

Senate Bill No. 284

(By Senators Nohe, Plymale, Sypolt, Walters, Blair, Williams, Prezioso and D. Hall)

[Introduced January 22, 2015; referred to the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new 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.

(a) When a chief law-enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law-enforcement officer shall, within fifteen days of receipt of a request for certification, provide the certification if the applicant is not prohibited by law from receiving or possessing the firearm or is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing the firearm. If the

1 chief law- enforcement officer is unable to make a certification as required by this section, the chief
2 law- enforcement officer shall provide the applicant a written notification of the denial and the
3 reason for this determination.

4 (b) For purposes of this section:

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

9 (2) "Certification" means the participation and assent of the chief law-enforcement officer
10 necessary under federal law for the approval of the application to transfer or make a firearm. A chief
11 law- enforcement officer is not required to make any certification under this section that the chief
12 law- enforcement officer knows to be untrue, but the chief law- enforcement officer may not refuse
13 to provide certification based on a generalized objection to private persons or entities making,
14 possessing or receiving firearms or any certain type of firearm the possession of which is not
15 prohibited by law.

16 (3) "Firearm" has the same meaning as provided in the National Firearms Act, 26 U.S.C. §
17 5845 (a).

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

20 (d) An applicant whose request for certification is denied may appeal the chief law-
21 enforcement officer's decision to the circuit court that is located in the city or county in which the
22 applicant resides or, in the case of a legal entity, maintains its address of record. The court shall

1 review the chief law-enforcement officer's decision to deny the certification de novo. If the court
2 finds that the applicant is not prohibited by law from receiving or possessing the firearm, or is not
3 the subject of a proceeding that could result in the prohibition, or that no substantial evidence
4 supports the chief law-enforcement officer's determination that he or she cannot truthfully make the
5 certification, the court shall order the chief law-enforcement officer to issue the certification and
6 award court costs and reasonable attorney's fees to the applicant.

7 (e) In making the determination required by subsection (a), a chief law-enforcement officer
8 may conduct a criminal background check, including an inquiry of the National Instant Criminal
9 Background Check System, and may require of the applicant only such information as is necessary
10 to identify the applicant for this purpose or to determine the disposition of an arrest or proceeding
11 relevant to the applicant's eligibility lawfully to possess or receive a firearm. A chief law
12 enforcement officer may not require access to or inspection of any private residential premises as a
13 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, strike-throughs and underscoring have been omitted.