

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

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JAN 23 11 50 AM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #4

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

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: 6

TITLE OF RULE BEING AMENDED: CARRYING OF HANDGUNS BY RETIRED

OR MEDICALLY DISCHARGED MEMBERS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
\_\_\_\_\_  
Authorized Signature

FILED

TITLE 81  
LEGISLATIVE RULE  
~~DIVISION OF PUBLIC SAFETY~~ WEST VIRGINIA STATE POLICE AM '98

SERIES 6  
CARRYING OF HANDGUNS BY RETIRED OR MEDICALLY DISCHARGED MEMBERS  
OFFICE OF 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 1, 1992.

1.4. Effective Date. -- May 1, 1992.

§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 ~~Division~~ 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 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 ~~Division~~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.

**§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 ~~Division~~department and any retired or medically discharged member accepting such authorization agrees through such action to return the authorization to the ~~Division~~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 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 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, ~~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 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 ~~Division~~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.



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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

State Capitol - Room MB-49  
Charleston, West Virginia 25305  
(304) 347-4840

Senator: Mike Ross, Co-Chairman  
Delegate: Mark Hunt, Co-Chairman  
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Audrey R. Ross, Admin. Assistant

December 16, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: S. W. Cogar  
West Virginia  
State Police  
725 Jefferson Road  
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Carrying of Handguns by Retired or Medically-Discharged Members (81CSR)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.