

SB 230

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 230**

SENATORS TRUMP, BLAIR AND MARONEY,

*original sponsors*

[Passed April 4, 2017; in effect 90 days from passage]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2017 APR 20 P 4: 54

FILED

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1 AN ACT 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 authorizing West Virginia prosecuting attorneys and assistant prosecuting attorneys to  
4 carry concealed firearms nationwide as authorized by the federal Law-Enforcement  
5 Officers Safety Act; providing the statutory authority necessary to give prosecuting  
6 attorneys and assistant prosecuting attorneys the option to carry firearms pursuant to  
7 federal law upon completion of required training and annual background check; granting  
8 prosecuting attorneys and assistant prosecuting attorneys arrest powers under certain  
9 circumstances; requiring West Virginia law-enforcement agencies to offer access to  
10 training and certification for honorably retired officers of said agencies to be permitted to  
11 carry a concealed firearm nationwide as a qualified retired law-enforcement officer as  
12 provided in the federal Law-Enforcement Officers Safety Act of 2004 and establishing a  
13 fee limit thereof; and authorizing West Virginia law-enforcement agencies to offer training  
14 to retired law-enforcement officers of other departments.

*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) The prosecuting attorney shall attend to the criminal business of the state in the county  
2 in which he or she is elected and qualified and when the prosecuting attorney has information of  
3 the violation of any penal law committed within the county, the prosecuting attorney shall institute  
4 and prosecute all necessary and proper proceedings against the offender and may, in such case,

5 issue or cause to be issued a summons for any witness the prosecuting attorney considers  
6 material. Every public officer shall give the prosecuting attorney information regarding the  
7 commission of any criminal offense committed within his or her county. The prosecuting attorney  
8 shall also attend to civil suits in the county in which the state or any department, commission or  
9 board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may  
10 be, all matters, actions, suits and proceedings in which such county or any county board of  
11 education is interested.

12 (b) (1) In furtherance of a prosecuting attorney's duty to investigate and prosecute criminal  
13 offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision  
14 shall have the authority to arrest any person committing a violation of the criminal laws of the  
15 State of West Virginia, the United States or a violation of Rule 42 of the West Virginia Rules of  
16 Criminal Procedure which occur within the office of the prosecuting attorney and committed in the  
17 presence of the prosecuting attorney or assistant prosecuting attorney.

18 (2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting  
19 attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy  
20 sheriff within the geographic limitations set forth in said subdivision.

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

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

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

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

35 (4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall  
36 include provisions which: (i) Preclude or remove a person from participation in the concealed  
37 firearm program who is subject to any disciplinary or legal action which could result in the loss of  
38 the authority to participate in the program; (ii) preclude from participation persons prohibited by  
39 federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying  
40 a firearm pursuant to the provisions of this subsection while in an impaired state as defined in  
41 section two, article five, chapter seventeen-c of this code.

42 (5) Any prosecuting attorney or assistant prosecuting attorney who participates in a  
43 program authorized by the provisions of this subsection shall be responsible, at his or her  
44 expense, for obtaining and maintaining a suitable firearm and ammunition.

45 (6) It is the intent of the Legislature in enacting the amendments to this section during the  
46 2017 regular session of the Legislature to authorize prosecuting attorney's offices wishing to do  
47 so to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements  
48 of the federal Law-Enforcement Officer's Safety Act, 18 U. S. C. §926B.

49 (c) The prosecuting attorney shall keep his or her office open in the charge of a responsible  
50 person during the hours when polls are open during general, primary and special countywide  
51 election days, and the prosecuting attorney, or the prosecuting attorney's assistant, if any, shall  
52 be available for the purpose of advising election officials. The prosecuting attorney, when  
53 requested by the Attorney General, shall perform or assist the Attorney General in performing, in  
54 the county in which the prosecuting attorney is elected, any legal duties required to be performed  
55 by the Attorney General and which are not inconsistent with the duties of the prosecuting attorney  
56 as the legal representative of the county. The prosecuting attorney, when requested by the

57 Attorney General, shall perform or assist the Attorney General in performing, any legal duties  
58 required to be performed by the Attorney General in any county other than that in which the  
59 prosecuting attorney is elected and for the performance of these duties in any county other than  
60 that in which the prosecuting attorney is elected, the prosecuting attorney shall be paid his or her  
61 actual expenses.

62 Upon the request of the Attorney General, the prosecuting attorney shall make a written  
63 report of the state and condition of the several causes in which the state is a party, pending in his  
64 or her county, and upon any matters referred to the prosecuting attorney by the Attorney General  
65 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 as 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 law enforcement agency which conducts firearms qualification for current employees

13 shall offer its honorably retired or separated former employees an opportunity to participate in  
14 such firearms qualification on an annual basis. The former employees shall provide, at their own  
15 expense, an appropriate firearm and ammunition and may be charged a fee not to exceed \$25  
16 for such training. Upon completion of the training and payment of any fee, the law-enforcement  
17 agency shall issue a new photo identification and certification which identifies the former  
18 employee as a “qualified retired law-enforcement officer” who has satisfied the annual training  
19 requirements of 18 U. S. C. §926C.

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

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

*Mark W. Warner*  
.....  
Chairman, Senate Committee

*Ryan F. Zinke*  
.....  
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

*Clark A. Burner*  
.....  
Clerk of the Senate

*Stepha J. Morris*  
.....  
Clerk of the House of Delegates

*Walter E. Gooden*  
.....  
President of the Senate

*Richard H. Roemer*  
.....  
Speaker of the House of Delegates

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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FILED

The within *is approved* this the *20th*  
Day of *April*, 2017.

*Jim Justice*  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 10 2017

Time 10:57 a.m.