended for other law-enforcement purposes
or operating needs of the sheriff's office, as the sheriff may
consider appropriate.

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

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

(2) Any handgun safety or training course or class
available to the general public offered by an official
law-enforcement organization, community college, junior
college, college or private or public institution or organiza-
tion or handgun training school utilizing instructors duly
certified by the institution;
(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard.

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

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

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

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

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

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

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

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

(l) Whenever any person after applying for and receiving
a concealed handgun license moves from the address named
in the application to another county within the state, the
license remains valid for the remainder of the five years:
Provided, That the licensee within twenty days thereafter
notifies the sheriff in the new county of residence in writing
of the old and new addresses.
(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

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

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

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

(q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section.
Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon permit issued in accordance with the provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver on the lands or waters of this state.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in section two of this article, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution pursuant to the provisions of chapter twenty-seven of this code: Provided, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: Provided, however, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:
(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine of said article or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward or a member of the defendant’s household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in the county jail for not less than ninety days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:
(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in sections two hundred four, two hundred five and two hundred six, article two, chapter sixty-a of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than $5,000, or both. The provisions of subsection (c) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: Provided, That a person prohibited from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm in accordance with the provisions of section five, article seven-a of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within .......... is approved .......... this the 22nd Day of ....... 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 4:20 p.m.