

COMMITTEE SUBSTITUTE

FOR

**H. B. 3087**

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(BY DELEGATES FRAZIER AND LAWRENCE)

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(Originating in the Committee on the Judiciary)  
[February 23, 2011]

A BILL to amend and reenact §7-4-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-2-25 of said code; and to amend said code by adding thereto a new section, designated §30-29-11, all relating to requiring 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; permitting and setting forth the requirements for prosecuting attorneys and assistant prosecuting attorneys to carry concealed handguns

pursuant to that act; requiring prosecutors, assistant prosecutors or duly appointed investigators employed by a prosecuting attorney to complete firearms training and certification before carrying a firearm while performing their duties; establishing 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; providing that certain methods of authorization for retired or medically discharged members of the State Police to carry concealed handguns are cumulative; providing 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; providing that law-enforcement agencies are neither prohibited from nor required to permit an officer to carry his or her service weapon off duty; and requiring 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.

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

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

**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  
2        shall attend to the criminal business of the state in the county  
3        in which ~~he~~ the prosecuting attorney is elected and qualified.  
4        ~~and~~ When ~~he~~ the prosecuting attorney has information of the  
5        violation of any penal law committed within ~~such~~ the county  
6        in which the prosecuting attorney is elected and qualified, ~~he~~  
7        the prosecuting attorney shall institute and prosecute all  
8        necessary and proper proceedings against the offender and  
9        may ~~in such case~~ issue or cause to be issued a summons for  
10       any witness ~~he may deem~~ the prosecuting attorney considers  
11       material. Every public officer shall give ~~him~~ the prosecuting  
12       attorney information of the violation of any penal law  
13       committed within ~~his~~ the county in which the prosecuting  
14       attorney is elected and qualified. ~~It shall also be the duty of~~

15 The prosecuting attorney ~~to~~ shall attend to civil suits in ~~such~~  
16 the county in which the prosecuting attorney is elected and  
17 qualified, in which the state or any department, commission,  
18 ~~or~~ board, ~~thereof~~ or other instrumentality of the state is  
19 interested, and ~~to~~ advise, attend to, bring, prosecute or  
20 defend, as the case may be, all matters, actions, suits and  
21 proceedings in which ~~such~~ the county or any county board of  
22 education is interested.

23 (b) Any prosecuting attorney or assistant prosecuting  
24 attorney who elects to carry a concealed firearm pursuant to  
25 the federal Law Enforcement Officers Safety Act, 18 U.S.C.  
26 §926B, shall undergo annual firearms training and  
27 certification established by the sheriff's department of his or  
28 her county, similar to that which is provided to members of  
29 the sheriff's department eligible for training and certification  
30 under 18 U.S.C. §926B, and which shall reasonably  
31 accommodate any physical disability of the trainee. Any  
32 prosecuting attorney or assistant prosecuting attorney who  
33 elects to undergo training and certification pursuant to this  
34 subsection shall provide, at his or her own expense, a suitable  
35 firearm and any ammunition actually expended in training  
36 and certification pursuant to this subsection. Upon

37 completion of training and certification pursuant to this  
38 subsection, each prosecuting attorney or assistant prosecuting  
39 attorney shall be issued a photographic identification and  
40 certification card, suitable to be carried in a wallet, valid for  
41 one year, which shall contain the name, title, official address,  
42 full-face color photograph of said prosecuting attorney or  
43 assistant prosecuting attorney, the sheriff's signature, the  
44 expiration date, the words "qualified law-enforcement officer  
45 under 18 U.S.C. §926B" in conspicuous type and shall  
46 indicate completion of periodic training consistent with this  
47 subsection and 18 U.S.C. §926B. Prosecuting attorneys and  
48 assistant prosecuting attorneys who have successfully  
49 completed such training and certification shall have all the  
50 rights and authorities necessary in order to comply with 18  
51 U.S.C. §926B and receive the rights, benefits, privileges and  
52 immunities conferred under 18 U.S.C. §926B. On the  
53 effective date of this subsection, any prosecutor or assistant  
54 prosecuting attorney or any duly appointed investigator  
55 employed by a prosecuting attorney must first complete  
56 firearms training and certification established by the sheriff's  
57 department of his or her county, similar to that which is  
58 provided to members of the sheriff's department, before he

59 or she may carry a firearm while performing their duties.

60 This subsection is supplemental and additional to existing

61 rights to bear arms, and nothing in this subsection shall

62 impair or diminish such rights.

63 ~~(c) It shall be the duty of~~ The prosecuting attorney to

64 shall keep his or her office open in the charge of a

65 responsible person during the hours polls are open on

66 general, primary and special county-wide election days, and

67 the prosecuting attorney, or ~~his~~ assistant prosecuting

68 attorneys, if any, shall be available for the purpose of

69 advising election officials. ~~It shall be the further duty of~~ The

70 prosecuting attorney, when requested by the Attorney

71 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in

72 performing, in the county in which ~~he~~ the prosecuting

73 attorney is elected and qualified, any legal duties required to

74 be performed by the Attorney General, and which are not

75 inconsistent with the duties of the prosecuting attorney as the

76 legal representative of ~~such~~ the county. ~~It shall also be the~~

77 ~~duty of~~ The prosecuting attorney, when requested by the

78 Attorney General, ~~to~~ shall perform or ~~to~~ assist the Attorney

79 General in performing any legal duties required to be

80 performed by the Attorney General, in any county other than

81 ~~that~~ the county in which ~~such~~ the prosecuting attorney is  
82 elected and qualified, and for the performance of any such  
83 duties in any county other than ~~that~~ the county in which ~~such~~  
84 the prosecuting attorney is elected ~~he~~ and qualified, the  
85 prosecuting attorney shall be paid his or her actual expenses.

