

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4145

(BY DELEGATES BLAIR, AZINGER, BUTLER, CADLE,
ELDRIDGE, HOUSEHOLDER, MARCUM, OVERINGTON,
R. PHILLIPS, SOBONYA AND UPSON)

[Passed February 24, 2016; in effect ninety days from passage.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2016 MAR - 3 P 2:10

FILED

HB 4145 (veto)

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[Passed February 24, 2016; in effect ninety days from passage.]

1 AN ACT to repeal §20-2-6a of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §61-7-3, §61-7-4, §61-7-6, §61-7-7 and §61-7-11a of said code; and to amend
3 said code by adding thereto three new sections, designated §61-7-4a and §61-7-15a and
4 §61-7-17, all relating to the carrying of firearms and deadly weapons generally;
5 establishing that criminal penalties for carrying a concealed deadly weapon without state
6 license or other lawful authorization apply only to persons under twenty-one years of age
7 and prohibited persons; requiring an applicant for a concealed weapon permit be a United
8 States citizen or legal resident thereof, a resident of this state and of the county in which
9 application is made; requiring training courses in handling and firing a handgun to include
10 the actual live firing of ammunition; requiring certificates of completion of a training course
11 which are submitted with license applications include the instructor's name, signature and
12 NRA or state instructor identification number; requiring that on or after January 1, 2017,
13 all duplicate license cards issued by county sheriffs be uniform across all fifty-five counties
14 and feature a photograph of the licensee; requiring State Police, in cooperation with the
15 Sheriffs' Bureau of Professional Standards, prepare uniform applications for licenses and
16 license cards; entitling a person who pays fees for training or application after the effective
17 date to a tax credit equal to the amount actually paid for training not to exceed \$50, unless
18 such training was provided for free or for less than \$50, then such tax credit may be applied
19 to the fees associated with the initial application; establishing a provisional license to carry
20 concealed deadly weapons for persons at least eighteen years of age and less than
21 twenty-one years of age; establishing provisional license application requirements and
22 procedures; providing for exceptions as to prohibitions against carrying handguns
23 concealed for persons at least eighteen years of age and fewer than twenty-one years of
24 age; providing for any United States citizen or legal resident thereof at least twenty-one
25 years of age and not otherwise prohibited from possessing a firearm may carry a
26 concealed deadly weapon without a license; creating felony offenses for any persons

27 prohibited from possessing firearms who carry concealed firearms and providing for
28 criminal penalties; providing that it shall not be unlawful to possess a firearm in or on a
29 private primary or secondary education building, structure or facility when such institution
30 has adopted written policies allowing for possession of firearms; exempting probation
31 officers from prohibition against possessing firearms on premises of educational facilities;
32 requiring a school principal to report certain violations to the State Police; creating felony
33 offense for persons using or presenting a firearm while engaged in the commission of a
34 felony and providing for criminal penalties; and providing for construction of article.

Be it enacted by the Legislature of West Virginia:

1 That §20-2-6a of the Code of West Virginia, 1931, as amended, be repealed; that §61-7-
2 3, §61-7-4, §61-7-6, §61-7-7 and §61-7-11a of said code be amended and reenacted; and that
3 said code be amended by adding thereto three new sections, designated §61-7-4a, §61-7-15a
4 and §61-7-17, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

**§61-7-3. Carrying a deadly weapon without provisional license or other authorization by
persons under twenty-one years of age; penalties.**

1 (a) Any person under twenty-one years of age and not otherwise prohibited from
2 possessing firearms under section seven of this article who carries a concealed deadly weapon,
3 without a state license or other lawful authorization established under the provisions of this code,
4 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor
5 more than \$1,000 and may be imprisoned in jail for not more than twelve months for the first
6 offense; but upon conviction of a second or subsequent offense, he or she is guilty of a felony
7 and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one
8 nor more than five years and fined not less than \$1,000 nor more than \$5,000.

9 (b) The prosecuting attorney in all cases shall ascertain whether or not the charge made
10 by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or

11 subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney
12 shall introduce the record evidence before the trial court of such second or subsequent offense
13 and may not be permitted to use discretion in introducing evidence to prove the same on the trial.

