

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2636**

4 (By Delegates Folk, R. Phillips, Faircloth, McGeehan, J. Nelson,
5 Householder, Butler, Marcum, Frich, H. White and Shott)
6

7 (Originating in the Committee on the Judiciary)

8 [February 28, 2015]
9

10 A BILL to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as
11 amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to
12 amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code,
13 all relating to the Freedom of Information Act; redefining the term "public record"; defining
14 and exempting certain fees and costs for reproduction of records; directing the Secretary of
15 State to establish a database of Freedom of Information requests and publication on the
16 Secretary of State's website; directing public bodies to report Freedom of Information
17 request information to the Secretary of State; authorizing emergency and legislative
18 rulemaking authority to the Secretary of State; establishing a presumption of public
19 accessibility to public records; revising the exemption for communications received or
20 prepared by any public body; exempting information contained in a concealed weapon permit
21 application from the Freedom of Information Act; authorizing disclosure of exempt
22 information to law enforcement agency; protecting the confidentiality of information
23 collected in an application for a concealed weapon permit; and providing criminal penalties.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended, be amended
3 and reenacted; that said code be amended by adding thereto one new section, designated §29B-1-3a;
4 that §29B-1-4 of said code be amended and reenacted, and that §61-7-4 of said code be amended and
5 reenacted, all to read as follows:

6 **CHAPTER 29B. FREEDOM OF INFORMATION.**

7 **ARTICLE 1. PUBLIC RECORDS.**

8 **§29B-1-2. Definitions.**

9 As used in this article:

10 (1) "Custodian" means the elected or appointed official charged with administering a public
11 body.

12 (2) "Person" includes any natural person, corporation, partnership, firm or association.

13 (3) "Public body" means every state officer, agency, department, including the executive,
14 legislative and judicial departments, division, bureau, board and commission; every county and city
15 governing body, school district, special district, municipal corporation, and any board, department,
16 commission council or agency thereof; and any other body which is created by state or local authority
17 or which is primarily funded by the state or local authority.

18 (4) "Public record" includes any writing ~~relating~~ prepared or received
19 by a public body, the content or context of which, judged either by content or context, relates to the
20 conduct of the public's business. ~~prepared, owned and retained by a public body.~~

21 (5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or
22 other documentary materials regardless of physical form or characteristics.

1 **§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act**
2 **requests registry.**

3 (1) (a) Every person has a right to inspect or copy any public record of a public body in this
4 state, except as otherwise expressly provided by section four of this article.

5 (2) (b) A request to inspect or copy any public record of a public body shall be made directly
6 to the custodian of such public record.

7 (3) (c) The custodian of any public records, unless otherwise expressly provided by statute,
8 shall furnish proper and reasonable opportunities for inspection and examination of the records in
9 his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the
10 usual business hours, to all persons having occasion to make examination of them. The custodian
11 of the records may make reasonable rules and regulations necessary for the protection of the records
12 and to prevent interference with the regular discharge of his or her duties. If the records requested
13 exist in magnetic, electronic or computer form, the custodian of the records shall make ~~such~~ copies
14 available on magnetic or electronic media, if so requested.

15 (4) (d) All requests for information must state with reasonable specificity the information
16 sought. The custodian, upon demand for records made under this statute, shall as soon as is
17 practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

18 (a) (1) Furnish copies of the requested information;

19 (b) (2) Advise the person making the request of the time and place at which he or she may
20 inspect and copy the materials; or

21 (c) (3) Deny the request stating in writing the reasons for such denial. ~~Such~~ A denial shall
22 indicate that the responsibility of the custodian of any public records or public body to produce the

1 requested records or documents is at an end, and shall afford the person requesting them the
2 opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the
3 county where the public record is kept.

4 ~~(5)~~ (e) The public body may establish fees reasonably calculated to reimburse it for its actual
5 cost in making reproductions of ~~such~~ records. A public body may not charge a search or retrieval fee
6 or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making
7 reproduction of records.

8 (f) The Secretary of State shall maintain an electronic data base of notices of requests as
9 required by section three-a of this article. The database shall be made available to the public via the
10 Internet and shall list each freedom of information request received and the outcome of the request.
11 The Secretary of State shall provide on the website a form for use by a public body to report the
12 results of the freedom of information request, providing the nature of the request and the public
13 body's response thereto, whether the request was granted, and if not, the exemption asserted under
14 section four of this article to deny the request.

15 **§29B-1-3a. Reports to Secretary of State by public bodies.**

16 (a) Beginning January 1, 2016, each public body that is in receipt of a freedom of
17 information request shall provide information to the Secretary of State relating to, at a minimum, the
18 nature of the request, the nature of the public body's response, the time-frame that was necessary to
19 comply in full with the request; and the amount of reimbursement charged to the requester for the
20 freedom of information request: *Provided*, That the public body shall not provide to the Secretary
21 of State the public records that were the subject of the FOIA request.

