

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3087**

4
5 (By Delegates Frazier and Lawrence)

6 (Originating in the Committee on the Judiciary)

7
8 [February 23, 2011]

9
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; requiring prosecutors, assistant
21 prosecutors or duly appointed investigators employed by a
22 prosecuting attorney to complete firearms training and
23 certification before carrying a firearm while performing their
24 duties; establishing a procedure for a retired or medically
25 discharged member of the State Police to appeal a denial of a
26 letter of authorization to carry concealed handguns; providing

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

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

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

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

22 **§7-4-1. Duties of prosecuting attorney; further duties upon**
23 **request of Attorney General.**

24 (a) ~~It shall be the duty of~~ The prosecuting attorney ~~to~~ shall
25 attend to the criminal business of the state in the county in which
26 ~~he~~ the prosecuting attorney is elected and qualified. ~~and~~ When ~~he~~

1 the prosecuting attorney has information of the violation of any
2 penal law committed within ~~such~~ the county in which the prosecuting
3 attorney is elected and qualified, ~~he~~ the prosecuting attorney
4 shall institute and prosecute all necessary and proper proceedings
5 against the offender and may ~~in such case~~ issue or cause to be
6 issued a summons for any witness ~~he may deem~~ the prosecuting
7 attorney considers material. Every public officer shall give ~~him~~
8 the prosecuting attorney information of the violation of any penal
9 law committed within ~~his~~ the county in which the prosecuting
10 attorney is elected and qualified. ~~It shall also be the duty of~~
11 ~~The prosecuting attorney to~~ shall attend to civil suits in ~~such~~ the
12 county in which the prosecuting attorney is elected and qualified,
13 in which the state or any department, commission, ~~or~~ board, ~~thereof~~
14 or other instrumentality of the state is interested, and ~~to~~ advise,
15 attend to, bring, prosecute or defend, as the case may be, all
16 matters, actions, suits and proceedings in which ~~such~~ the county or
17 ~~any~~ county board of education is interested.

18 (b) Any prosecuting attorney or assistant prosecuting attorney
19 who elects to carry a concealed firearm pursuant to the federal Law
20 Enforcement Officers Safety Act, 18 U.S.C. §926B, shall undergo
21 annual firearms training and certification established by the
22 sheriff's department of his or her county, similar to that which is
23 provided to members of the sheriff's department eligible for
24 training and certification under 18 U.S.C. §926B, and which shall
25 reasonably accommodate any physical disability of the trainee. Any
26 prosecuting attorney or assistant prosecuting attorney who elects

1 to undergo training and certification pursuant to this subsection
2 shall provide, at his or her own expense, a suitable firearm and
3 any ammunition actually expended in training and certification
4 pursuant to this subsection. Upon completion of training and
5 certification pursuant to this subsection, each prosecuting
6 attorney or assistant prosecuting attorney shall be issued a
7 photographic identification and certification card, suitable to be
8 carried in a wallet, valid for one year, which shall contain the
9 name, title, official address, full-face color photograph of said
10 prosecuting attorney or assistant prosecuting attorney, the
11 sheriff's signature, the expiration date, the words "qualified
12 law-enforcement officer under 18 U.S.C. §926B" in conspicuous type
13 and shall indicate completion of periodic training consistent with
14 this subsection and 18 U.S.C. §926B. Prosecuting attorneys and
15 assistant prosecuting attorneys who have successfully completed
16 such training and certification shall have all the rights and
17 authorities necessary in order to comply with 18 U.S.C. §926B and
18 receive the rights, benefits, privileges and immunities conferred
19 under 18 U.S.C. §926B. On and the effective date of this
20 subsection, any prosecutor or assistant prosecuting attorney or any
21 duly appointed investigator employed by a prosecuting attorney must
22 first complete firearms training and certification established by
23 the sheriff's department of his or her county, similar to that
24 which is provided to members of the sheriff's department, before he
25 or she may carry a firearm while performing their duties. This
26 subsection is supplemental and additional to existing rights to

1 bear arms, and nothing in this subsection shall impair or diminish
2 such rights.