§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 section six,
5 article twenty-six, chapter twenty-nine of this code. Concealed weapons license may only be
6 issued for pistols and revolvers. Each applicant shall file with the sheriff a complete application,
7 as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which
8 sets forth only the following licensing 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 twenty-one 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 section in the five years immediately preceding
30 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 section twenty-eight, article two of this chapter or subsection (b) or (c), section nine,
34 article two of this chapter in which the victim was a current or former spouse, current or former
35 sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent
36 or guardian, the defendant's child or ward or a member of the defendant's household at the time
37 of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other
38 than this state;

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

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

49 (10) That the applicant is not prohibited under the provisions of section seven of this article
50 or federal law, including 18 U. S. C. §922(g) or (n), from receiving, possessing or transporting a
51 firearm;

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

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

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

66 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen
67 licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license
68 administration fund. The fund shall be administered by the sheriff and shall take the form of an
69 interest-bearing account with any interest earned to be compounded to the fund. Any funds
70 deposited in this concealed weapon license administration fund are to be expended by the sheriff
71 to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on
72 hand at the end of each fiscal year may be expended for other law-enforcement purposes or
73 operating needs of the sheriff's office, as the sheriff considers appropriate.

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

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

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

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

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

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

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

98 (f) The sheriff shall issue a license unless he or she determines that the application is
99 incomplete, that it contains statements that are materially false or incorrect or that applicant

100 otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue
101 or deny the license within forty-five days after the application is filed if all required background
102 checks authorized by this section are completed.

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

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

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

118 (j) If an application is denied, the specific reasons for the denial shall be stated by the
119 sheriff denying the application. Any person denied a license may file, in the circuit court of the
120 county in which the application was made, a petition seeking review of the denial. The petition
121 shall be filed within thirty days of the denial. The court shall then determine whether the applicant
122 is entitled to the issuance of a license under the criteria set forth in this section. The applicant
123 may be represented by counsel, but in no case is the court required to appoint counsel for an
124 applicant. The final order of the court shall include the court's findings of fact and conclusions of
125 law. If the final order upholds the denial, the applicant may file an appeal in accordance with the

126 Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and
127 conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable
128 costs and attorney's fees, payable by the sheriff's office which issued the denial.

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

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

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

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

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

152 (p) Notwithstanding subsection (a) of this section, with respect to application by a former
153 law-enforcement officer honorably retired from agencies governed by article fourteen, chapter
154 seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this
155 code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from
156 payment of fees and costs as otherwise required by this section. All other application and
157 background check requirements set forth in this section are applicable to these applicants.

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

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

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

§61-7-4a. Provisional license to carry deadly weapons; how obtained.

1 (a) Any person who is at least eighteen years of age and less than twenty-one years of
2 age who desires to obtain a state license to carry a concealed deadly weapon shall apply to the
3 sheriff of his or her county for a provisional license, and pay to the sheriff, at the time of application,
4 a fee of \$25, of which \$5 of that amount shall be deposited in the Courthouse Facilities

5 Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.
6 Provisional licenses may only be issued for pistols or revolvers. Each applicant shall file with the
7 sheriff a complete application, as prepared by the Superintendent of the West Virginia State
8 Police, in writing, duly verified, which sets forth only the following licensing 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 resident of this
15 state and of the county in which the application is made and has a valid driver's license or other
16 state-issued photo identification showing the residence;

17 (3) That the applicant is at least eighteen years of age and less than twenty-one years of
18 age;

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 section within five years immediately preceding
30 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 under either section twenty-eight, article two of this chapter or subsection (b) or (c), section nine,
34 article two of this chapter in which the victim was a current or former spouse, current or former
35 sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent
36 or guardian, the defendant's child or ward or a member of the defendant's household at the time
37 of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other
38 than this state;

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

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

49 (10) That the applicant is not prohibited under section seven of this article or federal law,
50 including 18 U. S. C. §922(g) or (n), from receiving, possessing or transporting a 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;

