

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 102**

BY SENATORS TRUMP, BOSO AND GAUNCH

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §7-4-1 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §30-29-12, all relating to  
 3 West Virginia officials carrying a concealed firearm nationwide as provided in the federal  
 4 Law-Enforcement Officers Safety Act, 18 U. S. C. §926B; providing statutory authority  
 5 necessary to give prosecuting attorneys and assistant prosecuting attorneys the option to  
 6 carry firearms pursuant to that federal act upon completion of required training and annual  
 7 background check; providing that law-enforcement agencies are neither prohibited from  
 8 nor required to permit an officer to carry his or her service weapon off duty; and requiring  
 9 West Virginia law-enforcement agencies to offer access to training and certification for  
 10 honorably retired officers to be permitted to carry a concealed firearm nationwide as a  
 11 qualified retired law-enforcement officer as provided in the federal Law-Enforcement  
 12 Officers Safety Act of 2004.

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

1 That §7-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
 2 and that said code be amended by adding thereto a new section, designated §30-29-12, all to  
 3 read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

**§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.**

1 ~~(a) It shall be the duty of~~ The prosecuting attorney to shall attend to the criminal business  
 2 of the state in the county in which he or she is elected and qualified, and when ~~he~~ the prosecuting  
 3 attorney has information of the violation of any penal law committed within ~~such~~ the county, ~~he~~  
 4 the prosecuting attorney shall institute and prosecute all necessary and proper proceedings  
 5 against the offender, and may in such case issue or cause to be issued a summons for any  
 6 witness ~~he may deem~~ the prosecuting attorney considers material. Every public officer shall give

7 ~~him~~ the prosecuting attorney information of the violation of any penal law committed within his or  
8 her county. ~~It shall also be the duty of~~ The prosecuting attorney ~~to~~ shall also attend to civil suits  
9 in ~~such~~ the county in which the state, or any department, commission or board thereof, is  
10 interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters,  
11 actions, suits and proceedings in which such county or any county board of education is  
12 interested.

13 (b) Any prosecuting attorney or assistant prosecuting attorney who elects to carry a  
14 concealed firearm for self-defense pursuant to 18 U.S.C. §926B must first complete training in  
15 the safe handling and firing of a handgun and pass a background investigation by the sheriff of  
16 their jurisdiction. Either of the following satisfies the training requirement of this subsection: (1) A  
17 handgun safety or training course conducted by a National Rifle Association certified firearms  
18 instructor; or (2) a firearms training, qualification or requalification offered by any federal, state or  
19 local law enforcement agency to its active or retired members. A certificate of completion or an  
20 affidavit from the instructor is proof of training required under this subsection. A prosecuting  
21 attorney or assistant shall provide proof of training to the sheriff of their county, who shall then  
22 conduct a background investigation including a nationwide criminal background check consisting  
23 of inquiries of the National Instant Criminal Background Check System, the West Virginia Criminal  
24 History Record Responses and the National Interstate Identification Index. The sheriff shall  
25 determine if possession of a firearm by the applicant would violate West Virginia or federal law,  
26 including 18 U.S.C. § 922(g) or (n). If the sheriff determines that an applicant has satisfied the  
27 training requirement of this section and may lawfully possess a firearm, the sheriff shall certify the  
28 same in writing to the applicant and to the prosecuting attorney of their jurisdiction. Upon the  
29 certification by the sheriff, the prosecuting attorney or an assistant prosecuting attorney may,  
30 within their jurisdiction, carry a firearm for self-defense under the federal Law-Enforcement  
31 Officers Safety Act 18 U.S.C. § 926B and shall be issued by their agency, a photographic  
32 identification and certification card. The card shall be suitable to be carried, in a wallet and shall

33 contain the name, title, official address, full-face color of the prosecuting attorney or assistant  
 34 prosecuting attorney, the signatures of both the prosecuting attorney and sheriff of the county and  
 35 the and the date of issuance together with the words "A Qualified Law-Enforcement Officer within  
 36 the meaning of 18 U.S.C. §926B authorized to carry firearms" in bold conspicuous type. The  
 37 sheriff shall annually conduct a background investigation on any person certified under this  
 38 section and immediately revoke the certification of any person who may not lawfully possess a  
 39 firearm. The statutory rights and authorities conferred under this subsection provide an addition  
 40 lawful means of carrying a firearm for self-defense supplemental to existing rights to bear arms  
 41 and nothing in this subsection impairs or diminishes those rights. Except upon a specific official  
 42 request by law enforcement to confirm that a given prosecuting attorney or assistant prosecuting  
 43 attorney is qualified to carry a firearm under this subsection, the names of individuals who may,  
 44 or may not, have qualified under this section shall remain private and confidential and are not  
 45 subject to disclosure under chapter twenty-nine-b of this code,

