

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2636

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[Passed March 14, 2015;
in effect ninety days from passage.]

AN ACT to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code, all relating to the Freedom of Information Act; redefining the term “public record”; defining and exempting certain fees and costs for reproduction of records; directing the Secretary of State to establish a database of Freedom of Information requests and publication on the Secretary of State’s website; directing public bodies to report Freedom of Information request information to the

Secretary of State; authorizing emergency and legislative rulemaking authority to the Secretary of State; establishing a presumption of public accessibility to public records; exempting information contained in a concealed weapon permit application from the Freedom of Information Act; authorizing disclosure of exempt information to law enforcement agency; protecting the confidentiality of information collected in an application for a concealed weapon permit; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto one new section, designated §29B-1-3a; that §29B-1-4 of said code be amended and reenacted, 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-1-2. Definitions.

1 As used in this article:

2 (1) “Custodian” means the elected or appointed official
3 charged with administering a public body.

4 (2) “Person” includes any natural person, corporation,
5 partnership, firm or association.

6 (3) “Public body” means every state officer, agency,
7 department, including the executive, legislative and judicial
8 departments, division, bureau, board and commission; every
9 county and city governing body, school district, special district,
10 municipal corporation, and any board, department, commission
11 council or agency thereof; and any other body which is created

12 by state or local authority or which is primarily funded by the
13 state or local authority.

14 (4) "Public record" includes any writing containing
15 information prepared or received by a public body, the content
16 or context of which, judged either by content or context, relates
17 to the conduct of the public's business.

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

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

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

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

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

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

24 (1) Furnish copies of the requested information;

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

27 (3) Deny the request stating in writing the reasons for such
28 denial. A denial shall indicate that the responsibility of the
29 custodian of any public records or public body to produce the
30 requested records or documents is at an end, and shall afford the
31 person requesting them the opportunity to institute proceedings
32 for injunctive or declaratory relief in the circuit court in the
33 county where the public record is kept.

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

39 (f) The Secretary of State shall maintain an electronic data
40 base of notices of requests as required by section three-a of this
41 article. The database shall be made available to the public via the
42 Internet and shall list each freedom of information request
43 received and the outcome of the request. The Secretary of State
44 shall provide on the website a form for use by a public body to
45 report the results of the freedom of information request,
46 providing the nature of the request and the public body's
47 response thereto, whether the request was granted, and if not, the
48 exemption asserted under section four of this article to deny the
49 request.

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

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

10 (b) Pursuant to article three, chapter twenty-nine-a of this
11 code, the Secretary of State shall propose rules and emergency
12 rules for legislative approval relating to the creation and
13 maintenance of a publically accessible database available on the
14 Secretary of State's website; the establishment of forms and
15 procedures for submission of information to the Secretary of
16 State by the public body; and for other procedures and policies
17 consistent with this section.

§29B-1-4. Exemptions.

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

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

14 (2) Information of a personal nature such as that kept in a
15 personal, medical or similar file, if the public disclosure of the
16 information would constitute an unreasonable invasion of
17 privacy, unless the public interest by clear and convincing
18 evidence requires disclosure in this particular instance: *Provided*,
19 That this article does not preclude an individual from inspecting
20 or copying his or her own personal, medical or similar file;

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

24 (4) Records of law-enforcement agencies that deal with the
25 detection and investigation of crime and the internal records and
26 notations of such law-enforcement agencies which are
27 maintained for internal use in matters relating to law
28 enforcement;

29 (5) Information specifically exempted from disclosure by
30 statute;

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

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

42 (8) Internal memoranda or letters received or prepared by
43 any public body.

44 (9) Records assembled, prepared or maintained to prevent,
45 mitigate or respond to terrorist acts or the threat of terrorist acts,
46 the public disclosure of which threaten the public safety or the
47 public health;

48 (10) Those portions of records containing specific or unique
49 vulnerability assessments or specific or unique response plans,
50 data, databases and inventories of goods or materials collected
51 or assembled to respond to terrorist acts; and communication
52 codes or deployment plans of law-enforcement or emergency
53 response personnel;

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

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

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

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

71 (15) Architectural or infrastructure designs, maps or other
72 records that show the location or layout of the facilities where
73 computing, telecommunications or network infrastructure used

74 to plan against or respond to terrorism are located or planned to
75 be located;

76 (16) Codes for facility security systems; or codes for secure
77 applications for facilities referred to in subdivision (15) of this
78 subsection;

79 (17) Specific engineering plans and descriptions of existing
80 public utility plants and equipment;

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

84 (19) Records of the Division of Corrections, Regional Jail
85 and Correctional Facility Authority and the Division of Juvenile
86 Services relating to design of corrections, jail and detention
87 facilities owned or operated by the agency, and the policy
88 directives and operational procedures of personnel relating to the
89 safe and secure management of inmates or residents, that if
90 released, could be used by an inmate or resident to escape a
91 facility, or to cause injury to another inmate, resident or to
92 facility personnel.

