



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Risk And Insurance Management TITLE-SERIES: 115-05
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes
RULE NAME: 115-05 Procedure for Providing Written Notification of Claims of Potential Liability to the State
or Its Employees

PRIMARY CONTACT

NAME: West Virginia Board of Risk and Insurance Management
ADDRESS: 1124 Smith Street Suite 4300
Charleston, WV 25301
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CITE STATUTORY AUTHORITY: 29-12-5

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This legislative rule is being repealed and replaced with a parallel more appropriate procedural rule. The rule provides a fundamental procedure for the agency and for its insured to provide notice of potential claims. This legislative rule was promulgated following a decision of the W. Va. Supreme Court of Appeals, State ex rel. Billy Ray C v. Skaff, 190 W. Va., S.E.2d 847 (1993), in a mandamus action directing BRIM to create formal procedures and a form for notifying it of a potential liability claim. In conjunction with this repeal, the agency filed a procedural rule that includes an updated Insurance Loss Notice Form and revised language to reflect modern methods of notification of potential claims. Because the procedures and form in the rule are more appropriately implemented by a procedural rule, the agency believes the legislative rule should be repealed.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/9/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/8/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The legislative rule was filed following a decision of the W. Va. Supreme Court of Appeals in a mandamus action directing BRIM to create formal procedures and a form for notification of potential liability claims.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The legislative rule should be repealed because it does not implement any specific provision in Code, however, it describes a fundamental procedure for the agency and its insured to provide notification of potential damage claims. The rule is procedural in nature and promulgates an Insurance Loss Notice Form.

The repealed legislative rule will be replaced with a new procedural rule that includes modern methods of notification of potential claims which the current rule fails to consider. Adoption of a procedural rule and form content will satisfy the Courts directive.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BRIM is seeking to repeal this rule. The rule was promulgated in 2000 as a Legislative rule in order to promulgate a form. The rule is more appropriate as a procedural rule. The rule also needs updating and BRIM is promulgating an updated procedural rule to replace this Legislative rule. Repealing this Legislative rule will have no immediate or long range increases or decreases in personal services, current expenses, repairs and alterations, assets, other costs and revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
LEGISLATIVE RULE
BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 5
PROCEDURE FOR PROVIDING WRITTEN NOTIFICATION OF CLAIMS OF
POTENTIAL LIABILITY TO THE STATE OR ITS EMPLOYEES

~~§115 5 1. General.~~

~~1.1. Scope. This rule establishes a procedure for the West Virginia Board of Risk and Insurance Management to provide the applicable form(s) to insured entities in order for insured entities to properly and promptly notify the West Virginia Board of Risk and Insurance Management of potential liability claims against State employees and/or against the State of West Virginia.~~

~~1.2. Authority. W. Va. Code §29-12-5.~~

~~1.3. Filing Date. May 26, 2000.~~

~~1.4. Effective Date. June 1, 2000.~~

~~§115 5 2. Purpose.~~

~~2.1. To establish a procedure whereby the West Virginia Board of Risk and Insurance Management can be made aware in a timely manner of any incident which may, in the future, lead to potential liability for damages against the State of West Virginia.~~

~~§115 5 3. Definitions.~~

~~As Used in these regulations, unless used in a context that clearly requires a different meaning, the term:~~

~~3.1. "Board" means the West Virginia Board of Risk and Insurance Management.~~

~~3.2. "Insured entity" means any agency, board, college or university, commission, department, office of elected state official, the Legislature, the Supreme Court of Appeals, municipality, as defined in W. Va. Code §29-12A-3(b), or political subdivision, as defined in W. Va. Code §29-12A-3(e), or any other entity which is insured for liability purposes through the "Board."~~

~~3.3. "Employee" means any officer, agent, employee, or servant, whether compensated or not, whether full-time or not, who is authorized to act and is acting within the scope of his or her employment for an "insured entity." "Employee" includes any elected or appointed official of an "insured entity," but does not include an independent contractor of an "insured entity."~~

~~3.4. "Incident" means any activity either observed by an "employee" or made known to him or her, which may result in injury or property damage to a third party, or which may otherwise result in liability or a claim for damages against the State of West Virginia, its employees, or other "insured entity."~~

~~§115 5 4. Reporting Requirements.~~

~~4.1. The West Virginia Board of Risk and Insurance Management will assist the insured entity with~~

~~establishing a contact person within the respective agency to facilitate completing the Insurance Loss Notice Form (claim form).~~

~~— 4.2. Any “employee” who either witnesses or is made aware of an “incident” as defined in Subsection 3.4, should as soon as practicable, gather all pertinent data and complete the Insurance Loss Notice Form (claim form), attached to and made a part of this rule as Appendix A, as appropriate.~~

~~— 4.3. The completed Insurance Loss Notice Form (claim form), shall be forwarded to the “Board,” as soon as possible, via United States first class mail or transmitted by facsimile.~~

~~— 4.4. The “Board” and/or its insurance carrier, shall retain a copy of the submitted Insurance Loss Notice Form (claim form) for a period of two (2) years, or longer if the “Board,” in its discretion, deems it necessary.~~

Appendix AINSURANCE LOSS NOTICE ~~State of West Virginia~~ BRIM USE ONLYInstructions: For *all* losses, complete sections 1, 2 & 3

Coding

For *Auto* losses *also* section 4

! To Co.

For Insured *Property* losses *also* section 5

(1) Insured Name: _____ Insured Acct. # _____ (required)

Insured Address: _____

Insured Phone Number (day): _____

For insured _____ (Contact Person)
Contact Person _____ Position with Insured

(2) Date of Loss: _____ Time of Day: _____

Location of Occurrence: (Street address) _____

Description of Occurrence: _____

Investigated By: (Police, Fire, etc.) _____

3) Injured/Property Damaged use additional sheet(s) as necessary

Name (injured/owner) _____ Home Phone #: _____

Address: _____ Work Phone #: _____

Age _____ Sex _____ Social Security #: _____ Occupation: _____

Employer: _____ Where is Property Now? _____

Description Injury: _____

Description Property Damage: _____ Estimate Amt. \$ _____

Witnesses: _____

(4) Auto Losses Only use additional sheet(s) as necessary

Insured Vehicle			Claimant Vehicle		
Year _____	Make _____	Model _____	Year _____	Make _____	Model _____
VIN _____			VIN _____		
Vehicle Driver _____			Vehicle Driver _____		
Vehicle Owner _____			Vehicle Owner _____		
Passengers _____			Passengers _____		

(5) Insured Property Losses Only: Loss Type

() Fire () Windstorm () Burglary & Theft () Boiler & Machinery () Fidelity

() Vehicle () Aircraft () Other

SUBMITTED BY: _____ DATE: _____

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