

**H. B. 3087**

(By Delegates Frazier and Lawrence)

[Introduced February 10, 2011; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

10 A BILL to amend and reenact §7-4-1 of the Code of West Virginia,  
11 1931, as amended; to amend and reenact §15-2-25 of said code;  
12 and to amend said code by adding thereto a new section,  
13 designated §30-29-11, all relating to requiring qualifying  
14 law-enforcement officers employed by a West Virginia law-  
15 enforcement agency to receive certification to carry a  
16 concealed firearm nationwide as provided in the federal Law-  
17 Enforcement Officers Safety Act of 2004; permitting and  
18 setting forth the requirements for prosecuting attorneys and  
19 assistant prosecuting attorneys to carry concealed handguns  
20 pursuant to that act; establishing a procedure for a retired  
21 or medically discharged member of the State Police to appeal  
22 a denial of a letter of authorization to carry concealed  
23 handguns; providing that certain methods of authorization for  
24 retired or medically discharged members of the State Police to  
25 carry concealed handguns are cumulative; providing that a  
26 letter of authorization for a retired or medically discharged  
27 member of the State Police to carry concealed handguns is

1 considered a West Virginia concealed handgun license for the  
 2 purpose of participating in reciprocity with other states;  
 3 providing that law-enforcement agencies are neither prohibited  
 4 from nor required to permit an officer to carry his or her  
 5 service weapon off duty; and requiring West Virginia law-  
 6 enforcement agencies to offer access to training and  
 7 certification for honorably retired officers to be permitted  
 8 to carry a concealed firearm nationwide as a qualified retired  
 9 law-enforcement officer as provided in the federal Law-  
 10 Enforcement Officers Safety Act of 2004.

11 *Be it enacted by the Legislature of West Virginia:*

12 That §7-4-1 of the Code of West Virginia, 1931, as amended,  
 13 be amended and reenacted; that §15-2-25 of said code be amended and  
 14 reenacted; and to amend said code by adding thereto a new section,  
 15 designated §30-29-11, all to read as follows:

16 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

17 **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

18 **§7-4-1. Duties of prosecuting attorney; further duties upon**  
 19 **request of Attorney General.**

20 (a) It ~~shall be~~ is the duty of the prosecuting attorney to  
 21 attend to the criminal business of the state in the county in which  
 22 he or she is elected and qualified, and when ~~he~~ the prosecuting  
 23 attorney has information of the violation of any penal law  
 24 committed within such county, ~~he~~ the prosecuting attorney shall  
 25 institute and prosecute all necessary and proper proceedings  
 26 against the offender, and may in such case issue or cause to be  
 27 issued a summons for any witness ~~he~~ the prosecuting attorney may

1 deem material. Every public officer shall give ~~him~~ the prosecuting  
2 attorney information of the violation of any penal law committed  
3 within his or her county. It ~~shall~~ is also ~~be~~ the duty of the  
4 prosecuting attorney to attend to civil suits in ~~such~~ the county in  
5 which the state, or any department, commission or board thereof, is  
6 interested, and to advise, attend to, bring, prosecute or defend,  
7 as the case may be, all matters, actions, suits and proceedings in  
8 which such county or any county board of education is interested.

9 (b) Any prosecuting attorney or assistant prosecuting attorney  
10 who elects to carry a concealed firearm pursuant to the Law-  
11 Enforcement Officers Safety Act, P.L. 108-277, must first complete  
12 training in the safe and proper handling and firing of a handgun.  
13 Upon completion of the training program, a prosecuting attorney or  
14 assistant prosecuting attorney has within his or her jurisdiction  
15 all the rights and authorities necessary to comply with the federal  
16 Law-Enforcement Officers Safety Act, P.L. 108-277, and has all the  
17 rights, benefits, privileges and immunities conferred under that  
18 act. Successfully completing any of the following satisfies the  
19 training requirement of this subsection: (1) Any official National  
20 Rifle Association handgun safety or training course on the actual  
21 safe handling and firing of a handgun; (2) any handgun safety or  
22 training course or class by an official law enforcement  
23 organization or handgun training school conducted by a firearms  
24 instructor certified by the United States, the State of West  
25 Virginia or by the National Rifle Association; (3) any handgun  
26 training or handgun qualification course of class by any branch of  
27 the United States Armed Forces, their respective Reserves or the

1 National Guard; or (4) any training program offered by any law-  
2 enforcement agency for handgun qualification of its active or  
3 retired members. A certificate of completion of any of the courses  
4 or classes or an affidavit from the instructor, school,  
5 organization or group that conducted the course attesting to the  
6 successful completion of the course, class or qualification by the  
7 applicant or a copy of any official document which shows successful  
8 completion of the course or class constitutes evidence of  
9 qualification under this section. Said training shall reasonably  
10 accommodate any physical disability of the trainee. Upon the  
11 successful completion of training pursuant to this subsection, the  
12 prosecuting attorney or assistant prosecuting attorney may be  
13 issued a photographic identification and certification wallet-sized  
14 card that contains the name, title, official address, full-face  
15 color photograph of the prosecuting attorney or assistant  
16 prosecuting attorney, the signature of the duly elected prosecuting  
17 attorney of their county, date of issuance, the words "Qualified  
18 Law Enforcement Officer within the meaning of the Law-Enforcement  
19 Officers Safety Act of 2004" in conspicuous type. The rights and  
20 authorities conferred under this subsection is supplemental and  
21 additional to existing rights to bear arms. This subsection does  
22 not impair or diminish these other rights.