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

55 (b) For provisional license applications, the sheriff shall conduct an investigation including
56 a nationwide criminal background check consisting of inquiries of the National Instant Criminal

57 Background Check System, the West Virginia criminal history record responses and the National
58 Interstate Identification Index, and shall review the information received in order to verify that the
59 information required in subsection (a) of this section is true and correct. A provisional license may
60 not be issued unless the issuing sheriff has verified through the National Instant Criminal
61 Background Check System that the information available does not indicate that receipt of or
62 possession of a firearm by the applicant would be in violation of the provisions of section seven
63 of this article or federal law, including 18 U. S. C. §922(g) or (n).

64 (c) Twenty dollars of the application fee and any fees for replacement of lost or stolen
65 provisional licenses received by the sheriff shall be deposited by the sheriff into a concealed
66 weapons license administration fund. The fund shall be administered by the sheriff and shall take
67 the form of an interest-bearing account with any interest earned to be compounded to the fund.
68 Any funds deposited in said fund are to be expended by the sheriff to pay the costs associated
69 with issuing concealed weapons provisional licenses. Any surplus in the fund on hand at the end
70 of each fiscal year may be expended for other law-enforcement purposes or operating needs of
71 the sheriff's office, as the sheriff considers appropriate.

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

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

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

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

83 (4) Any proof of current or former service in the United States armed forces, armed forces
84 reserves or National Guard.

85 A photocopy of a certificate of completion of any of the courses or classes or an affidavit
86 from the instructor, school, club, organization or group that conducted or taught the course or
87 class attesting to the successful completion of the course or class by the applicant, or a copy of
88 any document which shows successful completion of the course or class, is evidence of
89 qualification under this section. Certificates, affidavits or other documents submitted to show
90 completion of a course or class shall include instructor information and proof of instructor
91 certification, including, if applicable, the instructor's NRA instructor certification number.

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

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

100 (g) Before any approved license is issued or is effective, the applicant shall pay to the
101 sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West
102 Virginia State Police within thirty days of receipt. The provisional license is valid until the licensee
103 turns twenty-one years of age, unless sooner revoked.

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

109 purposes of this section. Duplicate license cards issued shall be uniform across all fifty-five
110 counties in size, appearance and information and must feature a photograph of the licensee. The
111 provisional license shall be readily distinguishable from a license issued pursuant to section four
112 of this article and shall state: "NOT NICS EXEMPT. This license confers the same rights and
113 privileges to carry a concealed pistol or revolver on the lands or waters of this state as a license
114 issued pursuant to section four, article seven, chapter sixty-one of this code, except that this
115 license does not satisfy the requirements of 18 U. S. C. §922(t)(3). A NICS check must be
116 performed prior to purchase of a firearm from a federally licensed firearm dealer."

117 (i) The Superintendent of the West Virginia State Police, in coordination with the West
118 Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for
119 provisional licenses and license cards showing that the license has been granted and shall
120 perform any other act required to protect the state and to enforce of section.

121 (j) If an application is denied, the specific reasons for the denial shall be stated by the
122 sheriff denying the application. Any person denied a provisional license may file, in the circuit
123 court of the county in which the application was made, a petition seeking review of the denial. The
124 petition shall be filed within thirty days of the denial. The court shall then determine whether the
125 applicant is entitled to the issuance of a provisional license under the criteria set forth in this
126 section. The applicant may be represented by counsel, but in no case is the court required to
127 appoint counsel for an applicant. The final order of the court shall include the court's findings of
128 fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal
129 in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the
130 findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be
131 entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the
132 denial.

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

136 (l) Whenever any person after applying for and receiving a provisional concealed weapon
137 license moves from the address named in the application to another county within the state, the
138 license remains valid until the licensee turns twenty-one years of age unless the sheriff of the new
139 county has determined that the person is no longer eligible for a provisional concealed weapon
140 license under this article, and the sheriff shall issue a new provisional license bearing the person's
141 new address and the original expiration date for a fee not to exceed \$5: *Provided*, That the
142 licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing
143 of the old and new addresses.

