

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

Form #3

Do Not Mark In This Box

RECEIVED  
2009 JUL 31 PM 6:12  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia State Police TITLE NUMBER: 81

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: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

From: James W. Spears, Cabinet Secretary  
Department of Military Affairs and Public Safety

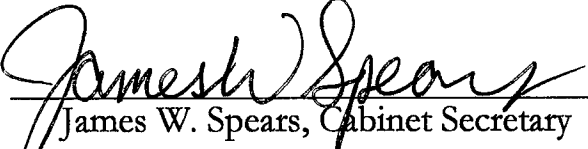
To: Legislative Rule Making Committee

Date: July 31, 2009

Re: 81CSR6/Carrying of Handguns By Retired or Medically Discharged  
Members

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I have reviewed the proposed Legislative Rule having gone to a public hearing or a public comment period and is hereby approved by the promulgating agency for filing with the Secretary of State and the Legislative Rule Making Review Committee for their review.

  
James W. Spears, Cabinet Secretary

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 31 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia State Police  
725 Jefferson Road  
South Charleston, WV 25309

LEGISLATIVE RULE TITLE: Carrying of Handguns By Retired or Medically Discharged  
Members

1. Authorizing statute(s) citation \_\_\_\_\_  
W. Va. Code §15-2-25

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 4 2009

b. What other notice, including advertising, did you give of the hearing?  
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
N/A

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31 2009

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Colonel Timothy S. Pack  
Superintendent  
West Virginia State Police  
725 Jefferson Road  
South Charleston, WV 25309

(P) 304-746-2115  
(F) 304-746-2246 E-mail - tspark@wvsp.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

F/Lt. Joe White  
West Virginia State Police  
Planning and Research  
725 Jefferson Road  
South Charleston, WV 25309

(P) 304-746-2193  
(F) 304-746-2281 E-mail - cjwhite@wvsp.state.wv.us

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:


Attached 

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*Planning and Research*  
*West Virginia State Police*  
*725 Jefferson Road*  
*South Charleston, West Virginia 25309*  
*Telephone: (304) 746-2193 Fax: (304) 746-2281*

## Memorandum

From: First Lieutenant Joe White 

To: Legislative Rule Making Committee

Date: July 31, 2009

Re: 81CSR6 / Carrying of Handguns By Retired or Medically Discharged Members

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There were no comments received by the West Virginia State Police during the comment period.

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.

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

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

*Cal. V. 14. 1/20*

RECEIVED

FILED

2009 JUL 31 PM 6:12

TITLE 81  
LEGISLATIVE RULE  
WEST VIRGINIA STATE POLICE

2009 JUN -4 PM 3:21

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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.~~

5.25.1. 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.