



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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

email: tanders@mail.wvnet.edu

FILED

2002 SEP 17 A 10:36

STATE OF WEST VIRGINIA
SECRETARY OF STATE

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: **Excess Line Brokers, 114CSR20**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: Excess Line Brokers (114 CSR 20)

Date: September 5, 2002

Staff Counsel: Connie A. Bowling

FILED
2002 SEP -9 A 10:58
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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 rule amends an existing rule governing excess lines brokers to conform to the provisions of HB4497 (2002 RS).

The amended rule substitutes the phrase "individual insurance producer" for the term "agent" throughout in conformity with the licensing provisions of HB4497 and updates Code references.

The amended rule also

- makes persons holding a valid excess or surplus line broker license in another state eligible for licensure in this state without examination;
- expands the penalties for violation of the rule to include license probation and/or to impose a civil penalty of up to \$5000;
- imposes minimum standards for determining whether a "diligent search" has been made to place the risk with licensed

- insurers, including a written statement or written record of an oral statement that 3 licensed insurers with comparable lines have declined coverage;
- details who may make and what must be included in a written statement or record of oral declination of coverage;
 - adds to the records an excess line broker is required to maintain and have available for inspection by the Commissioner;
 - requires reporting of gross fees charged by the excess lines broker for insurance procured in the previous calendar year

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.

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.

Counsel recommends technical modifications.