

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

FILED
1991 JUL 11 PM 1:28
SECRETARY OF STATE

Effective Date

July 12, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: DIVISION OF PUBLIC SAFETY TITLE NUMBER: 81

CITE AUTHORITY: West Virginia Code §15-2-25

EMERGENCY 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 FILED AS AN EMERGENCY: VI

TITLE OF RULE BEING FILED AS AN EMERGENCY: Carrying of Handguns by
Retired or Medically Discharged Members

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

On March 9, 1990 the West Virginia Legislature passed Senate Bill 127, relating to the carrying of weapons by Division members who are retired or who have been medically discharged. This legislation became effective on June 9, 1990 and mandated that the Superintendent establish rules governing the issuance and continuance of the authority granted in the legislation.

The attached emergency rule will place the Superintendent in compliance with the legislative mandate and will allow the Division to immediately implement this process for the benefit of the retired and medically discharged members.

Use Additional Sheets If Necessary.

[Signature]
Signature

3.05

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Carrying of Handguns by Retired or Medically Discharged Members

Type of Rule: Legislative Interpretive Procedural

Agency Division of Public Safety Address 725 Jefferson Road,
South Charleston, WV 25309

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$2,400	\$2,400	\$2,400
Personal Services					
Current Expense			\$2,400	\$2,400	\$2,400
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:
The only cost associated with these rules is the cost of bonding retired State Police Officers. We estimate that a five (5) year bond will cost \$200 per person and that approximately twelve (12) bonds will have to be purchased each year, resulting in an annual cost of \$2,400.

3. Objectives of these rules:
These rules are implemented in accordance with West Virginia Code §15-2-25 and are intended to govern the issuance and termination of authorization for retired and medically discharged members of the State Police to carry handguns and sets specific requirements for the type and condition of any handgun carried under the provisions of this rule.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: 7-11-91

Signature of Agency Head or Authorized Representative

G. R. Young

DIVISION OF PUBLIC SAFETY

DATE: July 11, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Public Safety

EMERGENCY RULE TITLE: Carrying of Handguns by Retired or Medically Discharged Members

1. Date of filing: July 11, 1991

2. Statutory authority for promulgating the emergency rule: West Virginia Code §15-2-25

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
This emergency rule adopts new language.

5. Has the same or similar emergency rule previously been filed and expired?
NO

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

SEE ATTACHMENT

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NO

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

SEE ATTACHMENT



Department of Public Safety
(West Virginia State Police)
725 Jefferson Road
South Charleston, West Virginia 25309

FILED
JUL 11 11 PM 1991
OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

Gaston Caperton
Governor

Colonel J. R. Buckalew
Superintendent

July 3, 1991

*Approved
7/11/91*

Major General Joseph J. Skaff
Secretary, Department of Public Safety
State Capitol Building
Post Office Box 2930
Charleston, West Virginia 25305-0001

Dear General Skaff:

Attached are the procedures for the carrying of handguns by retired or medically discharged members of the Division. These procedures require your review and approval before submission to the Secretary of State's Office.

Sincerely,

COLONEL J. R. BUCKALEW
SUPERINTENDENT

JRB:mr

Attachment

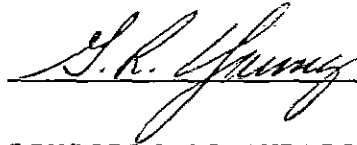
General

*we are fixing a deadline on filing these
with the Sec. of STATE 7-11-91*

PM 1:27

On March 9, 1990, the West Virginia Legislature passed Senate Bill 127, relating to the carrying of weapons by Division members who are retired or who have been medically discharged. This legislation became effective on June 9, 1990, and mandated that the Superintendent establish rules governing the issuance and continuance of the authority granted in the legislation.

The attached emergency rule will place the Superintendent in compliance with the legislative mandate and will allow the Division to immediately implement this process for the benefit of the retired and medically discharged members.



DIVISION OF PUBLIC SAFETY

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY
CHAPTER 15-2
SERIES VI
FILING

2011
JUL 11 PM 1:28
OFFICE OF THE CLERK
STATE OF WEST VIRGINIA

Title: Carrying of Handguns by Retired or Medically Discharged Members

Section 1. General

1.1 Scope - This rule prescribes the requirements for the issuance and termination of authorization for retired and medically discharged members of the West Virginia State Police to carry handguns and sets specific requirements for the type and condition of any handgun carried under the provisions of this rule.

1.2 Authority and related Code Citation - West Virginia Code 15-2-25, effective July 1, 1990.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Authorization Requirements

2.1 Upon retirement, a member of the Division of Public Safety may submit a request to the Superintendent for authorization to carry within the State of West Virginia a handgun, concealed or otherwise, upon his or her person, provided:

a. The retired member is retired honorably with at least twenty (20) years of service; or

b. The retired member is retired with less than twenty years of service due to a total or partial disability, regardless of whether such disability resulted from his or her service with the division, as determined by the Consolidated Public Retirement Board; and provided that any such disability does not affect the retired member's ability to safely operate and control the handgun during firing, as determined by the Superintendent.

2.2 A request submitted in compliance with this rule must be of written form, shall include the retired member's name, complete address and signature and may be submitted at any time prior to the last day of the fourth year of the member's retirement status.

2.3 The authorization issuance provisions of this rule shall expressly exclude:

a. Any member whose retirement from the Division was effective on or before June 30, 1990;

b. Any member whom the Superintendent finds to be mentally incapacitated; and

c. Any member whom the Superintendent finds to constitute a danger to any person or the community.