23       (c) It ~~shall be~~ is the duty of the prosecuting attorney to  
24 keep his or her office open in the charge of a responsible person  
25 during the hours polls are open on general, primary and special  
26 county-wide election days, and the prosecuting attorney, or ~~his~~ the  
27 prosecuting attorney's assistant, if any, shall be available for

1 the purpose of advising election officials. It ~~shall be~~ is the  
 2 further duty of the prosecuting attorney, when requested by the  
 3 Attorney General, to perform or to assist the Attorney General in  
 4 performing, in the county in which ~~he~~ the prosecuting attorney is  
 5 elected, any legal duties required to be performed by the Attorney  
 6 General, and which are not inconsistent with the duties of the  
 7 prosecuting attorney as the legal representative of such county.  
 8 It shall also be the duty of the prosecuting attorney, when  
 9 requested by the Attorney General, to perform or to assist the  
 10 Attorney General in performing, any legal duties required to be  
 11 performed by the Attorney General, in any county other than that in  
 12 which such prosecuting attorney is elected, and for the performance  
 13 of any such duties in any county other than that in which such  
 14 prosecuting attorney is elected ~~he~~ the prosecuting attorney shall  
 15 be paid his or her actual expenses.

16 (d) Upon the request of the Attorney General the prosecuting  
 17 attorney shall make a written report of the state and condition of  
 18 the several causes in which the state is a party, pending in his or  
 19 her county, and upon any matters referred to ~~him~~ the prosecuting  
 20 attorney by the Attorney General as provided by law.

21 **CHAPTER 15. PUBLIC SAFETY.**

22 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

23 **§15-2-25. Rules generally; carrying of weapons upon retirement or**  
 24 **medical discharge.**

25 (a) Subject to the written approval of the Governor and the  
 26 provisions of this article, the superintendent may make and  
 27 promulgate proper rules for the government, discipline and control

1 of the West Virginia State Police and shall also cause to be  
2 established proper rules for the examinations of all applicants for  
3 appointment thereto. The members of the West Virginia State Police  
4 ~~shall be~~ are permitted to carry arms and weapons and no license may  
5 be required for the privilege.

6       **(b)** Upon retirement or medical discharge from the West  
7 Virginia State Police and with the written consent of the  
8 superintendent, any retired or medically discharged member who is  
9 not prohibited by federal law or the laws of this state from  
10 possessing a handgun may carry ~~a handgun~~ concealed handguns without  
11 a license for the life of the member following retirement or  
12 medical discharge notwithstanding the provisions of article seven,  
13 chapter sixty-one of this code: *Provided*, That the superintendent's  
14 written letter of consent to carry ~~a handgun~~ concealed handguns may  
15 not last for more than five years at a time and a retired or  
16 medically discharged member who wishes to continue to carry ~~a~~  
17 ~~handgun~~ concealed handguns beyond five years of the date of his or  
18 her initial retirement or medical discharge must request and obtain  
19 a renewal of the superintendent's written permission to carry ~~a~~  
20 ~~handgun~~ concealed handguns at least once every five years. A  
21 retired or medically discharged member desiring to carry ~~a handgun~~  
22 concealed handguns after retirement or medical discharge must  
23 provide his or her own handgun. Upon request, each member shall be  
24 presented with a letter of authorization signed by the  
25 superintendent authorizing the retired or medically discharged  
26 member to carry ~~a handgun~~ concealed handguns. The written  
27 authorization shall be carried by the retired or medically

1 discharged member at all times that he or she has ~~a handgun~~  
2 concealed handguns on or about his or her person. The  
3 superintendent may not withhold, deny or revoke any letter of  
4 authorization issued under this subsection without cause if the  
5 retired or medically discharged member is qualified for the  
6 authorization. The superintendent may not issue a letter of  
7 authorization to any retired or medically discharged member who is  
8 no longer employed by the State Police due to a mental disability,  
9 ~~or~~ who the superintendent has reason to believe is mentally  
10 incapacitated to the extent it would present a threat of physical  
11 harm to one or more persons for the member to carry ~~a~~ concealed  
12 ~~weapon~~ handguns or who is prohibited by federal law or the laws of  
13 this state from possessing, purchasing or receiving a handgun. The  
14 superintendent may revoke the authority ~~at any time without cause~~  
15 ~~and without recourse~~ for just cause. Conviction of the retired or  
16 medically discharged member for the commission of any felony or for  
17 a misdemeanor involving the improper or illegal use of a firearm  
18 ~~shall cause~~ or the retired or medically discharged member becoming  
19 prohibited by federal law or the laws of this state from  
20 possessing, purchasing or receiving a handgun causes this authority  
21 to terminate immediately without a hearing or other recourse and  
22 without any action on the part of the superintendent. The  
23 superintendent shall promulgate a legislative rule in accordance  
24 with the provisions of chapter twenty-nine-a of this code, which  
25 rule shall prescribe requirements necessary for the issuance and  
26 continuance of the authority ~~herein~~ granted and the procedure for  
27 appealing a denial or revocation of a letter of authorization to