46 ~~(c) It shall be the duty of~~ The prosecuting attorney ~~to~~ shall keep his or her office open in  
 47 the charge of a responsible person during the hours polls are open on general, primary and  
 48 special county-wide election days, and the prosecuting attorney, or ~~his~~ the prosecuting attorney's  
 49 assistant, if any, shall be available for the purpose of advising election officials. ~~It shall be the~~  
 50 ~~further duty of~~ The prosecuting attorney, when requested by the Attorney General, ~~to~~ shall perform  
 51 or ~~to~~ assist the Attorney General in performing, in the county in which ~~he~~ the prosecuting attorney  
 52 is elected, any legal duties required to be performed by the Attorney General, and which are not  
 53 inconsistent with the duties of the prosecuting attorney as the legal representative of ~~such~~ the  
 54 county. ~~It shall also be the duty of~~ The prosecuting attorney, when requested by the Attorney  
 55 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in performing, any legal duties required  
 56 to be performed by the Attorney General, in any county other than that in which ~~such~~ the  
 57 prosecuting attorney is elected, and for the performance of ~~any such~~ these duties in any county  
 58 other than that in which ~~such~~ the prosecuting attorney is elected ~~he~~ the prosecuting attorney shall

59 be paid his or her actual expenses.

60           Upon the request of the Attorney General the prosecuting attorney shall make a written  
61 report of the state and condition of the several causes in which the state is a party, pending in his  
62 or her county, and upon any matters referred to ~~him~~ the prosecuting attorney by the Attorney  
63 General as provided by law.

## CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

### ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

#### **§30-29-12. Law-enforcement officers to receive identification and certification to carry weapons off-duty.**

1           (a) Every person employed by a West Virginia state, county or municipal agency who is a  
2 qualified law-enforcement officer" within the meaning of 18 U.S.C. §926B shall receive an  
3 appropriate photo-identification and certification of training required to carry a concealed firearm  
4 under the federal Law-Enforcement Officers Safety Act. 18 U.S.C. §926B. No currently employed  
5 officer may be charged a fee for the photo-identification and certification. This subsection does  
6 not prohibit a law-enforcement agency from controlling the use of any department-owned weapon.

7           (b) When a qualified law-enforcement officer, within the meaning of 18 U.S.C. §926B  
8 retires from, or otherwise honorably ceases employment with, a West Virginia state, county or  
9 municipal agency, the agency shall provide, at no charge, an appropriate photo-identification to  
10 show the former employee's status as an honorably separated or retired qualified retired law-  
11 enforcement officer within the meaning of 18 U.S.C. §926C. Every West Virginia state, county or  
12 municipal agency which conducts firearms qualification for current employees shall offer its  
13 honorably retired or separated former employees an opportunity to participate in such firearms  
14 qualification on an annual basis. The former employees shall provide at their own expense an  
15 appropriate firearm and ammunition and may be charged a fee not to exceed \$25. Upon  
16 completion of the training and payment of any fee, the law-enforcement agency shall issue a new

17 photo identification and certification which identifies the former employee as a "qualified retired  
18 law-enforcement officer" who has satisfied the annual training requirements of 18 U.S.C. §926C.  
19 (c) A law-enforcement agency may, in its sole discretion, allow a person who honorably  
20 retired or separated from another agency as a qualified law-enforcement officer within the  
21 meaning of 18 U.S.C. §926B, the opportunity to participate in firearms qualification the agency  
22 provides its own former employees under subsection (b) of this section. A participant shall provide  
23 at their own expense an appropriate firearm and ammunition and may be charged a fee not to  
24 exceed \$50. Upon completion of the training and payment of any fee, the law-enforcement agency  
25 shall issue a certification which states that the retiree satisfied the training requirements of  
26 18 U.S.C. 926C.

NOTE: The purpose of this bill is to require all law-enforcement agencies in this state to certify qualified law-enforcement officers to carry concealed firearms nationwide as provided by the federal Law-Enforcement Officers Safety Act, to provide statutory authority necessary to give prosecuting attorneys and assistant prosecuting attorneys the option to carry firearms for self-defense pursuant to that federal act upon completion of required training and annual background check and to require law-enforcement agencies to provide qualified retired law-enforcement officers the opportunity to be certified to carry concealed firearms nationwide, under that act

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