

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2009 JUN -4 PM 3:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia State Police TITLE NUMBER: 81

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §15-2-25

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 6

TITLE OF RULE BEING AMENDED: Carrying of Handguns By Retired or Medically Discharged Members

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 6 2009 AT 10:00 A.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

F/Lt. Joe White

West Virginia State Police
Planning and Research

725 Jefferson Road
South Charleston, WV 25309

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FILED

**TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE**

2009 JUN -4 PM 3: 21

**SERIES 6
CARRYING OF HANDGUNS BY RETIRED
OR MEDICALLY DISCHARGED MEMBERS**

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§81-6-1. 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. -- W. Va. Code §15-2-25.

1.3. Filing Date. -- ~~April 26, 2005.~~

1.4. Effective Date. -- ~~May 16, 2005.~~

§81-6-2. Authorization Requirements.

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

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

(b) The member is retired with less than 20 years of service due to a total or partial disability, regardless of whether such disability resulted from his or her service with the Department, as determined by the Consolidated Public Retirement Board; and provided that any such disability does not affect the retired or medically discharged 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 for either issuance or renewal of an authorization must be in writing upon a form prescribed by the Superintendent and shall include the retired or medically discharged

member's name, complete address, signature and other information as requested. The retired or medically discharged member, or a member petitioning for retirement, may submit a request at any time.

2.3. The following retired or medically discharged members are ineligible to receive an authorization under the provisions of this rule:

(a) Any retired or medically discharged member the Superintendent finds to be mentally incapacitated; or

(b) Any retired or medically discharged member the Superintendent finds to constitute a danger to any person or the community.

(c) Any retired or medically discharged member the Superintendent finds to be a non-resident of the State of West Virginia.

§81-6-3. Authorization Issuance.

3.1. The Superintendent shall review all requests submitted in accordance with Section 2 of this rule and shall issue authorization to carry a handgun to every retired or medically discharged member whose request is approved.

3.2. The Superintendent shall provide the authorization issued pursuant to this rule that shall consist of a letter or certificate signed by the Superintendent indicating the date of issuance and the date of expiration and shall cause to be issued an authorization identification card to permit convenient carrying and display. Any issued authorization remains the property of the Department and any retired or medically discharged member accepting such authorization agrees through such action to return the authorization to the Department immediately upon any termination or revocation of the authorization, as provided by Section 4 of this rule; provided, that any authorization in the

possession of the retired or medically discharged member on the date of expiration may be retained as memorabilia.

3.3. The retired or medically discharged member shall carry the authorization identification card issued pursuant to this rule at all times he or she has a handgun on his or her person and when such handgun is carried under the authority granted in this rule.

3.4. Any retired or medically discharged member receiving authorization, as provided in this rule, shall advise the Superintendent in writing within 30 days of any change of address and the effective date of the change.

3.5. Holders of authorizations issued under the provisions of this rule shall have the same privileges and rights as enjoyed by persons issued concealed pistol/handgun permits under the authority of W. Va. Code §61-7.

§81-6-4. Authorization Termination, Revocation and Renewal.

4.1. An authorization, as provided and approved under this rule, terminates 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, any misdemeanor involving the improper or illegal use of a firearm, or any misdemeanor involving domestic violence.

4.2. An authorization, as provided and approved under this rule, terminates with the possibility of renewal upon the expiration of five years following the date of the authorization's issuance.

4.3. Retired or medically discharged members may submit a request for authorization renewal within 60 days of the current authorization's expiration date as specified in Section 2.2 of this rule.

4.4. The Superintendent may revoke an authorization, as provided and approved under this rule, at any time without cause or recourse. Upon revoking the authorization of any retired or medically discharged member, as provided

for in this section, the Superintendent shall immediately notify the retired or medically discharged member of the revocation, in writing, sent by certified mail, return receipt requested, to the most recent address provided by the retired or medically discharged member. The return of the receipt or the notice to the Superintendent is presumptive evidence that proper notice of revocation was given, notwithstanding any reason for non-delivery, unless and until it can be established that the Department 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.

§81-6-5. Handgun Certification.

~~5.1. The retired or medically discharged member must own or otherwise maintain any handgun carried under the authority granted under this rule and the handgun must be of reputable manufacture.~~

5.2.1. There is no restriction on a handgun as to barrel length, caliber or action type, except that no person may carry a handgun capable of full automatic function under the authority of this rule.

~~5.3. All handguns carried under the authority of this rule must be certified as mechanically reliable by the Firearms/Toolmarks Section of the West Virginia State Police Forensic Laboratory. The provisions of this subsection do not apply to any handgun owned by the retired or medically discharged member and awarded under the authority of W. Va. Code §15-2-43.~~

**TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE**

**SERIES 6
CARRYING OF HANDGUNS BY RETIRED
OR MEDICALLY DISCHARGED MEMBERS**

Summary of Proposal

This proposed change would eliminate Subsections 5.1 and 5.3 of §81-6-5, Handgun Certification. Currently, retired or medically discharged members are required to carry handguns made by a “reputable manufacturer” and they are required to submit handguns not awarded under §15-2-43 for examination by the Firearms/Toolmarks Section of the West Virginia State Police Forensic Laboratory prior to carrying the weapon in accordance with the provisions of this rule. The term “reputable manufacturer” is subjective in nature and is not a requirement under W. Va. Code §61-7. In essence, this proposal would effectively allow retired or medically discharged members to have “the same privileges and rights as enjoyed by persons issued concealed pistol/handgun permits under the authority of W. Va. Code §61-7.”

This proposed change would also modify Subsection 2.3 of §81-6-2, Authorization Requirements. Currently, the rule does not allow the Superintendent the authority to deny retired or medically discharged members from authorization if they are not a resident of West Virginia. This proposal would allow the Superintendent the authority to deny those retired and medically discharged members who are not residents of West Virginia from receiving authorization to carry handguns under this rule.

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: West Virginia State Police

Address: 725 Jefferson Road
South Chareleston, WV 25309

Phone Number: 304-746-2193 Email: cjwhite@wvsp.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure will not have an impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

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

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Not applicable

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not have a fiscal impact**, and/or any special issues **not captured elsewhere** on this form.

Date: _____

Signature of Agency Head or Authorized Representative

