

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

Form #6

**FILED**  
May 21 3 33 PM '98  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia State Police TITLE NUMBER: 81

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB4200

SECTION 64-6-2(c), PASSED ON March 12, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: June 15, 1998

  
Authorized Signature

\$2.60

TITLE 81  
LEGISLATIVE RULES  
WEST VIRGINIA STATE POLICE

SERIES 6

CARRYING OF HANDGUNS BY RETIRED OR MEDICALLY DISCHARGED MEMBERS

PROMULGATION HISTORY

|  |                  |
|--|------------------|
| Notice of Comment Period on Proposed Rule:   | June 6, 1997     |
| Comment Period Ends:   | July 7, 1997     |
| Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee: | July 17, 1997    |
| Notice of Rule Modification of a Proposed Rule:  | January 23, 1998 |
| Notice of Final Filing and Adoption of a Legislative Rule Authorized by the West Virginia Legislature:     | May 21, 1998.    |

TITLE 81  
LEGISLATIVE RULE  
WEST VIRGINIA STATE POLICE

SERIES 6  
CARRYING OF HANDGUNS BY RETIRED  
OR MEDICALLY DISCHARGED MEMBERS

FILED  
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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 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 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 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 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, 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 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.

**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.**

bb/tr

81-6

1 Bill-SP, H.

2 **H. B. 4199**

3 (By Delegates Hunt, Linch, Compton, Jenkins,  
4 Faircloth and Riggs)

5 [Introduced January 30, 1998; referred to the  
6 Committee on the Judiciary.]

7  
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9  
10 A BILL to amend article six, chapter sixty-four of the code  
11 of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section two, relating to  
14 authorizing the state police to promulgate a  
15 legislative rule relating to the carrying of handguns  
16 by retired or medically discharged members.

17 **Be it enacted by the Legislature of West Virginia:**

18 That article six, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,

4199

1 designated section two, to read as follows:

2 **ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY**  
3 **AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE**  
4 **RULES.**

5 **§64-6-2. State police.**

6 The legislative rule filed in the state register on  
7 the seventeenth day of July, one thousand nine hundred  
8 ninety-seven, under the authority of section twenty-five,  
9 article two, chapter fifteen, of this code, modified by the  
10 state police to meet the objections of the legislative  
11 rule-making review committee and refiled in the state  
12 register on the twenty-third day of January, one thousand  
13 nine hundred ninety-eight, relating to the state police  
14 (carrying of handguns by retired or medically discharged  
15 members, 81 CSR 6), is authorized.

16

17 NOTE: The purpose of this bill is to authorize the  
18 State Police to promulgate a legislative rule relating to  
19 the Carrying of Handguns By Retired or Medically Discharged  
20 Members.

21

22 This section is new; therefore, strike-throughs and  
23 underscoring have been omitted.

Senate Bill No. 340

81-6

1 (By Senator(s) Ross, Anderson, Bowman,  
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the  
4 Committee on the Judiciary.]

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10 A BILL to amend article six, chapter sixty-four of the code  
11 of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
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14 authorizing the state police to promulgate a  
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16 by retired or medically discharged members.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article six, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section two, to read as follows:

22 **ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY**  
23 **AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE**

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