Section 3. Authorization Issuance

3.1 The Superintendent shall review all requests submitted in accordance with the Authorization Requirements of this rule and will issue authorization to carry a handgun to every member whose request is approved.

3.2 Authorization issued pursuant to this rule shall be provided by the Superintendent and will consist of a letter or certificate signed by the Superintendent indicating the date of issuance and the date of expiration and may be accompanied by a mechanically reproduced copy of such letter or certificate, reduced in size to permit convenient carrying and display. Any such issued authorization shall remain the property of the Division and any retired or medically discharged member accepting such authorization will agree through such action to return the authorization to the Division immediately upon any termination or revocation, as provided by the Authorization Termination and Revocation section of this rule, excepting any authorization in the possession of the retired or medically discharged member on the date of expiration may be retained as memorabilia.

3.3 Authorization issued pursuant to this rule shall be carried by the retired or medically discharged member at all times that he or she has a handgun on his or her person and when such handgun is carried under the authority granted herein.

3.4 Any retired or medically discharged member receiving authorization, as provided herein, shall advise the Superintendent in writing of any change of address and the effective date of such change.

Section 4. Authorization Termination and Revocation

4.1 Authorization, as provided and approved herein, shall terminate immediately and permanently without any right of hearing or other recourse and without any action required by the Superintendent in all cases where the retired or medically discharged member is convicted of any felony or any misdemeanor involving the improper or illegal use of a firearm.

4.2 Authorization, as provided and approved herein, shall terminate without possibility of renewal or extension upon expiration of five years immediately following retirement or medical discharge, notwithstanding the total elapsed period following the authorization issuance.

4.3 Authorization, as provided and approved herein, may be revoked by the Superintendent at any time without cause or recourse. Upon revoking the authorization of any retired or medically discharged member, as hereinbefore in this section provided, the Superintendent shall forthwith notify the member of such revocation, in writing, sent by certified mail, return receipt requested, to the most recent address provided by the member. The return of the receipt or the notice to the Superintendent shall exist as presumptive evidence that proper notice of revocation was given, notwithstanding any reason for non-delivery, unless and until it can be established that the Division directed the notice to an incorrect or non-existent address in contradiction to that address supplied in compliance with section 3.4 of this rule.

Section 5. Handgun Certification

5.1 Any handgun carried under the authority granted herein must be owned or otherwise maintained by the retired or medically discharged member and of reputable manufacture.

5.2 There shall be no restriction as to barrel length, caliber or action type, excepting no handgun capable of full automatic function may be carried under the authority of this rule.

5.3 All handguns carried under this authority must be certified as mechanically reliable by the Firearms/Toolmarks Section of the West Virginia State Police Forensic Laboratory. The provisions of this subsection shall not apply to any handgun owned by the member and awarded under the authority of Chapter 15, Article 2, Section 43, as amended.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 12, 1991
ADMINISTRATIVE LAW DIVISION

July 12, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

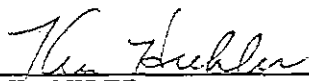
AGENCY: Division of Public Safety

RULE: New Rule, Series 6, Carrying of Handguns by Retired or
Medically Discharged Members

DATE RULE FILED AS AN EMERGENCY RULE: July 11, 1991

DECISION NO. 60-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

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STATE OF WEST VIRGINIA

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DECISION

EMERGENCY RULE DECISION (ERD 60-91)

AGENCY: Division of Public Safety
RULE: New Rule, Series 6, Carrying of Handguns by Retired or
Medically Discharged Members
FILED AS EMERGENCY RULE: July 11, 1991

- par. 1 The Division of Public Safety (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State July 11, 1991 and with the LRMRC July 11, 1991.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §15-2-25 reads in part:

Subject to the written approval of the governor and the provisions of this article, the superintendent may make and promulgate proper rules and regulations for the government, discipline and control of the division of public safety, and shall also cause to be established proper rules and regulations for the examination of all applicants for appointment thereto. The member of the division of public safety shall be permitted to carry arms and weapons, and no license shall be required for such privilege.

Upon retirement or medical discharge from the division of public safety, and with the written consent of the superintendent, any retired or medically discharged member may carry a handgun for a period of five years following retirement or medical discharge notwithstanding the provisions of §61-7-1 of this code. A retired or medically discharged member desiring to carry a handgun after retirement or medical discharge, must provide his or her own handgun. . . The superintendent shall promulgate a legislative rule in accordance with the provisions of §29A-1-1 et seq. of this code, which rule shall prescribe requirements necessary for the issuance and continuance of the authority herein granted. The authority granted herein shall be for a period of five years immediately following retirement or medical discharge and shall not be renewed or extended for a longer term.

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

On March 9, 1990 the W. Va. Legislature passed SB 127, relating to the carrying of weapons by Division members who are retired or who have been medically discharged. This legislation became effective on June 9, 1990 and mandated that the Superintendent establish rules governing the issuance and continuance of the authority granted in the legislation. The attached emergency rule will place the superintendent in compliance with the legislative mandate and will allow the Division to immediately implement this process for the benefit of the retired and medically discharged members.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation: (Legislation - June 9, 1990).

par. 14 This decision shall be cited as Emergency Rule Decision 60-91 or ERD 60-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Public Safety, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 12, 1991
ADMINISTRATIVE LAW DIVISION