

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2004 JUL 23 A 10: 27

WEST VIRGINIA
SECRETARY OF STATE

**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: 15-2-25

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 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.

M. Christine Morris
Authorized Signature

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 23, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* _____

West Virginia State Police
725 Jefferson Road

South Charleston, WV 25309
F/Sgt. Michael G. Corsaro

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

1. Authorizing statute(s) citation 15-2-25

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 14, 2004

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 14, 2004

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

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

July 23, 2004

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

F/Sgt. Michael G. Corsaro

Planning & Research Section

West Virginia State Police

South Charleston, WV 25309
746-2109

- 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)

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:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**West Virginia State Police
Title 81
Series 6**

Summary of Proposed Rule

This rule as proposed serves to provide procedures by which retired or medically discharged members may be issued an authorization to carry a concealed handgun by the West Virginia State Police under authorization of *W. Va. Code § 15-2-25*. It will afford retired or medically discharged members the same rights and responsibilities when carrying a concealed handgun as those persons possessing a concealed handgun under the authority of *W. Va. Code § Chapter 61, Article 7*.

West Virginia State Police
Title 81
Series 6

Circumstances Requiring Filing of Rule

The Superintendent of the West Virginia State Police is required to promulgate this rule pursuant to *W. Va. Code 15-2-25*. This proposed amended rule came about due to changes made during the 2004 Legislative Session to *W. Va. Code 15-2-25*. This rule provides procedures by which retired or medically discharged members may receive authorization from the West Virginia State Police to carry a concealed handgun to comply with the amended statute.

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 Charleston, WV 25309-1698

F/Sgt. Michael G. Corsaro - 746-2109

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

This rule is required under 15-2-25, modified during the 2004 Legislative Session, that allows the carrying of firearms by retired or medically discharged members. This amended rule provides procedures to comply with the revised 15-2-25.

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

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: June 14, 2004

Signature of Agency Head or Authorized Representative:

H.C. Nelson for *H.E. Hines*

FILED

TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE

JUN 23 A 10: 27

SERIES 6
CARRYING OF HANDGUNS BY RETIRED
OR MEDICALLY DISCHARGED MEMBERS

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. -- ~~May 21, 1998.~~

1.4. Effective Date. -- ~~June 15, 1998.~~

§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 twenty (20) years of service; or

(b) The 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 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, ~~and 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 ~~prior to the last day of the fourth year of the member's retirement.~~

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

~~(a) Any member whose retirement or medical discharge from the Division was effective on or before June 30, 1990;~~

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

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

§81-6-3. Authorization Issuance.

3.1. The Superintendent shall review all requests submitted in accordance with Section 2 of this rule and ~~will~~ 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 which will consist of a letter or certificate signed by the Superintendent indicating the date of issuance and

the date of expiration and ~~may shall cause to be issued an authorization identification card accompanied by a mechanically reproduced copy of such letter or certificate, reduced in size to permit convenient carrying and display.~~ Any issued authorization remains the property of the ~~d~~Department and any retired or medically discharged member accepting such authorization agrees through such action to return the authorization to the ~~d~~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 that 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 thirty (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, and 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 ~~without~~ the possibility of renewal ~~or extension~~ upon the expiration of five years ~~immediately following the retirement or medical discharge, notwithstanding the total elapsed period following the date of the~~ authorization's issuance.

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

4.34. 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 ~~d~~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. 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.