

COMMITTEE SUBSTITUTE

for

H. B. 2636

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(Originating in the Committee on the Judiciary)

[February 28, 2015]

A BILL 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; revising the exemption for communications received or prepared by any public body; 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 relating prepared or received by a public body, the
16 content or context of which, judged either by content or context,
17 relates to the conduct of the public’s business. ~~prepared, owned~~
18 ~~and retained by a public body.~~

19 (5) "Writing" includes any books, papers, maps,
20 photographs, cards, tapes, recordings or other documentary
21 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 (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 (2) (b) A request to inspect or copy any public record of a
5 public body shall be made directly to the custodian of such
6 public record.

7 (3) (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 ~~such~~
18 copies available on magnetic or electronic media, if so requested.

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

24 ~~(a)~~ (1) Furnish copies of the requested information;

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

34 ~~(5)~~ (e) The public body may establish fees reasonably
35 calculated to reimburse it for its actual cost in making

36 reproductions of ~~such~~ records. A public body may not charge a
37 search or retrieval fee or otherwise seek reimbursement based on
38 a man-hour basis as part of costs associated with making
39 reproduction of records.

40 (f) The Secretary of State shall maintain an electronic data
41 base of notices of requests as required by section three-a of this
42 article. The database shall be made available to the public via the
43 Internet and shall list each freedom of information request
44 received and the outcome of the request. The Secretary of State
45 shall provide on the website a form for use by a public body to
46 report the results of the freedom of information request,
47 providing the nature of the request and the public body's
48 response thereto, whether the request was granted, and if not, the
49 exemption asserted under section four of this article to deny the
50 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 ~~thereof~~
16 of the 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 ~~nothing in this article shall be construed as precluding~~ does
20 not preclude an individual from inspecting or copying his or her
21 own personal, medical or similar file;

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

25 (4) Records of law-enforcement agencies that deal with the
26 detection and investigation of crime and the internal records and

27 notations of such law-enforcement agencies which are
28 maintained for internal use in matters relating to law
29 enforcement;

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

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

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

43 (8) ~~Internal memoranda or letters received or prepared by~~
44 ~~any public body~~ Internal communications among members or
45 employees of the public body expressing opinions and mental
46 impressions intended to facilitate deliberation of a matter

47 pending before the public body's deliberative decision-making
48 process: *Provided, That communications received after a public*
49 body's decision shall be disclosed and not deemed to be
50 exempted under this subdivision.

51 (9) Records assembled, prepared or maintained to prevent,
52 mitigate or respond to terrorist acts or the threat of terrorist acts,
53 the public disclosure of which threaten the public safety or the
54 public health;

55 (10) Those portions of records containing specific or unique
56 vulnerability assessments or specific or unique response plans,
57 data, databases and inventories of goods or materials collected
58 or assembled to respond to terrorist acts; and communication
59 codes or deployment plans of law-enforcement or emergency
60 response personnel;

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

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

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

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

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

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

86 (17) Specific engineering plans and descriptions of existing
87 public utility plants and equipment;

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

91 (19) Records of the Division of Corrections, Regional Jail
92 and Correctional Facility Authority and the Division of Juvenile
93 Services relating to design of corrections, jail and detention
94 facilities owned or operated by the agency, and the policy
95 directives and operational procedures of personnel relating to the
96 safe and secure management of inmates or residents, that if
97 released, could be ~~utilized~~ used by an inmate or resident to
98 escape a facility, or to cause injury to another inmate, resident or
99 to facility personnel.

100 (20) Information related to applications under section four,
101 article seven, chapter sixty-one of this code, including
102 applications, supporting documents, permits, renewals, or any
103 other information that would identify an applicant for or holder
104 of a concealed weapon permit: *Provided*, That information in the
105 aggregate that does not identify any permit holder other than by

106 county or municipality is not exempted: *Provided, however, That*
107 information or other records exempted under this subdivision
108 may be disclosed to a law enforcement agency or officer: (i) to
109 determine the validity of a permit, (ii) to assist in a criminal
110 investigation or prosecution, or (iii) for other lawful law-
111 enforcement purposes.

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

116 (1) Intimidate or coerce the civilian population;

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

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

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

123 (c) ~~Nothing in~~ The provisions of subdivisions (9) through
124 (16), inclusive, subsection (a) of this section ~~should be construed~~
125 ~~to~~ do not make subject to the provisions of this chapter any

126 evidence of an immediate threat to public health or safety
127 unrelated to a terrorist act or the threat ~~thereof~~ of a terrorist act
128 which comes to the attention of a public entity in the course of
129 conducting a vulnerability assessment response or similar
130 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 transport-
86 ing 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.

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

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

203 (m) The sheriff shall, immediately after the license is
204 granted as aforesaid, furnish the Superintendent of the West
205 Virginia State Police a certified copy of the approved
206 application. The sheriff shall furnish to the Superintendent of the
207 West Virginia State Police at any time so requested a certified
208 list of all licenses issued in the county. The Superintendent of the

209 West Virginia State Police shall maintain a registry of all
210 persons who have been issued concealed weapons licenses.

211 (n) Except when subject to an exception under section six,
212 article seven of this chapter, all licensees shall carry with them
213 a state-issued photo identification card with the concealed
214 weapons license whenever the licensee is carrying a concealed
215 weapon. Any licensee who, in violation of this subsection, fails
216 to have in his or her possession a state-issued photo
217 identification card and a current concealed weapons license
218 while carrying a concealed weapon is guilty of a misdemeanor
219 and, upon conviction thereof, shall be fined not less than \$50 or
220 more than \$200 for each offense.

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

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

229 (q) Notwithstanding the provisions of subsection (a) of this
230 section, with respect to application by a former law-enforcement
231 officer honorably retired from agencies governed by article
232 fourteen, chapter seven of this code; article fourteen, chapter
233 eight of this code; article two, chapter fifteen of this code; and
234 article seven, chapter twenty of this code, an honorably retired
235 officer is exempt from payment of fees and costs as otherwise
236 required by this section. All other application and background
237 check requirements set forth in this shall be applicable to these
238 applicants.

239 (r) Information collected under this section, including
240 applications, supporting documents, permits, renewals, or any
241 other information that would identify an applicant for or holder
242 of a concealed weapon permit, is confidential: *Provided*, That
243 such information may be disclosed to a law enforcement agency
244 or officer: (i) to determine the validity of a permit, (ii) to assist
245 in a criminal investigation or prosecution, or (iii) for other lawful
246 law-enforcement purposes. A person who violates this
247 subsection is guilty of a misdemeanor and, upon conviction

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

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

