

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4427**

BY DELEGATE DUKE

[Introduced February 8, 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 two new sections, designated §30-29A-12 and §30-  
 3 29A-13, all relating to requiring law-enforcement agencies to provide identification to  
 4 qualified law-enforcement officers in order to allow them to carry firearms for self-defense  
 5 under the federal Law-Enforcement Officers Safety Act; providing, upon completion of  
 6 required training and annual background check, prosecuting attorneys and assistant  
 7 prosecuting attorneys are vested with statutory authority necessary for the option to carry  
 8 firearms for self-defense pursuant to the applicable federal act; and requiring law-  
 9 enforcement agencies to provide qualified retired law-enforcement officers the opportunity  
 10 to receive annual firearms qualification as required under the federal act.

*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 two new sections, designated §30-29A-12 and  
 3 §30-29A-13, all to 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 attend to the criminal business of the  
 2 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 county, ~~he~~ the  
 4 prosecuting attorney shall institute and prosecute all necessary and proper proceedings against  
 5 the offender, and may in such case issue or cause to be issued a summons for any witness ~~he~~  
 6 the prosecuting attorney may deem material. Every public officer shall give ~~him~~ the prosecuting  
 7 attorney information of the violation of any penal law committed within his or her county. It shall  
 8 also be the duty of the prosecuting attorney to attend to civil suits in such county in which the

9 state, or any department, commission or board thereof, is interested, and to advise, attend to,  
10 bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in  
11 which such county or any county board of education is interested.

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

35 and the date of issuance together with the words "A Qualified Law-Enforcement Officer within the  
36 meaning of 18 U.S.C. § 926B authorized to carry firearms" in bold conspicuous type. The sheriff  
37 shall annually conduct a background investigation on any person certified under this subsection  
38 and immediately revoke the certification of any person who may not lawfully possess a firearm.  
39 The statutory rights and authorities conferred under this subsection provide an additional lawful  
40 means of carrying a firearm for self-defense supplemental to existing rights to bear arms and  
41 nothing in this subsection shall impair or diminish such 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 shall not  
45 be subject to disclosure under article one, chapter twenty-nine-b of this code.

46 (c) It shall be the duty of the prosecuting attorney to keep his or her office open in the  
47 charge of a responsible person during the hours polls are open on general, primary and special  
48 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 perform or  
51 to assist the Attorney General in performing, in the county in which ~~he~~ the prosecuting attorney is  
52 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 county.  
54 It shall also be the duty of the prosecuting attorney, when requested by the Attorney General, to  
55 perform or to assist the Attorney General in performing, any legal duties required to be performed  
56 by the Attorney General, in any county other than that in which such prosecuting attorney is  
57 elected, and for the performance of any such duties in any county other than that in which such  
58 prosecuting attorney is elected ~~he~~ the prosecuting attorney shall be paid his or her actual  
59 expenses.

60 (d) 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.

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

**§30-29A-12. Qualified retired law enforcement eligibility for continued firearms qualification.**

1 When a person is employed by the state or a county or municipal agency in this state as  
 2 a "Qualified Law-Enforcement Officer" within the meaning of 18 U.S.C. §926B and retires from, or  
 3 otherwise honorably ceases employment, the agency shall provide, at no charge, an appropriate  
 4 photo-identification to show the former employee's total years of public service and their status  
 5 as an honorably separated or retired "Qualified Law-Enforcement Officer." Upon request and  
 6 payment of a fee not to exceed \$10, a replacement photo-identification shall be issued. Every  
 7 West Virginia state, county or municipal agency which conducts firearms qualification for current  
 8 employees shall offer its eligible retired or honorably separated former employees an opportunity  
 9 to participate in firearms qualification on an annual basis. The former employees shall provide, at  
 10 their own expense, an appropriate firearm and ammunition and may be charged a fee not to  
 11 exceed \$25. Upon completion of the training and payment of any fee, the law-enforcement agency  
 12 shall issue a new photo-identification and certification which identifies the former employee as a  
 13 retired "Qualified Law-Enforcement Officer" who has satisfied the annual training requirements of  
 14 18 U.S.C. §926C.

**§30-29A-13. 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, free  
 3 of charge, an appropriate photo-identification and certification of training required to carry a  
 4 concealed firearm under the federal Law-Enforcement Officers Safety Act. 18 U.S.C. §926B. This

5 subsection may not be construed to prohibit a law-enforcement agency from controlling the use  
6 of any department-owned weapon.

7 (b) When a person employed by a West Virginia state, county or municipal agency as a  
8 "Qualified Law-Enforcement Officer" within the meaning of 18 U.S.C. §926B retires from, or  
9 otherwise honorably ceases employment, the agency shall provide, at no charge, an appropriate  
10 photo-identification to show the former employee's total years of public service and their status  
11 as an honorably separated or retired "Qualified Law-Enforcement Officer." Upon request and  
12 payment of a fee not to exceed \$10, a replacement photo-identification shall be issued. Every  
13 West Virginia state, county or municipal agency which conducts firearms qualification for current  
14 employees shall offer its eligible retired or honorably separated former employees an opportunity  
15 to participate in such firearms qualification on an annual basis. The former employees shall  
16 provide, at their own expense, an appropriate firearm and ammunition and may be charged a fee  
17 not to exceed \$25. Upon completion of the training and payment of any fee, the law-enforcement  
18 agency shall issue a new photo-identification and certification which identifies the former  
19 employee as a retired "Qualified Law-Enforcement Officer" who has satisfied the annual training  
20 requirements of 18 U.S.C. §926C.

21 (c) A law-enforcement agency may, in its sole discretion, allow a person who retired, or  
22 honorably separated from another agency as a "Qualified Law-Enforcement Officer" within the  
23 meaning of 18 U.S.C. §926B, the opportunity to participate in firearms qualification the agency  
24 provides its own former employees under subsection (b) above. A participant shall provide proof  
25 of eligibility as a former "Qualified Law-Enforcement Officer" and shall provide, at their own  
26 expense, an appropriate firearm and ammunition and may be charged a fee not to exceed \$50.  
27 Upon completion of the training and payment of the applicable fee, the law-enforcement agency  
28 shall issue a written and dated certification which states that the retiree satisfied the firearms  
29 qualification requirements of the agency to allow the retiree to qualify under 18 U.S.C. §926C.

NOTE: The purpose of this bill is to require law-enforcement agencies to provide identification to qualified law-enforcement officers to allow them to carry firearms for self-defense under the federal Law-Enforcement Officers Safety Act; The bill provides that upon completion of required training and annual background checks, prosecuting attorneys and assistant prosecuting attorneys have the statutory authority necessary for the option to carry firearms for self-defense pursuant to the applicable federal act in order to have legal authority to carry firearms while crossing state lines (NOTE: 18 U.S.C. §926C includes persons who prosecute as "Qualified Law-Enforcement Officers"). The bill also requires law-enforcement agencies to provide qualified retired law-enforcement officers the opportunity to receive annual firearms qualification as required under the federal 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.