3 (c) ~~It shall be the duty of~~ The prosecuting attorney ~~to~~ shall
4 keep his or her office open in the charge of a responsible person
5 during the hours polls are open on general, primary and special
6 county-wide election days, and the prosecuting attorney, or ~~his~~
7 assistant prosecuting attorneys, if any, shall be available for the
8 purpose of advising election officials. ~~It shall be the further~~
9 ~~duty of~~ The prosecuting attorney, when requested by the Attorney
10 General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in
11 performing, in the county in which ~~he~~ the prosecuting attorney is
12 elected and qualified, any legal duties required to be performed by
13 the Attorney General, and which are not inconsistent with the
14 duties of the prosecuting attorney as the legal representative of
15 ~~such~~ the county. ~~It shall also be the duty of~~ The prosecuting
16 attorney, when requested by the Attorney General, ~~to~~ shall perform
17 or ~~to~~ assist the Attorney General in performing any legal duties
18 required to be performed by the Attorney General, in any county
19 other than ~~that~~ the county in which ~~such~~ the prosecuting attorney
20 is elected and qualified, and for the performance of any such
21 duties in any county other than ~~that~~ the county in which ~~such~~ the
22 prosecuting attorney is elected ~~he~~ and qualified, the prosecuting
23 attorney shall be paid his or her actual expenses.

24 (d) Upon the request of the Attorney General, the prosecuting
25 attorney shall make a written report of the state and condition of
26 ~~the several causes~~ all cases in which the state is a party, pending

1 in ~~his~~ the county, and upon any matters referred to ~~him~~ the
2 prosecuting attorney by the Attorney General as provided by law.

3 **CHAPTER 15. PUBLIC SAFETY.**

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

5 **§15-2-25. Rules generally; carrying of weapons upon retirement or**
6 **medical discharge.**

7 (a) Subject to the written approval of the Governor and the
8 provisions of this article, the superintendent may make and
9 promulgate proper rules for the government, discipline and control
10 of the West Virginia State Police and shall also cause to be
11 established proper rules for the examinations of all applicants for
12 appointment thereto. The members of the West Virginia State Police
13 ~~shall be~~ are permitted to carry arms and weapons and no license may
14 be required for the privilege.

15 (b) Upon retirement or medical discharge from the West
16 Virginia State Police and with the written consent of the
17 superintendent, any retired or medically discharged member who is
18 not prohibited by federal law or the laws of this state from
19 possessing a handgun may carry ~~a handgun~~ concealed handguns without
20 a license for the life of the member following retirement or
21 medical discharge notwithstanding the provisions of article seven,
22 chapter sixty-one of this code: *Provided*, That the superintendent's
23 written letter of consent to carry ~~a handgun~~ concealed handguns may
24 not last for more than five years at a time and a retired or
25 medically discharged member who wishes to continue to carry ~~a~~
26 ~~handgun~~ concealed handguns beyond five years of the date of his or

1 her initial retirement or medical discharge must request and obtain
2 a renewal of the superintendent's written permission to carry ~~a~~
3 ~~handgun~~ concealed handguns at least once every five years. A
4 retired or medically discharged member desiring to carry ~~a handgun~~
5 concealed handguns after retirement or medical discharge must
6 provide his or her own handgun. Upon request, each member shall be
7 presented with a letter of authorization signed by the
8 superintendent authorizing the retired or medically discharged
9 member to carry ~~a handgun~~ concealed handguns. The written
10 authorization shall be carried by the retired or medically
11 discharged member at all times that he or she has ~~a handgun~~
12 concealed handguns on or about his or her person. The
13 superintendent may not withhold, deny or revoke any letter of
14 authorization issued under this subsection without cause if the
15 retired or medically discharged member is qualified for the
16 authorization. The superintendent may not issue a letter of
17 authorization to any retired or medically discharged member who is
18 no longer employed by the State Police due to a mental disability,
19 ~~or~~ who the superintendent has reason to believe is mentally
20 incapacitated to the extent it would present a threat of physical
21 harm to one or more persons for the member to carry ~~a~~ concealed
22 ~~weapon~~ handguns or who is prohibited by federal law or the laws of
23 this state from possessing, purchasing or receiving a handgun. The
24 superintendent may revoke the authority ~~at any time without cause~~
25 ~~and without recourse~~ for just cause. Conviction of the retired or
26 medically discharged member for the commission of any felony or for

