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H. B. 2636

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

[Introduced February 6, 2015; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended; and to
11 amend and reenact §61-7-4 of said code, all relating to concealed weapons permits;
12 exempting information contained in a concealed weapon permit application from the
13 Freedom of Information Act; protecting the confidentiality of information collected in an
14 application for a concealed weapon permit; and providing criminal penalties.

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

16 That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
17 and that §61-7-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

21 (a) The following categories of information are specifically exempt from disclosure under
22 the provisions of this article:

23 (1) Trade secrets, as used in this section, which may include, but are not limited to, any

1 formula, plan pattern, process, tool, mechanism, compound, procedure, production data or
2 compilation of information which is not patented which is known only to certain individuals within
3 a commercial concern who are using it to fabricate, produce or compound an article or trade or a
4 service or to locate minerals or other substances, having commercial value, and which gives its users
5 an opportunity to obtain business advantage over competitors;

6 (2) Information of a personal nature such as that kept in a personal, medical or similar file,
7 if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the
8 public interest by clear and convincing evidence requires disclosure in the particular instance:
9 *Provided*, That nothing in this article shall be construed as precluding an individual from inspecting
10 or copying his or her own personal, medical or similar file;

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

13 (4) Records of law-enforcement agencies that deal with the detection and investigation of
14 crime and the internal records and notations of such law-enforcement agencies which are maintained
15 for internal use in matters relating to law enforcement;

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

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

21 (7) Information contained in or related to examination, operating or condition reports
22 prepared by, or on behalf of, or for the use of any agency responsible for the regulation or

1 supervision of financial institutions, except those reports which are by law required to be published
2 in newspapers;

3 (8) Internal memoranda or letters received or prepared by any public body;

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

7 (10) Those portions of records containing specific or unique vulnerability assessments or
8 specific or unique response plans, data, databases and inventories of goods or materials collected or
9 assembled to respond to terrorist acts; and communication codes or deployment plans of law
10 enforcement or emergency response personnel;

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

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

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

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

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

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

6 (17) Specific engineering plans and descriptions of existing public utility plants and
7 equipment;

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

10 (19) Records of the Division of Corrections, Regional Jail Authority and the Division of
11 Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by
12 the agency, and the policy directives and operational procedures of personnel relating to the safe and
13 secure management of inmates or residents, that if released, could be utilized by an inmate or
14 resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel.

15 (20) Information related to applications under section four, article seven, chapter sixty-one
16 of this code, including applications, any supporting documents, or any other information that would
17 identify an applicant for or holder of a concealed weapon permit.

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

21 (1) Intimidate or coerce the civilian population;

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

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

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

4 (c) Nothing in the provisions of subdivisions (9) through (16), inclusive, subsection (a) of
5 this section should be construed to make subject to the provisions of this chapter any evidence of an
6 immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which
7 comes to the attention of a public entity in the course of conducting a vulnerability assessment
8 response or similar activity.

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

10 **ARTICLE 7. DANGEROUS WEAPONS.**

11 **§61-7-4. License to carry deadly weapons; how obtained.**

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

20 (1) The applicant's full name, date of birth, Social Security number, a description of the
21 applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and,
22 if the applicant is not a United States citizen, any alien or admission number issued by the United

1 States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an
2 exception to the prohibitions of 18 U. S. C. § 922(g)(5)(B);

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

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

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

20 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug
21 treatment; or

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

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

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

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

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

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

1 restored;

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

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

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

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

19 (c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses
20 received by the sheriff shall be deposited by the sheriff into a concealed weapons license
21 administration fund. The fund shall be administered by the sheriff and shall take the form of an
22 interest-bearing account with any interest earned to be compounded to the fund. Any funds

1 deposited in this concealed weapon license administration fund are to be expended by the sheriff to
2 pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand
3 at the end of each fiscal year may be expended for other law-enforcement purposes or operating
4 needs of the sheriff's office, as the sheriff considers appropriate.

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

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

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

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

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

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

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

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

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

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

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

22 (j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff

1 denying the application. Any person denied a license may file, in the circuit court of the county in
2 which the application was made, a petition seeking review of the denial. The petition shall be filed
3 within thirty days of the denial. The court shall then determine whether the applicant is entitled to
4 the issuance of a license under the criteria set forth in this section. The applicant may be represented
5 by counsel, but in no case is the court required to appoint counsel for an applicant. The final order
6 of the court shall include the court's findings of fact and conclusions of law. If the final order
7 upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate
8 Procedure of the Supreme Court of Appeals.

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

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

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

21 (n) Except when subject to an exception under section six, article seven of this chapter, all
22 licensees shall carry with them a state-issued photo identification card with the concealed weapons

1 license whenever the licensee is carrying a concealed weapon. Any licensee who, in violation of this
2 subsection, fails to have in his or her possession a state-issued photo identification card and a current
3 concealed weapons license while carrying a concealed weapon is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.

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

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

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

17 (r) Information collected under this section is confidential and may only be disclosed to a
18 law-enforcement officer as part of a bona fide investigation or to determine the validity of a permit
19 issued under this section. A person who violates this subsection is guilty of a misdemeanor and,
20 upon conviction thereof, shall be fined not 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.

NOTE: The purpose of this bill is to protect the privacy of concealed weapon permit holders. The bill provides that information relating to applications for concealed weapon permits is exempt from the Freedom of Information Act. The bill further provides that information collected in the application process for a concealed weapon permit is confidential and provides criminal penalties for violations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.