22 (b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall

1 propose rules and emergency rules for legislative approval relating to the creation and maintenance
2 of a publically accessible database available on the Secretary of State’s website; the establishment
3 of forms and procedures for submission of information to the Secretary of State by the public body;
4 and for other procedures and policies consistent with this section.

5 **§29B-1-4. Exemptions.**

6 (a) There is a presumption of public accessibility to all public records, subject only to the
7 following categories of information which are specifically exempt from disclosure under the
8 provisions of this article:

9 (1) Trade secrets, as used in this section, which may include, but are not limited to, any
10 formula, plan pattern, process, tool, mechanism, compound, procedure, production data or
11 compilation of information which is not patented which is known only to certain individuals within
12 a commercial concern who are using it to fabricate, produce or compound an article or trade or a
13 service or to locate minerals or other substances, having commercial value, and which gives its users
14 an opportunity to obtain business advantage over competitors;

15 (2) Information of a personal nature such as that kept in a personal, medical or similar file,
16 if the public disclosure ~~thereof~~ of the information would constitute an unreasonable invasion of
17 privacy, unless the public interest by clear and convincing evidence requires disclosure in this
18 particular instance: *Provided*, That ~~nothing in this article shall be construed as precluding~~ does not
19 preclude an individual from inspecting or copying his or her own personal, medical or similar file;

20 (3) Test questions, scoring keys and other examination data used to administer a licensing
21 examination, examination for employment or academic examination;

22 (4) Records of law-enforcement agencies that deal with the detection and investigation of

1 crime and the internal records and notations of such law-enforcement agencies which are maintained
2 for internal use in matters relating to law enforcement;

3 (5) Information specifically exempted from disclosure by statute;

4 (6) Records, archives, documents or manuscripts describing the location of undeveloped
5 historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any
6 public body upon which the donor has attached restrictions on usage or the handling of which could
7 irreparably damage ~~such~~ the record, archive, document or manuscript;

8 (7) Information contained in or related to examination, operating or condition reports
9 prepared by, or on behalf of, or for the use of any agency responsible for the regulation or
10 supervision of financial institutions, except those reports which are by law required to be published
11 in newspapers;

12 (8) ~~Internal memoranda or letters received or prepared by any public body~~ Internal
13 communications among members or employees of the public body expressing opinions and mental
14 impressions intended to facilitate deliberation of a matter pending before the public body's
15 deliberative decision-making process: *Provided*, That communications received after a public body's
16 decision shall be disclosed and not deemed to be exempted under this subdivision.

17 (9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist
18 acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the
19 public health;

20 (10) Those portions of records containing specific or unique vulnerability assessments or
21 specific or unique response plans, data, databases and inventories of goods or materials collected or
22 assembled to respond to terrorist acts; and communication codes or deployment plans of

1 law-enforcement or emergency response personnel;

2 (11) Specific intelligence information and specific investigative records dealing with terrorist
3 acts or the threat of a terrorist act shared by and between federal and international law-enforcement
4 agencies, state and local law-enforcement and other agencies within the Department of Military
5 Affairs and Public Safety;

6 (12) National security records classified under federal executive order and not subject to
7 public disclosure under federal law that are shared by federal agencies and other records related to
8 national security briefings to assist state and local government with domestic preparedness for acts
9 of terrorism;

10 (13) Computing, telecommunications and network security records, passwords, security
11 codes or programs used to respond to or plan against acts of terrorism which may be the subject of
12 a terrorist act;

13 (14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

14 (15) Architectural or infrastructure designs, maps or other records that show the location or
15 layout of the facilities where computing, telecommunications or network infrastructure used to plan
16 against or respond to terrorism are located or planned to be located;

17 (16) Codes for facility security systems; or codes for secure applications for ~~such~~ facilities
18 referred to in subdivision (15) of this subsection;

19 (17) Specific engineering plans and descriptions of existing public utility plants and
20 equipment;

21 (18) Customer proprietary network information of other telecommunications carriers,
22 equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; and

1 (19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority
2 and the Division of Juvenile Services relating to design of corrections, jail and detention facilities
3 owned or operated by the agency, and the policy directives and operational procedures of personnel
4 relating to the safe and secure management of inmates or residents, that if released, could be ~~utilized~~
5 used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or
6 to facility personnel.

7 (20) Information related to applications under section four, article seven, chapter sixty-one
8 of this code, including applications, supporting documents, permits, renewals, or any other
9 information that would identify an applicant for or holder of a concealed weapon permit: *Provided:*
10 That information in the aggregate that does not identify any permit holder other than by county or
11 municipality is not exempted: *Provided, however,* That information or other records exempted under
12 this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the
13 validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful
14 law-enforcement purposes.