1 a misdemeanor involving the improper or illegal use of a firearm
2 ~~shall cause~~ or the retired or medically discharged member becoming
3 prohibited by federal law or the laws of this state from
4 possessing, purchasing or receiving a handgun causes this authority
5 to terminate immediately without a hearing or other recourse and
6 without any action on the part of the superintendent. The
7 superintendent shall promulgate a legislative rule in accordance
8 with the provisions of chapter twenty-nine-a of this code, which
9 rule shall prescribe requirements necessary for the issuance and
10 continuance of the authority ~~herein~~ granted and the procedure for
11 appealing a denial or revocation of a letter of authorization to
12 carry concealed handguns issued under this subsection. For the
13 purposes of participation in concealed handgun license reciprocity
14 with other states pursuant to subdivision (7), section six, article
15 seven, chapter sixty-one of this code, a valid letter of
16 authorization issued pursuant to this subsection constitutes a
17 concealed handgun license issued by this state.

18 (c) In addition to any letter of authorization under
19 subsection (b) of this section, the superintendent must make
20 available to all eligible retired or medically discharged members
21 of the State Police a program for certification to carry a
22 concealed firearm nationwide under Law-Enforcement Officers Safety
23 Act, P.L. 108-277, if that retired or medically discharged member
24 is a qualified retired law-enforcement officer as defined therein.
25 Until that act is amended to increase renewal interval for a
26 certification as a qualified retired law-enforcement officer to

1 equal or exceed the renewal interval for letters of authorization
2 under subsection (b) of this section, a retired or medically
3 discharged member of the State Police who qualifies for both a
4 letter of authorization under said subsection and certification as
5 a qualified retired law-enforcement officer under the federal act
6 is entitled to both and the corresponding rights, benefits,
7 privileges and immunities appertaining to each.

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

13 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

15 **§30-29-11. Law-enforcement officers to receive certification to**
16 **carry weapons off-duty.**

17 (a) Every qualified law-enforcement officer employed by a West
18 Virginia law-enforcement agency must receive the training and
19 certification required to be considered a "qualified law-
20 enforcement officer" pursuant to the federal Law-Enforcement
21 Officers Safety Act, P.L. 108-277, in order to carry a concealed
22 firearm nationwide. It is the duty of each law-enforcement official
23 to provide to qualified law-enforcement officers under his or her
24 command the identification required by that act. No officer may be
25 charged any fees or costs for receiving this certification. This
26 subsection may not be construed to require or prohibit a law-

1 enforcement agency from permitting, requiring or prohibiting a law-
2 enforcement officer to carry his or her service weapon off-duty.

3 (b) Every West Virginia law-enforcement agency shall, at least
4 once annually, notify each honorably retired law-enforcement
5 officer who retired from that agency of the provisions of the Law-
6 Enforcement Officers Safety Act, P.L. 108-277, permitting a
7 qualified retired law-enforcement officer to carry a concealed
8 firearm nationwide. The agency shall permit a retired officer who
9 meets the eligibility requirements of this law to receive the
10 training and certification required for the retired officer to
11 qualify as a "qualified retired law-enforcement officer" as
12 provided by that act. Each qualifying retired officer shall be
13 offered the required annual recertification as provided in that
14 act.