

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 04

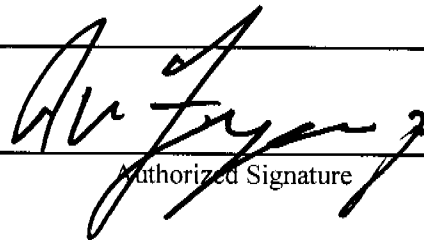
TITLE OF RULE BEING PROPOSED: Pre-Employment Reference and Inquiries Rule

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 382

SECTION 64-2-5(b), PASSED ON April 9, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2005


Authorized Signature



West Virginia Division of Personnel

Willard M. Farley, Acting Director

STATE PERSONNEL BOARD
Rev. Paul Gilmer ♦ Elizabeth Harter
Sharon Lynch ♦ Eugene Stump

MEMORANDUM

TO: Members of the State Personnel Board

FROM: Willard M. Farley, Acting Director
West Virginia Division of Personnel

RE: Final Filing of the *Pre-Employment Reference and Inquiries Rule*

DATE: May 19, 2005

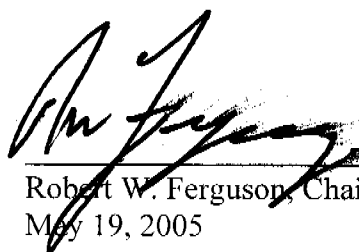
Your approval is requested for the final filing and adoption of the *Pre-Employment Reference and Inquiries Rule* in accordance with the provisions of *West Virginia Code §29A-3-1 et seq.*

Senate Bill 382, authorizing the Division of Personnel to adopt the *Pre-Employment Reference and Inquiries Rule*, was passed by the Legislature on April 9, 2005 and signed by the Governor on May 2, 2005. The proposed rule was approved as amended by the Senate Judiciary Committee.

With your approval, we will file the final rule no later than June 3, 2005 with an effective date of July 1, 2005. Once the rule is filed, we will post it on our web site and notify all agencies, bureaus, departments, and county boards of health of the adoption of the rule and its location on our web site.

Thank you for your consideration of this request.

APPROVED:


Robert W. Ferguson, Chairman
May 19, 2005

WMF:TMC/

WEST VIRGINIA DIVISION OF PERSONNEL
PRE-EMPLOYMENT REFERENCE AND INQUIRIES RULE

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Section 1. General

1.1. Scope: This rule implements the provisions set forth in West Virginia Code § 29-6-10 (8) regarding the rejection of candidates or eligibles within the classified service.

1.2. Authority: This rule is issued under authority of West Virginia Code § 29-6-10.

1.3. Filing Date: June 3, 2005

1.4. Effective Date: July 1, 2005

Section 2. Definitions. Terms used in this rule which are not included in this section have the meaning given in the *Administrative Rule* of the Division of Personnel, 143CSR1.

2.1. Applicant: Individual being considered for employment in the classified service of the State of West Virginia or in the classified service within a County Health Department including any employee being considered for transfer to any organizational unit with a different appointing authority.

2.2. Appointing Authority: The executive or administrative head of an agency who is authorized by statute to appoint employees in the classified or classified-exempt service.

2.3. Authorized Designee: Employee who is designated by an appointing authority and approved by the Division of Personnel to receive and process criminal history check request forms from applicants, receive criminal history information and make suitability determinations.

2.4. Contact Person: Employee who is designated by an appointing authority and approved by the Division of Personnel to receive and process criminal history check request forms from applicants, but who is not authorized to receive criminal history information nor to make final suitability determinations.

2.5. Disqualifying Event: Conviction of a crime of an infamous crime or other crime involving moral turpitude which has a reasonable connection to the position/class for which the applicant or employee is applying. For purposes of this, a plea of "guilty" or "no contest" is considered a conviction unless the charge was subsequently invalidated by a court decision.

2.6. Director: The Director of the Division of Personnel or his or her designee.

2.7. Employee: Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

2.8. Position: An authorized and identified group of duties and responsibilities assigned by proper authority which requires the full-time or part-time employment of at least one person.