144 (m) The sheriff shall, immediately after the provisional license is granted, furnish the
145 Superintendent of the West Virginia State Police a certified copy of the approved application. The
146 sheriff shall furnish to the Superintendent of the West Virginia State Police, at any time so
147 requested, a certified list of all provisional licenses issued in the county. The Superintendent of
148 the West Virginia State Police shall maintain a registry of all persons who have been issued
149 provisional concealed weapon licenses.

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

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

156 (p) 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 provisional license, is confidential: *Provided*, That this information may be
159 disclosed to a law enforcement agency or officer: (i) To determine the validity of a provisional
160 license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-

161 enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and,
162 upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.

163 (q) Except as restricted or prohibited by the provisions of this article or as otherwise
164 prohibited by law, the issuance of a provisional concealed weapon license issued in accordance
165 with the provisions of this section authorizes the holder of the license to carry a concealed pistol
166 or revolver on the lands or waters of this state.

**§61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons
at least eighteen years of age and fewer than twenty-one years of age;
exemptions from licensing fees.**

1 (a) The provisions in section three of this article do not apply to any person at least
2 eighteen years of age and fewer than twenty-one years of age who is:

3 (1) Carrying a deadly weapon upon his or her own premises;

4 (2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence
5 or place of business or to a place of repair and back to his or her home, residence or place of
6 business; or

7 (3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her
8 home, residence or place of business to a hunting site and returning to his or her home, residence
9 or place of business;

10 (4) A member of a properly organized target-shooting club authorized by law to obtain
11 firearms by purchase or requisition from this state or from the United States for the purpose of
12 target practice from carrying any pistol, as defined in this article, unloaded, from his or her home,
13 residence or place of business to a place of target practice and from any place of target practice
14 back to his or her home, residence or place of business, for using any such weapon at a place of
15 target practice in training and improving his or her skill in the use of the weapons;

16 (5) A law-enforcement officer or law-enforcement official or chief executive as defined in
17 section one, article twenty-nine, chapter thirty of this code;

18 (6) An employee of the West Virginia Division of Corrections duly appointed pursuant to
19 section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;

20 (7) A member of the United States armed forces, reserve or National Guard;

21 (8) A resident of another state who holds a valid permit or license to possess or carry a
22 handgun issued by a state or a political subdivision subject to the provisions and limitations set
23 forth in section six-a of this article;

24 (9) A federal law-enforcement officer or federal police officer authorized to carry a weapon
25 in the performance of the officer's duty; and

26 (10) A parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-
27 two of this code in the performance of his or her duties.

28 (b) The following judicial officers and prosecutors and staff are exempt from paying any
29 application fees or licensure fees required under this article. However, they shall make application
30 and satisfy all licensure and handgun safety and training requirements to obtain a license as set
31 forth in section four of this article:

32 (1) Any justice of the Supreme Court of Appeals of West Virginia;

33 (2) Any circuit judge;

34 (3) Any retired justice or retired circuit judge designated senior status by the Supreme
35 Court of Appeals of West Virginia;

36 (4) Any family court judge;

37 (5) Any magistrate;

38 (6) Any prosecuting attorney;

39 (7) Any assistant prosecuting attorney; or

40 (8) Any duly appointed investigator employed by a prosecuting attorney.

**§61-7-7. Persons prohibited from possessing firearms; classifications; right of
nonprohibited persons over twenty-one years of age to carry concealed**

**deadly weapons; offenses and penalties; reinstatement of rights to possess;
offenses; penalties.**

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

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

5 (2) Is habitually addicted to alcohol;

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

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

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

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

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

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

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

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

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

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

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

39 (b) Notwithstanding the provisions of subsection (a) of this section, any person:

40 (1) Who has been convicted in this state or any other jurisdiction of a felony crime of
41 violence against the person of another or of a felony sexual offense; or

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

51 (c) Any person may carry a concealed deadly weapon without a license therefor who is:

52 (1) At least twenty-one years of age;

53 (2) A United States citizen or legal resident thereof;

54 (3) Not prohibited from possessing a firearm under the provisions of this section; and

55 (4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g)

56 or (n).

