WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2431

(Delegate(s) R. Phillips, Cowles, Hunt, Marcum, Moye, Pethtel and Stowers)

Passed April 13, 2013

In effect ninety days from passage.
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COMMITTEE SUBSTITUTE

FOR

H. B. 2431

(BY DELEGATE(S) R. PHILLIPS, COWLES, HUNT, MARCUM, MOYE, PETHTEL AND STOWERS)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §61-7-2 and §61-7-7 of the Code of West Virginia, 1931, as amended, all relating to the process for obtaining a state license to carry a concealed deadly weapon; conforming state licensure law to meet federal “Brady Exemption” requirements; clarifying certain restrictions and prohibitions; clarifying effect of expungement, pardons or reversal of prior offenses on permit applications; clarifying training and certification requirements; and clarifying background check requirements.

Be it enacted by the Legislature of West Virginia:

That §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.

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

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and shall pay to the sheriff, at the time of application, a fee of $75, of which $15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by 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
unless the conviction has been expunged or set aside or the
applicant’s civil rights have been restored or the applicant has
been unconditionally pardoned for the offense;

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

(7) 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;

(8) 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;

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

(10) 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 requirement
shall be waived in the case of a renewal applicant who has
previously qualified; and

(11) 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 inquiries of the National Instant
Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct.

(c) Sixty dollars of the application fee and any fees for replacement 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 Administration 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 organization 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 or proof of other handgun qualification received while serving in 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 determine 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. All other application and background
check requirements set forth in this shall be applicable to these
applicants.

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 to be mentally incompetent or who
has been involuntarily committed to a mental institution pursuant
to the provisions of chapter twenty-seven of this code or in similar
law of another jurisdiction: 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
immediately surrender any firearms in their ownership or
possession: Provided, however, That the mental hygiene
16 commissioner or circuit judge shall first make a determination of
17 the appropriate public or private individual or entity to act as
18 conservator for the surrendered property;

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

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

22 (7) Is subject to a domestic violence protective order that:

23 (A) Was issued after a hearing of which such person received
24 actual notice and at which such person had an opportunity to
25 participate;

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

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

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

36 (8) Has been convicted of a misdemeanor offense of assault or
37 battery either under the provisions of section twenty-eight, article
38 two of this chapter or the provisions of subsection (b) or (c),
39 section nine of said article or a federal or state statute with the
40 same essential elements in which the victim was a current or
41 former spouse, current or former sexual or intimate partner, person
42 with whom the defendant has a child in common, person with
43 whom the defendant cohabits or has cohabited, a parent or
44 guardian, the defendant’s child or ward or a member of the
45 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 section.

(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.
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.

(d) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is disagreed this the 17th day of April, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 17 2013

Time 11:24 am