

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 102**

BY SENATORS TRUMP, BOSO AND GAUNCH

[Originating in the Committee on the Judiciary;

reported on January 12, 2016.]

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 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; granting prosecuting attorneys and assistant prosecuting attorneys  
8 arrest powers under certain circumstances; providing that law-enforcement agencies are  
9 neither prohibited from nor required to permit an officer to carry his or her service weapon  
10 off duty; and requiring West Virginia law-enforcement agencies to offer access to training  
11 and certification for honorably retired officers to be permitted to carry a concealed firearm  
12 nationwide as a qualified retired law-enforcement officer as provided in the federal Law-  
13 Enforcement 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) (1) In furtherance of the prosecuting attorney's duty to prosecute criminal offenses  
14 committed in the county of his or her election or appointment, the prosecuting attorney and  
15 assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any  
16 person committing a violation of the criminal laws of the State of West Virginia, the United States  
17 or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure in the county courthouse  
18 and in the presence of the prosecuting attorney or assistant prosecuting attorney.

19 (2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting  
20 attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy  
21 sheriff.

22 (3) Should a prosecuting attorney or assistant prosecuting attorney desire to carry a  
23 concealed firearm for self-defense purposes pursuant to the provisions of 18 U. S. C. §926B, the  
24 following criteria must be met:

25 (A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting  
26 attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-  
27 defense purposes;

28 (B) There shall be in place in the office of the prosecuting attorney a requirement that the  
29 prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a  
30 firearm with standards therefore which are equal to or exceed those required of sheriff's deputies  
31 in the county in which the prosecuting attorney was elected or appointed;

32           (C) The office of the prosecuting attorney shall issue a photographic identification and  
33 certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law  
34 enforcement employees of the prosecuting attorney's office pursuant to the provisions of section  
35 twelve, article twenty-nine, chapter thirty of this code.

36           (4) A prosecuting attorney's office which institutes a policy pursuant to this subsection  
37 shall include in such policy a provision that precludes persons from participation in the concealed  
38 firearm program and persons subject to any disciplinary action which could result in loss of the  
39 authority conferred by this subsection to prosecute violations of criminal law and to arrest persons  
40 committing violations of State and Federal Criminal laws and West Virginia Rule of Criminal  
41 Procedure 42 and provisions which expressly preclude from participation persons prohibited by  
42 Federal or State law from possessing or receiving a firearm or those under the influence of alcohol  
43 or another intoxicating or hallucinatory drug or substance.

44           (5) Any prosecuting attorney or assistant prosecuting attorney who elects to participate in  
45 the program authorized by the provisions of this subsection shall be responsible, at his or her  
46 expense, for a suitable firearm and ammunition.

47           (6) It is the intent of the legislation in enacting the amendment to this section during the  
48 2016 Regular Session of the Legislature to authorizing a prosecuting attorney and assistant  
49 prosecuting attorneys wishing to do so to meet the requirements of the Federal Law-Enforcement  
50 Officer's Safety Act, 18 U. S. C. §926B.

51           ~~(c) It shall be the duty of~~ The prosecuting attorney ~~to~~ shall keep his or her office open in  
52 the charge of a responsible person during the hours when polls are open during general, primary  
53 and special county-wide election days, and the prosecuting attorney, or ~~his~~ the prosecuting  
54 attorney=s assistant, if any, shall be available for the purpose of advising election officials. ~~It shall~~  
55 ~~be the further duty of~~ The prosecuting attorney, when requested by the Attorney General, ~~to~~ shall  
56 perform or ~~to~~ assist the Attorney General in performing, in the county in which ~~he~~ the prosecuting  
57 attorney is elected, any legal duties required to be performed by the Attorney General, and which

58 are not inconsistent with the duties of the prosecuting attorney as the legal representative of ~~such~~  
59 the county. ~~It shall also be the duty of~~ The prosecuting attorney, when requested by the Attorney  
60 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in performing, any legal duties required  
61 to be performed by the Attorney General, in any county other than that in which ~~such~~ the  
62 prosecuting attorney is elected, and for the performance of ~~any such~~ these duties in any county  
63 other than that in which ~~such~~ the prosecuting attorney is elected ~~he~~ the prosecuting attorney shall  
64 be paid his or her actual expenses.

65         Upon the request of the Attorney General the prosecuting attorney shall make a written  
66 report of the state and condition of the several causes in which the state is a party, pending in his  
67 or her county, and upon any matters referred to ~~him~~ the prosecuting attorney by the Attorney  
68 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  
12 or 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 18 U.  
26 S. C. 926C.