57 (d) As a separate and additional offense to the offense provided for in subsection (a) of
58 this section, and in addition to any other offenses outlined in this code, and except as provided
59 by subsection (e) of this section, any person prohibited by subsection (a) of this section from
60 possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction
61 thereof, shall be confined in a state correctional facility for not more than three years or fined not
62 more than \$5,000, or both.

63 (e) As a separate and additional offense to the offense described in subsection (b) of this
64 section, and in addition to any other offenses outlined in this code, any person prohibited by
65 subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty
66 of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not
67 more than ten years or fined not more than \$10,000, or both.

68 (f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of
69 this section may petition the circuit court of the county in which he or she resides to regain the
70 ability to possess a firearm and if the court finds by clear and convincing evidence that the person
71 is competent and capable of exercising the responsibility concomitant with the possession of a
72 firearm, the court may enter an order allowing the person to possess a firearm if such possession
73 would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm
74 by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability
75 to possess a firearm in accordance with the provisions of section five, article seven-a of this
76 chapter.

77 (g) Any person who has been convicted of an offense which disqualifies him or her from
78 possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set
79 aside or who subsequent thereto receives an unconditional pardon for said offense shall not be
80 prohibited from possessing a firearm by the provisions of the section.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by
school principals; suspension of driver's license; possessing deadly
weapons on premises housing courts of law and family law courts.**

1 (a) The Legislature finds that the safety and welfare of the citizens of this state are
2 inextricably dependent upon assurances of safety for children attending and persons employed
3 by schools in this state and for persons employed by the judicial department of this state. It is for
4 the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section are
5 enacted as a reasonable regulation of the manner in which citizens may exercise the rights
6 accorded to them pursuant to section twenty-two, article three of the Constitution of the State of
7 West Virginia.

8 (b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school
9 bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public
10 primary or secondary education building, structure, facility or grounds including a vocational
11 education building, structure, facility or grounds where secondary vocational education programs
12 are conducted or at a school-sponsored function, or in or on a private primary or secondary
13 education building, structure or facility: *Provided*, That it shall not be unlawful to possess a
14 firearm or other deadly weapon on or in a private primary or secondary education building,
15 structure or facility when such institution has adopted written policies allowing for possession of
16 firearms on or in the institution's buildings, structures or facilities.

17 (2) This subsection does not apply to:

18 (A) A law-enforcement officer employed by a federal, state, county or municipal law-
19 enforcement agency;

20 (B) Any probation officer appointed pursuant to section five, article twelve, chapter sixty-
21 two or chapter forty-nine of this code in the performance of his or her duties;

22 (C) A retired law-enforcement officer who:

23 (i) Is employed by a state, county or municipal law-enforcement agency;

24 (ii) Is covered for liability purposes by his or her employer;

25 (iii) Is authorized by a county board of education and the school principal to serve as
26 security for a school;

27 (iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement
28 officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S.
29 C. §926C(c); and

30 (v) Meets all of the requirements for handling and using a firearm established by his or her
31 employer, and has qualified with his or her firearm to those requirements;

32 (D) A person specifically authorized by the board of Education of the county or principal
33 of the school where the property is located to conduct programs with valid educational purposes;

34 (E) A person who, as otherwise permitted by the provisions of this article, possesses an
35 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
36 weapon in a locked motor vehicle;

37 (F) Programs or raffles conducted with the approval of the county board of education or
38 school which include the display of unloaded firearms;

39 (G) The official mascot of West Virginia University, commonly known as the Mountaineer,
40 acting in his or her official capacity; or

41 (H) The official mascot of Parkersburg South High School, commonly known as the Patriot,
42 acting in his or her official capacity.

43 (3) A person violating this subsection is guilty of a felony and, upon conviction thereof,
44 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
45 years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

46 (c) A school principal subject to the authority of the State Board of Education who
47 discovers a violation of subsection (b) of this section shall report the violation as soon as possible
48 to:

49 (1) The State Superintendent of Schools. The State Board of Education shall keep and
50 maintain these reports and may prescribe rules establishing policy and procedures for making
51 and delivering the reports as required by this subsection; and

52 (2) The appropriate local office of the State Police, county sheriff or municipal police
53 agency.