15 (b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term
16 "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or
17 the environment and is intended to:

18 (1) Intimidate or coerce the civilian population;

19 (2) Influence the policy of a branch or level of government by intimidation or coercion;

20 (3) Affect the conduct of a branch or level of government by intimidation or coercion; or

21 (4) Retaliate against a branch or level of government for a policy or conduct of the
22 government.

1 (c) ~~Nothing in~~ The provisions of subdivisions (9) through (16), inclusive, subsection (a) of
2 this section ~~should be construed to~~ do not make subject to the provisions of this chapter any evidence
3 of an immediate threat to public health or safety unrelated to a terrorist act or the threat ~~thereof~~ of
4 a terrorist act which comes to the attention of a public entity in the course of conducting a
5 vulnerability assessment response or similar activity.

6 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

7 **ARTICLE 7. DANGEROUS WEAPONS.**

8 **§61-7-4. License to carry deadly weapons; how obtained.**

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

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

22 (2) That, on the date the application is made, the applicant is a bona fide resident of this state

1 and of the county in which the application is made and has a valid driver's license or other state-
2 issued photo identification showing the residence;

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

14 (4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not
15 an unlawful user thereof as evidenced by either of the following within the three years immediately
16 prior to the application:

17 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
18 treatment; or

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

20 (5) That the applicant has not been convicted of a felony unless the conviction has been
21 expunged or set aside or the applicant's civil rights have been restored or the applicant has been
22 unconditionally pardoned for the offense;

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

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

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

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

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

1 firearm;

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

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

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

16 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses
17 received by the sheriff shall be deposited by the sheriff into a concealed weapons license
18 administration fund. The fund shall be administered by the sheriff and shall take the form of an
19 interest-bearing account with any interest earned to be compounded to the fund. Any funds
20 deposited in this concealed weapon license administration fund are to be expended by the sheriff to
21 pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand
22 at the end of each fiscal year may be expended for other law-enforcement purposes or operating

1 needs of the sheriff's office, as the sheriff considers appropriate.

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

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

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

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

12 (4) Any handgun training or safety course or class conducted by any branch of the United
13 States Military, Reserve or National Guard or proof of other handgun qualification received while
14 serving in any branch of the United States Military, Reserve or National Guard.

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

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

1 five, chapter sixty-one of this code.

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

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

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

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

19 (j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff
20 denying the application. Any person denied a license may file, in the circuit court of the county in
21 which the application was made, a petition seeking review of the denial. The petition shall be filed
22 within thirty days of the denial. The court shall then determine whether the applicant is entitled to

1 the issuance of a license under the criteria set forth in this section. The applicant may be represented
2 by counsel, but in no case is the court required to appoint counsel for an applicant. The final order
3 of the court shall include the court's findings of fact and conclusions of law. If the final order
4 upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate
5 Procedure of the Supreme Court of Appeals.

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

9 (l) Whenever any person after applying for and receiving a concealed handgun license moves
10 from the address named in the application to another county within the state, the license remains
11 valid for the remainder of the five years: *Provided*, That the licensee within twenty days thereafter
12 notifies the sheriff in the new county of residence in writing of the old and new addresses.

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

18 (n) Except when subject to an exception under section six, article seven of this chapter, all
19 licensees shall carry with them a state-issued photo identification card with the concealed weapons
20 license whenever the licensee is carrying a concealed weapon. Any licensee who, in violation of this
21 subsection, fails to have in his or her possession a state-issued photo identification card and a current
22 concealed weapons license while carrying a concealed weapon is guilty of a misdemeanor and, upon

1 conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.

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

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

8 (q) Notwithstanding the provisions of subsection (a) of this section, with respect to
9 application by a former law-enforcement officer honorably retired from agencies governed by article
10 fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter
11 fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is
12 exempt from payment of fees and costs as otherwise required by this section. All other application
13 and background check requirements set forth in this shall be applicable to these applicants.

14 (r) Information collected under this section, including applications, supporting documents,
15 permits, renewals, or any other information that would identify an applicant for or holder of a
16 concealed weapon permit, is confidential: *Provided:* That such information may be disclosed to a
17 law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal
18 investigation or prosecution, or (iii) for other lawful law-enforcement purposes. A person who
19 violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
20 less than \$50 or more than \$200 for each offense.

21 (†) (s) Except as restricted or prohibited by the provisions of this article or as otherwise
22 prohibited by law, the issuance of a concealed weapon permit issued in accordance with the

1 provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver
2 on the lands or waters of this state.

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