

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2619

2015 Carryover

(BY DELEGATES, MCGEEHAN, AZINGER, KURCABA, WELD,
IHLE, KESSINGER, J. NELSON, CANTERBURY, HAMRICK
AND MOFFATT))

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §61-7-16, relating to dangerous weapons; when a chief law-enforcement
 3 officer is required to certify the transfer or making of certain firearms; providing definitions;
 4 and right of appeal if request for certification is denied.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §61-7-16, to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-16. Chief officer certification to transfer or make certain firearms; definitions; appeal.

1 (a) When a chief law-enforcement officer's certification is required by federal law or
 2 regulation for the transfer or making of a firearm, the chief law-enforcement officer shall, within
 3 fifteen days of receipt of a request for certification, provide the certification if the applicant is not
 4 prohibited by law from receiving or possessing the firearm or is not the subject of a proceeding
 5 that could result in the applicant being prohibited by law from receiving or possessing the firearm.
 6 If the chief law-enforcement officer is unable to make a certification as required by this section,
 7 the chief law-enforcement officer shall provide the applicant a written notification of the denial and
 8 the reason for this determination.

9 (b) For purposes of this section:

10 (1) "Chief law- enforcement officer" means any official, or the designee of that official, that
 11 the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by
 12 regulation or otherwise as eligible to provide any required certification for the making or transfer
 13 of a firearm.

14 (2) "Certification" means the participation and assent of the chief law-enforcement officer

15 necessary under federal law for the approval of the application to transfer or make a firearm. A
16 chief law- enforcement officer is not required to make any certification under this section that the
17 chief law- enforcement officer knows to be untrue, but the chief law- enforcement officer may not
18 refuse to provide certification based on a generalized objection to private persons or entities
19 making, possessing or receiving firearms or any certain type of firearm the possession of which
20 is not prohibited by law.

21 (3) "Firearm" has the same meaning as provided in the National Firearms Act, 26 U.S.C.
22 § 5845 (a).

23 (c) Chief law- enforcement officers and their employees who act in good faith are immune
24 from liability arising from any act or omission in making a certification as required by this section.

25 (d) An applicant whose request for certification is denied may appeal the chief law-
26 enforcement officer's decision to the circuit court that is located in the city or county in which the
27 applicant resides or, in the case of a legal entity, maintains its address of record. The court shall
28 review the chief law-enforcement officer's decision to deny the certification de novo. If the court
29 finds that the applicant is not prohibited by law from receiving or possessing the firearm, or is not
30 the subject of a proceeding that could result in the prohibition, or that no substantial evidence
31 supports the chief law-enforcement officer's determination that he or she cannot truthfully make
32 the certification, the court shall order the chief law-enforcement officer to issue the certification
33 and award court costs and reasonable attorney's fees to the applicant.

34 (e) In making the determination required by subsection (a), a chief law-enforcement officer
35 may conduct a criminal background check, including an inquiry of the National Instant Criminal
36 Background Check System, and may require of the applicant only such information as is
37 necessary to identify the applicant for this purpose or to determine the disposition of an arrest or
38 proceeding relevant to the applicant's eligibility lawfully to possess or receive a firearm. A chief

39 law-enforcement officer may not require access to or inspection of any private residential
40 premises as a condition of granting an application under this section.

NOTE: The purpose of this bill is to state the procedure when a chief law-enforcement officer is required to certify the transfer or making of certain firearms. The bill includes definitions and right of appeal if a request for certification of the transfer or making of certain firearms is denied.

§61-7-16 is new; therefore, it has been completely underscored.