House Bill No. 4186

(By Delegates Phillips, R., White, Tomblin, Marcum, Hamilton, Evans, A., Ashley, Barker, Boggs, Hartman and Sponaugle)

Passed March 6, 2014

In effect ninety days from passage.
ENROLLED

H. B. 4186

(BY DELEGATES PHILLIPS, R., WHITE,
TOMBLIN, MARCUM, HAMILTON, EVANS, A.,
ASHLEY, BARKER, BOGGS, HARTMAN AND SPONAUGLE)

[Passed March 6, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to the procedures for issuing a concealed weapon license; adding requirements to ensure that an applicant is not prohibited under the provisions of state or federal law from the receipt or possession of a firearm.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

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

2 (a) Except as provided in subsection (h) of this section, any
3 person desiring to obtain a state license to carry a concealed
4 deadly weapon shall apply to the sheriff of his or her county for
5 the license, and 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 is not prohibited under the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(q) or (n), from receiving, possessing or transporting a firearm;

(11) 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

(12) 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. A license may not be issued
unless the issuing sheriff has verified through the National
Instant Criminal Background Check System that the information
available to him or her does not indicate that receipt or
possession of a firearm by the applicant would be in violation of
the provisions of section seven of this article or federal law,
including 18 U.S.C. § 922(g) or (n).

(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 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 considers 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 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 the 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 is 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 is issued or is 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 is 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 is 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 shall 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.

(r) 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

[Signatures]

Secretary of State

The within is approved this the 26th day of [insert date], 2014.

Governor
PRESENTED TO THE GOVERNOR

MARCH 17, 2014

Time 3:30 pm