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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

2002 SEP 17 A 10:36

*Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX*

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

email: tanders@mail.wvnet.edu

*Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel*

September 15, 2002

*Joseph A. Altizer, Associate Counsel
Connie A. Bowling, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Gregory A. Elam
Insurance Commissioner
Capitol Complex
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Licensing and Conduct of Agents, Agencies and Solicitors, 114CSR2**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Insurance Commission

Subject: Licensing and Conduct of Agents, Agencies and Solicitors
(114 CSR 2)

Date: September 4, 2002

Staff Counsel: Connie A. Bowling

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2002 SEP - 9 A 10: 59

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PERTINENT DATES

Filed for public comment: May 29, 2002
Public comment period ended: July 1, 2002
Filed following public comment period: July 26, 2002
Filed LRMRC: July 26, 2002
Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

This proposed rule amends an existing rule governing insurance agent and agency licensing and was promulgated in response to changes to Chapter 33, Article 12 made by the passage of HB4497, adopting the NAIC model licensing act.

The amended rule substitutes the term "individual insurance producer" for the term "agent" and deletes sections inconsistent with the new statute.

Licensure of insurance agencies was not required under prior law. The amended rule contains a new section governing such licensing. It

- places restrictions on the names under which agencies may be licensed;

- makes insurance companies responsible for notifying their agencies of the requirement to file an application and license fee;
- provides for termination of an agency license when the agency ceases to have a stockholder, officer, director, member, employee or associate who has an individual (agent) license, in which case the agency must surrender the license within 30 days;
- requires a domestic agency to be organized under WV law and have its principal place of business here;
- prohibits issuance of an agency license to applicants whose primary business is not insurance or which is neither a national banking association qualifying for an agency license under federal law or a bank that qualifies for agency license under WV law;
- requires the agency licensee to notify the Commissioner of personnel changes within 30 days;
- prohibits issuance of an agency license if the owner of a majority interest in the agency has been denied an individual license or had an individual license revoked

The amended rule contains another new section which allows commissions to be paid only to licensed agents appointed by the insurer who issued the policy and prohibits a licensee from accepting commissions from an insurer which he has not been appointed to represent

Yet another new section, governing "switching", prohibits a financial institution from requiring a borrower to purchase insurance from the institution or from an agent or agency with which the institution has a connection. This section makes the agency/agent strictly liable for a lender's actions in violation of this rule and subject to suspension or loss of license.

The amended rule also contains a new section clarifying that an insurer/agency/agent may give nominal compensation to employees of an unlicensed lender for referrals if the compensation is not related to an application for or sale of insurance.

AUTHORITY

Statutory authority:

W. Va. Code § 33-2-10:

The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

W. Va. Code § 33-12-35 (2002) :

The insurance commissioner may, in accordance with article three, chapter twenty-nine-a of this code, promulgate reasonable regulations as are necessary or proper to carry out the purposes of this article. Any legislative rules promulgated under the former article twelve of this chapter shall remain in full force and effect but shall henceforth relate to the redesignated statutory provisions contained herein.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

There is a possible conflict between § 2.3 and W. Va. Code 33-12-4, relating to waiver of examination requirements, which may require merely a technical change. In addition, the Commissioner rejects the industry's assertion that the provisions relating to fees for referrals by unlicensed persons are in conflict with federal regulations of the Office of the Comptroller of the Currency.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes, with technical changes.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel recommends a number of technical changes to clarify the meaning and intent of the rule.