54 (d) In addition to the methods of disposition provided by article five, chapter forty-nine of
55 this code, a court which adjudicates a person who is fourteen years of age or older as delinquent
56 for a violation of subsection (b) of this section may order the Division of Motor Vehicles to suspend
57 a driver's license or instruction permit issued to the person for a period of time as the court
58 considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has
59 not been issued a driver's license or instruction permit by this state, a court may order the Division
60 of Motor Vehicles to deny the person's application for a license or permit for a period of time as
61 the court considers appropriate, not to extend beyond the person's nineteenth birthday. A
62 suspension ordered by the court pursuant to this subsection is effective upon the date of entry of
63 the order. Where the court orders the suspension of a driver's license or instruction permit
64 pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in
65 the adjudicated person's possession and forward to the Division of Motor Vehicles.

66 (e)(1) If a person eighteen years of age or older is convicted of violating subsection (b) of
67 this section, and if the person does not act to appeal the conviction within the time periods
68 described in subdivision (2) of this subsection, the person's license or privilege to operate a motor
69 vehicle in this state shall be revoked in accordance with the provisions of this section.

70 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
71 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If

72 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
73 transcript when the person convicted has not requested an appeal within twenty days of the
74 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
75 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
76 notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was
77 entered.

78 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
79 determines that the person was convicted as described in subdivision (1) of this subsection, the
80 commissioner shall make and enter an order revoking the person's license or privilege to operate
81 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
82 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever
83 is the greater period. The order shall contain the reasons for the revocation and the revocation
84 period. The order of suspension shall advise the person that because of the receipt of the court's
85 transcript, a presumption exists that the person named in the order of suspension is the same
86 person named in the transcript. The commissioner may grant an administrative hearing which
87 substantially complies with the requirements of the provisions of section two, article five-a, chapter
88 seventeen-c of this code upon a preliminary showing that a possibility exists that the person
89 named in the notice of conviction is not the same person whose license is being suspended. The
90 request for hearing shall be made within ten days after receipt of a copy of the order of
91 suspension. The sole purpose of this hearing is for the person requesting the hearing to present
92 evidence that he or she is not the person named in the notice. If the commissioner grants an
93 administrative hearing, the commissioner shall stay the license suspension pending the
94 commissioner's order resulting from the hearing.

95 (4) For the purposes of this subsection, a person is convicted when he or she enters a
96 plea of guilty or is found guilty by a court or jury.

97 (f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years
98 of age who knows that the person is in violation of subsection (b) of this section or has reasonable
99 cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately
100 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

101 (2) A person violating this subsection is guilty of a misdemeanor and, upon conviction
102 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,
103 or both fined and confined.

104 (g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
105 premises of a court of law, including family courts.

106 (2) This subsection does not apply to:

107 (A) A law-enforcement officer acting in his or her official capacity; and

108 (B) A person exempted from the provisions of this subsection by order of record entered
109 by a court with jurisdiction over the premises or offices.

110 (3) A person violating this subsection is guilty of a misdemeanor and, upon conviction
111 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,
112 or both fined and confined.

113 (h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
114 premises of a court of law, including family courts, with the intent to commit a crime.

115 (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,
116 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
117 years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

118 (i) Nothing in this section may be construed to be in conflict with the provisions of federal
119 law.

§61-7-15a. Use or presentation of a firearm during commission of a felony; penalties.


1 As a separate and distinct offense, and in addition to any and all other offenses provided
2 for in this code, any person who, while engaged in the commission of a felony, uses or presents

3 a firearm shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional
4 facility for not more than ten years.

§61-7-17. Construction of article.

1 Nothing in this article should be construed to abrogate or modify statutory provisions and
2 common law decisions related to defense of self or others.

The 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 disapproved this the 3rd.....
day of March....., 2016.


.....
Governor

PRESENTED TO THE GOVERNOR

FEB 26 2016

Time 2:35 pm