93 (20) Information related to applications under section four,
94 article seven, chapter sixty-one of this code, including
95 applications, supporting documents, permits, renewals, or any
96 other information that would identify an applicant for or holder
97 of a concealed weapon permit: *Provided*: That information in the
98 aggregate that does not identify any permit holder other than by
99 county or municipality is not exempted: *Provided, however*, That
100 information or other records exempted under this subdivision
101 may be disclosed to a law enforcement agency or officer: (i) to
102 determine the validity of a permit, (ii) to assist in a criminal
103 investigation or prosecution, or (iii) for other lawful law-
104 enforcement purposes.

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

109 (1) Intimidate or coerce the civilian population;

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

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

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

116 (c) The provisions of subdivisions (9) through (16),
117 inclusive, subsection (a) of this section do not make subject to
118 the provisions of this chapter any evidence of an immediate
119 threat to public health or safety unrelated to a terrorist act or the
120 threat of a terrorist act which comes to the attention of a public
121 entity in the course of conducting a vulnerability assessment
122 response or similar activity.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

1 (a) Except as provided in subsection (h) of this section, any
2 person desiring to obtain a state license to carry a concealed
3 deadly weapon shall apply to the sheriff of his or her county for
4 the license, and pay to the sheriff, at the time of application, a
5 fee of \$75, of which \$15 of that amount shall be deposited in the
6 Courthouse Facilities Improvement Fund created by section six,
7 article twenty-six, chapter twenty-nine of this code. Concealed

8 weapons permits may only be issued for pistols or revolvers.
9 Each applicant shall file with the sheriff a complete application,
10 as prepared by the Superintendent of the West Virginia State
11 Police, in writing, duly verified, which sets forth only the
12 following licensing requirements:

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

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

25 (3) That the applicant is twenty-one years of age or older:
26 *Provided*, That any individual who is less than twenty-one years
27 of age and possesses a properly issued concealed weapons
28 license as of the effective date of this article shall be licensed to
29 maintain his or her concealed weapons license notwithstanding
30 the provisions of this section requiring new applicants to be at
31 least twenty-one years of age: *Provided, however*, That upon a
32 showing of any applicant who is eighteen years of age or older
33 that he or she is required to carry a concealed weapon as a
34 condition for employment, and presents satisfactory proof to the
35 sheriff thereof, then he or she shall be issued a license upon
36 meeting all other conditions of this section. Upon discontinuance
37 of employment that requires the concealed weapons license, if
38 the individual issued the license is not yet twenty-one years of
39 age, then the individual issued the license is no longer eligible
40 and must return his or her license to the issuing sheriff;

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

45 (A) Residential or court-ordered treatment for alcoholism or
46 alcohol detoxification or drug treatment; or

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

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

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

57 (7) That the applicant has not been convicted of a misde-
58 meanor crime of domestic violence as defined in 18 U. S. C.
59 § 921(a)(33), or a misdemeanor offense of assault or battery
60 either under the provisions of section twenty-eight, article two of
61 this chapter or the provisions of subsection (b) or (c), section
62 nine, article two of this chapter in which the victim was a current
63 or former spouse, current or former sexual or intimate partner,
64 person with whom the defendant cohabits or has cohabited, a
65 parent or guardian, the defendant's child or ward or a member of
66 the defendant's household at the time of the offense, or a
67 misdemeanor offense with similar essential elements in a
68 jurisdiction other than this state;

69 (8) That the applicant is not under indictment for a felony
70 offense or is not currently serving a sentence of confinement,

71 parole, probation or other court-ordered supervision imposed by
72 a court of any jurisdiction or is the subject of an emergency or
73 temporary domestic violence protective order or is the subject of
74 a final domestic violence protective order entered by a court of
75 any jurisdiction;

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

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

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

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

95 (b) For both initial and renewal applications, the sheriff shall
96 conduct an investigation including a nationwide criminal
97 background check consisting of inquiries of the National Instant
98 Criminal Background Check System, the West Virginia criminal
99 history record responses and the National Interstate
100 Identification Index and shall review the information received in
101 order to verify that the information required in subsection (a) of
102 this section is true and correct. A license may not be issued

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

109 (c) Sixty dollars of the application fee and any fees for
110 replacement of lost or stolen licenses received by the sheriff
111 shall be deposited by the sheriff into a concealed weapons
112 license administration fund. The fund shall be administered by
113 the sheriff and shall take the form of an interest-bearing account
114 with any interest earned to be compounded to the fund. Any
115 funds deposited in this concealed weapon license administration
116 fund are to be expended by the sheriff to pay the costs associated
117 with issuing concealed weapons licenses. Any surplus in the
118 fund on hand at the end of each fiscal year may be expended for
119 other law-enforcement purposes or operating needs of the
120 sheriff's office, as the sheriff considers appropriate.

