

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #2

**FILED**

**JUN 6 1 24 PM '97**

OFFICE OF 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 X 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 NEW RULE BEING PROPOSED: N/A

TITLE OF RULE BEING PROPOSED: N/A

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 7, 1997 AT 10:00 am. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

SUPERINTENDENT c/o S.W. Cogar

725 Jefferson Rd.

S. Charleston, WV 25309-1698

- Contact number: (304)746-2112

- FAX number: (304)746-2405

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

## **Circumstances Requiring Amendments to the Rule**

The following circumstances led to the proposed amendments to §81-7-1 et seq.:

- 1.) **The legislature changed the name of the agency from the "Division of Public Safety" to the "West Virginia State Police." The proposed rule reflects this change.**
- 2.) **Generic references to the West Virginia State Police will be made using "department" rather than "Division." This is a consequence of the legislative name change. The proposed rule reflects this change.**
- 3.) **The current rule does not mandate the revocation of an issued handgun permit when a retired or medically discharged member commits a misdemeanor involving domestic violence. However, recently passed federal legislation makes it a federal crime for an individual to possess any firearm and/or ammunition if that individual has been convicted of a domestic violence crime. In order to comply with the federal law, the proposed rule mandates the revocation of an issued permit when a retired or medically discharged member commits a misdemeanor involving domestic violence.**

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** CARRYING OF HANDGUNS BY RETIRED OR MEDICALLY DISCHARGED MEMBER

**Type of Rule:** X Legislative        Interpretive        Procedural

**Agency** WEST VIRGINIA STATE POLICE

**Address** 725 Jefferson Rd.

S. Charleston, WV 25309-1698

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b><u>ESTIMATED TOTAL COST</u></b>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERNATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

**2. Explanation of above estimates:**

The proposed rules will have only nominal costs (if any at all) associated with them. Therefore, we have indicated that the proposed rules result in no costs to our agency.

**3. Objectives of these rules:**

To establish 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.

**Rule Title:** CARRYING OF HANDGUNS BY RETIRED OR MEDICALLY DISCHARGED MEMBER

**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 2, 1997

Signature of Agency Head or Authorized Representative

A. Col. Gary H. Griffith

TITLE 81  
LEGISLATIVE RULE  
~~DIVISION OF PUBLIC SAFETY WEST VIRGINIA STATE POLICE~~

SERIES 6  
CARRYING OF HANDGUNS BY RETIRED  
OR MEDICALLY DISCHARGED MEMBERS

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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§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. --

1.4. Effective Date. --

§81-6-2. Authorization Requirements.

2.1. Upon retirement or medical discharge, a member of the ~~Division of Public Safety 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.

~~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 Division, 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 must be in writing and shall include the retired or medically discharged member's name, complete address and signature. The retired or medically discharged member 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 department was effective on or before June 30, 1990;

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

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

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

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

~~c. 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 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 be 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 Divisiondepartment and any retired or medically discharged member accepting such authorization agrees through such action to return the authorization to the Divisiondepartment 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 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 of any change of address and the effective date of the change.

**§81-6-4. Authorization Termination and Revocation.**

~~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. The following will result in all cases where the a retired or medically discharged member is convicted member's authorization, as provided and approved under this rule, being terminated immediately and permanently without any right of hearing or other recourse and without any action required by the Superintendent:~~

~~(a) Conviction of any felony or;~~

~~(b) Conviction of any misdemeanor involving the improper or illegal use of a firearm; or~~

~~(c) Conviction of any misdemeanor involving domestic violence, where said member was:~~

~~(1) Represented by counsel at the hearing, or knowingly waived that right, and~~

~~(2) Had a jury trial, if entitled, or knowingly waived that right, and~~

~~(3) The offense either involved the use or attempted use~~

of physical force, or the threatened use of a deadly weapon.

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 authorization's issuance.

4.3. 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 Divisiondepartment 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.

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

**Summary of Proposed Rule**

**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 provision of this rule.**