



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: Gregory A. Elam
Insurance Commissioner
Capitol Complex
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Group Accident and Sickness Insurance Minimum Policy Coverage Standards, 114CSR39**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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: Group Accident and Sickness Insurance Minimum Policy Coverage Schedule (114 CSR 39)

Date: September 3, 2002

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

SECRETARY OF STATE
WEST VIRGINIA

2002 SEP -9 A 10:59

FILED

Fiscal Impact: None

ABSTRACT

Before the last Regular Session, groups eligible to obtain Group Accident & Sickness insurance included an "association" with at least 10 insured members. W. Va. Code § 33-16-2 [1957]. "Association" was defined as "bona fide association", i.e., one which has been active for at least 5 years, was not formed for the purpose of offering insurance, and makes coverage available only to members or persons affiliated with members. W. Va. Code § 33-1-22 [2001]; 33-16-1a (1997).

SB583 repealed the general definition of "association" and classified as eligible groups "bona fide associations" and associations which have been active for at least 1 year, were organized for purposes other than offering insurance and have at least 10 insured members. W. Va. Code § 33-16-2 (2002).

This proposed rule amends the existing rule governing standards for coverage and for group eligibility to obtain Group Accident & Sickness coverage.

The amended rule adds definitions of "individual" and "insurance producer" (agent).

In a new section, the amended rule requires the Insurance Commissioner to certify the eligibility of an association before group policies may be issued and restricts when and by whom group insurance can be sold. Concurrent sales of group coverage and association memberships or the use of one as an inducement to purchase the other are prohibited. In addition, insurance companies are precluded from including membership dues on premium statements, selling coverage to affiliated associations, or advertising an endorsement by the association.

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 § 33-16-17:

Pursuant to chapter twenty-nine-a of this code, the commissioner shall have the power to propose rules, subject to legislative approval, necessary to implement the provisions of this article.

ANALYSIS

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

No. Although the industry asserts that the statute contains no restriction on marketing of group insurance other than requiring the association to have been in existence for 1 year, SB583 clearly requires the association to be "organized and maintained in good faith for purposes other than . . . obtaining insurance" as an element of eligibility. Counsel is of the opinion that in this light, the restrictions are within the scope of the Commissioner's authority under SB583 to prevent solicitation and establishment of sham associations in order to sell insurance.

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