86 (d) Upon the request of the Attorney General, the  
87 prosecuting attorney shall make a written report of the state  
88 and condition of ~~the several causes~~ all cases in which the  
89 state is a party, pending in ~~his~~ the county, and upon any  
90 matters referred to ~~him~~ the prosecuting attorney by the  
91 Attorney General as provided by law.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. WEST VIRGINIA STATE POLICE.

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

1 (a) Subject to the written approval of the Governor and  
2 the provisions of this article, the superintendent may make  
3 and promulgate proper rules for the government, discipline  
4 and control of the West Virginia State Police and shall also  
5 cause to be established proper rules for the examinations of  
6 all applicants for appointment thereto. The members of the  
7 West Virginia State Police ~~shall be~~ are permitted to carry

8 arms and weapons and no license may be required for the  
9 privilege.

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

30 with a letter of authorization signed by the superintendent  
31 authorizing the retired or medically discharged member to  
32 carry ~~a handgun~~ concealed handguns. The written  
33 authorization shall be carried by the retired or medically  
34 discharged member at all times that he or she has ~~a handgun~~  
35 concealed handguns on or about his or her person. The  
36 superintendent may not withhold, deny or revoke any letter  
37 of authorization issued under this subsection without cause  
38 if the retired or medically discharged member is qualified for  
39 the authorization. The superintendent may not issue a letter  
40 of authorization to any retired or medically discharged  
41 member who is no longer employed by the State Police due  
42 to a mental disability, ~~or~~ who the superintendent has reason  
43 to believe is mentally incapacitated to the extent it would  
44 present a threat of physical harm to one or more persons for  
45 the member to carry ~~a concealed weapon~~ handguns or who is  
46 prohibited by federal law or the laws of this state from  
47 possessing, purchasing or receiving a handgun. The  
48 superintendent may revoke the authority ~~at any time without~~  
49 ~~cause and without recourse~~ for just cause. Conviction of the  
50 retired or medically discharged member for the commission  
51 of any felony or for a misdemeanor involving the improper

52 or illegal use of a firearm ~~shall cause~~ or the retired or  
53 medically discharged member becoming prohibited by  
54 federal law or the laws of this state from possessing,  
55 purchasing or receiving a handgun causes this authority to  
56 terminate immediately without a hearing or other recourse  
57 and without any action on the part of the superintendent. The  
58 superintendent shall promulgate a legislative rule in  
59 accordance with the provisions of chapter twenty-nine-a of  
60 this code, which rule shall prescribe requirements necessary  
61 for the issuance and continuance of the authority ~~herein~~  
62 granted and the procedure for appealing a denial or  
63 revocation of a letter of authorization to carry concealed  
64 handguns issued under this subsection. For the purposes of  
65 participation in concealed handgun license reciprocity with  
66 other states pursuant to subdivision (7), section six, article  
67 seven, chapter sixty-one of this code, a valid letter of  
68 authorization issued pursuant to this subsection constitutes a  
69 concealed handgun license issued by this state.

70 (c) In addition to any letter of authorization under  
71 subsection (b) of this section, the superintendent must make  
72 available to all eligible retired or medically discharged  
73 members of the State Police a program for certification to

74 carry a concealed firearm nationwide under Law-Enforcement  
75 Officers Safety Act, P.L. 108-277, if that retired or medically  
76 discharged member is a qualified retired law-enforcement  
77 officer as defined therein. Until that act is amended to  
78 increase renewal interval for a certification as a qualified  
79 retired law-enforcement officer to equal or exceed the  
80 renewal interval for letters of authorization under subsection  
81 (b) of this section, a retired or medically discharged member  
82 of the State Police who qualifies for both a letter of  
83 authorization under said subsection and certification as a  
84 qualified retired law-enforcement officer under the federal  
85 act is entitled to both and the corresponding rights, benefits,  
86 privileges and immunities appertaining to each.

87 (d) Any denial, revocation or termination of a retired or  
88 medically discharged member's letter of authority under  
89 subsection (b) of this section or certification as a qualified  
90 retired law-enforcement officer under subsection (c) of this  
91 section is subject to article five, chapter twenty-nine-a of this  
92 code..

### **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

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

15       (b) Every West Virginia law-enforcement agency shall,  
16       at least once annually, notify each honorably retired law-  
17       enforcement officer who retired from that agency of the  
18       provisions of the Law- Enforcement Officers Safety Act, P.L.  
19       108-277, permitting a qualified retired law-enforcement  
20       officer to carry a concealed firearm nationwide. The agency

21 shall permit a retired officer who meets the eligibility  
22 requirements of this law to receive the training and  
23 certification required for the retired officer to qualify as a  
24 "qualified retired law-enforcement officer" as provided by  
25 that act. Each qualifying retired officer shall be offered the  
26 required annual recertification as provided in that act.