2.9. Qualified Entity: Any appointing authority authorized by the Director of Personnel to conduct investigations and/or to secure reports in compliance with this rule.

2.10. Subject Individual: An applicant or employee who is subject to a criminal history check pursuant to this rule.

2.11. Suitability Determination: The assessment of an applicant's or an employee's criminal background record, central abuse registry record, and/or driving record to determine whether the individual's employment in a particular position will be conducive to a safe workplace and public accountability and is not likely to result in damage or injury to others.

2.12. Transfer: The movement of an employee to a classified service position in a different subdivision or geographic location of the same or a different agency.

2.13. Year: Twelve (12) consecutive month period, unless otherwise specified.

Section 3. Verification of Eligibility.

3.1. To establish the eligibility of an applicant or employee, the Director may verify information provided by the applicant, including, but not limited to:

- a. current and previous employment and/or volunteer and/or student activities;
- b. military service;
- c. formal education; and
- d. professional licensure and/or certification.

3.2. To the extent permitted by law and reasonably relevant to established eligibility standards or the nature of the position sought by the applicant, the Director may obtain and review:

- a. the applicant's state and/or federal criminal records history;
- b. the central abuse registry established pursuant to W. Va. Code § 15-2C-1 *et seq.*; and
- c. the applicant's driving records.

3.3. To the extent permitted by law, the Director may require an applicant to provide any information necessary to afford the Director access to records reasonable relevant to established eligibility standards or the nature of the position sought by the applicant.

3.4. The Director shall conduct investigations and/or secure reports necessary to assess the suitability of an applicant. The Director may delegate some or all of the responsibility to qualified appointing authorities in accordance with the provisions of this rule.

3.5. Nothing in this rule shall be construed as to prevent an appointing authority from obtaining a copy of the credit record of an applicant for employment in a position where the appointing authority has determined that the specific job functions of that position require a demonstration of financial responsibility.

Section 4. Review and Reconsideration.

4.1. Subject individuals are solely responsible for dealing with any reporting agency to challenge the accuracy or completeness of information provided by the West Virginia State Police, the Federal Bureau of Investigation or other agencies reporting information to the Director or qualified entity. Subject individuals are solely responsible for providing the Director or qualified entity with proof of any error and correction thereof by any reporting agency.

4.2. If the subject individual provides proof of any error and correction thereof by any reporting agency to the Director or qualified entity, the Director or authorized designee will conduct a new suitability determination.

4.3. If a subject individual wishes to dispute an adverse suitability determination, the subject individual may request that the Director reconsider his or her suitability. The Director shall consider the request if it is submitted in writing and received not later than fifteen (15) calendar days following the date the notice of disqualification was postmarked. Within thirty (30) calendar days after a properly submitted request for reconsideration is received, the Director shall report his or her decision in writing to the subject individual.

Section 5. Records and Reports.

5.1. The Director or authorized appointing authority shall maintain confidential records and reports pertaining to reference information and background investigations in a separate file.

5.2. The appointing authority shall provide all information and reports requested by the Division of Personnel pursuant to this rule in accordance with procedures established by the Division of Personnel.

Section 6. Employee and Applicant Responsibilities.

6.1. It is the responsibility of the employee to report any disqualifying event to his or her appointing authority within five days of the disposition of the matter. Failure of an employee to report a disqualifying event within the time provided is grounds for disciplinary action up to and including dismissal.

6.2. Each applicant or employee shall provide information, including fingerprints, required by the state police and other entities for processing or to facilitate access to: driving records; verification of employment, education, licensure, and residence; and state and federal criminal history information.

Section 7. Appointing Authority Responsibilities. The appointing authority must comply with this rule and the procedures established by the Division of Personnel for implementation of the rule.

7.1. The authorized appointing authority shall request that the Director make a suitability determination prior to the transfer or promotion of an employee to a classified service position for which there is a suitability standard that is different and/or more stringent than the standard for the employee's current position.

7.2. The appointing authority shall ensure adequate training is provided to all authorized designees and contact persons.