



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 20, 2002

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

TO: Joe Manchin, Secretary of State, State Register

TO: Jack M. Rife
Insurance Commissioner
Capitol Complex
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Unfair Trade Practices, 114CSR14**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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

FILED

Agency: West Virginia Insurance Commission 2002 NOV 13 A 10:12
Subject: Unfair Trade Practices (114 CSR 14) WEST VIRGINIA
Date: October 4, 2002 SECRETARY OF STATE
Staff Counsel: Connie A. Bowling

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

During the 2002 Regular Session, WVC § 33-6-33 was amended to require auto insurers to use the "most recent **version** of an 'official used car guide'" approved by the Commissioner to set the minimum value of a motor vehicle which is the subject of a total loss claim. Previously, the statute required use of the "most recent **publication**".

The proposed rule has been amended to conform to the wording of the statute. In addition, the amended rule creates a definition of "official used car guide" and sets out the Commissioner's standards for approving a particular "guide" as a valuation source.

The amended rule also allows use of computerized databases and other non-paper manuals as a valuation source and sets out the standards for approval of those guides.

The amended rule now requires that the insurer must maintain documentation of any deviation from an approved valuation guide in the claim file.

Finally, the amended rule deletes an exclusion of title insurance and fidelity and surety bonds from the operation of the rule on the ground that neither type of insurance is expressly excepted by statute from the unfair trade practices provisions of Chapter 33, Article 11.

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 § 33-11-6:

If, after notice and hearing, the commissioner determines that any person has engaged in or is engaging in any method of competition, act or practice in violation of the provisions of this article or any rules or regulations promulgated by the commissioner thereunder, the commissioner shall issue an order directing such person to cease and desist from engaging in such method of competition, act or practice,

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?

No.

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?

No.

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.

None.