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

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

127 (2) Any handgun safety or training course or class available
128 to the general public offered by an official law-enforcement
129 organization, community college, junior college, college or
130 private or public institution or organization or handgun training
131 school utilizing instructors certified by the institution;

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

135 (4) Any handgun training or safety course or class conducted
136 by any branch of the United States Military, Reserve or National
137 Guard or proof of other handgun qualification received while
138 serving in any branch of the United States Military, Reserve or
139 National Guard.

140 A photocopy of a certificate of completion of any of the
141 courses or classes or an affidavit from the instructor, school,
142 club, organization or group that conducted or taught the course
143 or class attesting to the successful completion of the course or
144 class by the applicant or a copy of any document which shows
145 successful completion of the course or class is evidence of
146 qualification under this section.

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

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

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

165 (h) Each license shall contain the full name and address of
166 the licensee and a space upon which the signature of the licensee

167 shall be signed with pen and ink. The issuing sheriff shall sign
168 and attach his or her seal to all license cards. The sheriff shall
169 provide to each new licensee a duplicate license card, in size
170 similar to other state identification cards and licenses, suitable
171 for carrying in a wallet, and the license card is considered a
172 license for the purposes of this section.

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

178 (j) If an application is denied, the specific reasons for the
179 denial shall be stated by the sheriff denying the application. Any
180 person denied a license may file, in the circuit court of the
181 county in which the application was made, a petition seeking
182 review of the denial. The petition shall be filed within thirty days
183 of the denial. The court shall then determine whether the
184 applicant is entitled to the issuance of a license under the criteria
185 set forth in this section. The applicant may be represented by
186 counsel, but in no case is the court required to appoint counsel
187 for an applicant. The final order of the court shall include the
188 court's findings of fact and conclusions of law. If the final order
189 upholds the denial, the applicant may file an appeal in
190 accordance with the Rules of Appellate Procedure of the
191 Supreme Court of Appeals. If the findings of fact and
192 conclusions of law of the court fail to uphold the denial, the
193 applicant may be entitled to reasonable costs and attorney's fees,
194 payable by the sheriff's office which issued the denial.

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

199 (l) Whenever any person after applying for and receiving a
200 concealed handgun license moves from the address named in the
201 application to another county within the state, the license
202 remains valid for the remainder of the five years unless the
203 sheriff of the new county has determined that the person is no
204 longer eligible for a concealed deadly weapon license under this
205 article, and the sheriff shall issue a new license bearing the
206 person's new address and the original expiration date for a fee not
207 to exceed \$5: *Provided*, That the licensee within twenty days
208 thereafter notifies the sheriff in the new county of residence in
209 writing of the old and new addresses.

210 (m) The sheriff shall, immediately after the license is
211 granted as aforesaid, furnish the Superintendent of the West
212 Virginia State Police a certified copy of the approved
213 application. The sheriff shall furnish to the Superintendent of the
214 West Virginia State Police at any time so requested a certified
215 list of all licenses issued in the county. The Superintendent of the
216 West Virginia State Police shall maintain a registry of all
217 persons who have been issued concealed weapons licenses.

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

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

226 (p) Notwithstanding the provisions of subsection (a) of this
227 section, with respect to application by a former law-enforcement
228 officer honorably retired from agencies governed by article
229 fourteen, chapter seven of this code; article fourteen, chapter
230 eight of this code; article two, chapter fifteen of this code; and

231 article seven, chapter twenty of this code, an honorably retired
232 officer is exempt from payment of fees and costs as otherwise
233 required by this section. All other application and background
234 check requirements set forth in this shall be applicable to these
235 applicants.

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

247 (r) Except as restricted or prohibited by the provisions of this
248 article or as otherwise prohibited by law, the issuance of a
249 concealed weapon permit issued in accordance with the
250 provisions of this section authorizes the holder of the permit to
251 carry a concealed pistol or revolver on the lands or waters of this
252 state.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