1 carry concealed handguns issued under this subsection. For the  
2 purposes of participation in concealed handgun license reciprocity  
3 with other states pursuant to subdivision (7), section six, article  
4 seven, chapter sixty-one of this code, a valid letter of  
5 authorization issued pursuant to this subsection constitutes a  
6 concealed handgun license issued by this state.

7 (c) In addition to any letter of authorization under  
8 subsection (b) of this section, the superintendent must make  
9 available to all eligible retired or medically discharged members  
10 of the State Police a program for certification to carry a  
11 concealed firearm nationwide under Law-Enforcement Officers Safety  
12 Act, P.L. 108-277, if that retired or medically discharged member  
13 is a qualified retired law-enforcement officer as defined therein.  
14 Until that act is amended to increase renewal interval for a  
15 certification as a qualified retired law-enforcement officer to  
16 equal or exceed the renewal interval for letters of authorization  
17 under subsection (b) of this section, a retired or medically  
18 discharged member of the State Police who qualifies for both a  
19 letter of authorization under said subsection and certification as  
20 a qualified retired law-enforcement officer under the federal act  
21 is entitled to both and the corresponding rights, benefits,  
22 privileges and immunities appertaining to each.

23 (d) Any denial, revocation or termination of a retired or  
24 medically discharged member's letter of authority under subsection  
25 (b) of this section or certification as a qualified retired law-  
26 enforcement officer under subsection (c) of this section is subject  
27 to article five, chapter twenty-nine-a of this code..



1                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

3 **§30-29-11. Law-enforcement officers to receive certification to**  
4                   **carry weapons off-duty.**

5           (a) Every qualified law-enforcement officer employed by a West  
6 Virginia law-enforcement agency must receive the training and  
7 certification required to be considered a "qualified law-  
8 enforcement officer" pursuant to the federal Law-Enforcement  
9 Officers Safety Act, P.L. 108-277, in order to carry a concealed  
10 firearm nationwide. It is the duty of each law-enforcement official  
11 to provide to qualified law-enforcement officers under his or her  
12 command the identification required by that act. No officer may be  
13 charged any fees or costs for receiving this certification. This  
14 subsection may not be construed to require or prohibit a law-  
15 enforcement agency from permitting, requiring or prohibiting a law-  
16 enforcement officer to carry his or her service weapon off-duty.

17           (b) Every West Virginia law-enforcement agency shall, at least  
18 once annually, notify each honorably retired law-enforcement  
19 officer who retired from that agency of the provisions of the Law-  
20 Enforcement Officers Safety Act, P.L. 108-277, permitting a  
21 qualified retired law-enforcement officer to carry a concealed  
22 firearm nationwide. The agency shall permit a retired officer who  
23 meets the eligibility requirements of this law to receive the  
24 training and certification required for the retired officer to  
25 qualify as a "qualified retired law-enforcement officer" as  
26 provided by that act. Each qualifying retired officer shall be  
27 offered the required annual recertification as provided in that

1 act.

NOTE: The purpose of this bill is to require qualifying law-enforcement officers employed by a West Virginia law-enforcement agency to receive certification to carry a concealed firearm nationwide as provided in the federal Law-Enforcement Officers Safety Act of 2004. The bill permits and sets forth the requirements for prosecuting attorneys and assistant prosecuting attorneys to carry concealed handguns. The bill establishes a procedure for a retired or medically discharged member of the State Police to appeal a denial of a letter of authorization to carry concealed handguns. The bill provides that certain methods of authorization for retired or medically discharged members of the State Police to carry concealed handguns are cumulative. The bill provides that a letter of authorization for a retired or medically discharged member of the State Police to carry concealed handguns is considered a West Virginia concealed handgun license for the purpose of participating in reciprocity with other states. The bill provides that law-enforcement agencies are neither prohibited from nor required to permit an officer to carry his or her service weapon off duty. The bill requires West Virginia law-enforcement agencies to offer access to training and certification for honorably retired officers to be permitted to carry a concealed firearm nationwide as a qualified retired law-enforcement officer as provided in the federal Law-Enforcement Officers Safety Act of 2004.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§30-29-11 is new; therefore, it has been completely underscored.