WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

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2004 JUN 30 A 11:07

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Interpretive CITE AUTHORITY: WV Code §33-2-10

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 70

TITLE OF RULE BEING PROPOSED: Rebates and Referrals

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 2004 AT 4:30 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Victor A. Mullins, Associate Counsel
West Virginia Insurance Commission
P.O. Box 50540
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$3.60

STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

June 30, 2004

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

RE: SERIES 3 - CANCELLATION AND NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES
SERIES 15 - EXAMINERS AND EXAMINATIONS
SERIES 20 - SURPLUS LINES INSURANCE
SERIES 42 - CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS
SERIES 67 - RATE AND FORM FILING ABSTRACTS (PROCEDURAL RULE)
SERIES 68 - VALUATION OF LIFE INSURANCE POLICES
SERIES 69 - RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS
SERIES 70 - REBATES AND REFERRALS (INTERPRETIVE RULE)
SERIES 71 - INSURANCE FRAUD PREVENTION
SERIES 72 - PERSONAL PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE AND PROPERTY INSURANCE WITHDRAWAL PLAN PROCEDURES (PROCEDURAL RULE)

Dear Judy:

Please find herewith one (1) copy of the following for each of the above subject rules:

1) Notice Of A Comment Period On A Proposed Rule and consent of Tax and Revenue Cabinet Secretary;

2) Brief Summary of the Rule;

3) Statement of Circumstances;

4) Fiscal Note; and

5) The proposed rule.

Please contact our office if you have any questions regarding the above or if further information is required.

Sincerely,

Jane L. Cline
Insurance Commissioner

JLC/jz
Enclosures

Post Office Box 50540
Charleston, West Virginia 25305-0540

"We are an Equal Opportunity Employer"

Telephone (304) 558-0401
Facsimile (304) 558-1362

Insurance Commissioner
Interpretive Rule
Title 114, Series 70

REBATES AND REFERRALS

TITLE 114, SERIES 70

BRIEF SUMMARY OF RULE

This interpretive rule is to set a reasonable monetary limit upon the value of items given to a consumer or prospective consumer by insurance companies or producers in connection with the solicitation or sale of insurance products and to specify what constitutes a "nominal fee" with respect to referrals to insurance companies or producers by individuals not licensed to sell insurance in this state. More specifically, the giving of educational materials, promotional materials, or articles of merchandise that cost twenty-five dollars ($25.00) or less is not to be considered a violation of the anti-rebating provisions set forth in W. Va. Code §33-11-4(8). A "nominal fee," as referred to in WV 114CSR2, is defined as a one-time fee of twenty-five dollars ($25.00) or less.

Insurance Commissioner
Interpretive Rule
Title 114, Series 70

REBATES AND REFERRALS

TITLE 114, SERIES 70

STATEMENT OF CIRCUMSTANCES

The Insurance Commissioner routinely receives questions concerning whether a company or producer may give away items such as pens, key chains, clocks, and other similar items without violating the anti-rebating provisions set forth in W. Va. Code §33-11-4(8). Likewise, the Insurance Commissioner fields many questions about how much an individual may charge for providing a referral to an insurance company or producer without violating the prohibition on referral fees set forth in WV 114CSR2. In order to provide practical and useful guidance to the insurance industry and to the public at large, this rule sets forth reasonable standards in these areas. This interpretive rule should be read in pari materia with W. Va. Code §33-11-4(8) and WV 114CSR2.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rebates and Referrals
Title 114, Series 70

Type of Rule: ____**Legislative** _X__**Interpretive** ____**Procedural**

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

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1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

The rule will have no additional fiscal impact upon state, local or federal government.

3. Objectives of these rules:

These interpretive rules are intended to set a reasonable monetary limit upon the value of items given to a consumer or prospective consumer by insurance companies or producers in connection with the solicitation or sale of insurance products and to specify what constitutes a "nominal fee" with respect to referrals to insurance companies or producers by individuals not licensed to sell insurance in this state.

Rule Title: Rebates and Referrals
Title 114, Series 70

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

This rule should have no economic impact on political subdivisions, specific industries or specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

This rule should have no economic impact on citizens/ public at large.

Date: June 30, 2004

Signature of Agency Head or Authorized Representative

JANE L. CLINE, INSURANCE COMMISSIONER

114CSR70

INTERPRETIVE RULE
INSURANCE COMMISSIONER

SERIES 70
REBATES AND REFERRALS

Section

114-70-1. General.

114-70-2. Interpretive Note.

114-70-3. Limitation on Items of Value with Respect to Rebates.

114-70-4. Defining Nominal Fee with Respect to Referrals.

114CSR70

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WEST VIRGINIA
SECRETARY OF STATE

INTERPRETIVE RULE
INSURANCE COMMISSIONER

SERIES 70
REBATES AND REFERRALS

§114-70-1. General.

1.1. Scope. -- The purpose of this interpretive rule is to set a reasonable monetary limit upon the value of items given to a consumer or prospective consumer by insurance companies or producers in connection with the solicitation or sale of insurance products and to specify what constitutes a "nominal fee" with respect to referrals to insurance companies or producers by individuals not licensed to sell insurance in this state.

1.2. Authority. -- This rule is promulgated pursuant to the authority of W. Va. Code §33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§114-70-2. Interpretive Note.

2.1. The Insurance Commissioner routinely receives questions concerning whether a company or producer may give away items such as pens, key chains, clocks, and other similar items without violating the anti-rebating provisions set forth in W. Va. Code §33-11-4(8). Likewise, the Insurance Commissioner fields many questions about how much an individual may charge for providing a referral to an insurance company or producer without violating the prohibition on referral fees set forth in WV 114CSR2. In order to provide practical and useful guidance to the insurance industry and to the public at large, this interpretive rule sets forth reasonable standards in these areas. This interpretive rule should be read in pari materia with W. Va. Code §33-11-4(8) and WV 114CSR2.

§114-70-3. Limitation on Items of Value with Respect to Rebates.

3.1. For the purposes of W. Va. Code §33-11-4(8), the phrases "valuable consideration" and "anything of value" shall not include any educational materials, promotional materials, or articles of merchandise that cost twenty-five dollars ($25.00) or less, regardless of whether a policy or contract is purchased.

3.2. For the purpose of determining the value of any item pursuant to W. Va. Code §33-11-4(8), an insurance company or producer shall retain the original invoice for such item for five (5) years beyond the later of the date the offer is discontinued or the date the last item is given.

§114-70-4. Defining Nominal Fee with Respect to Referrals.

4.1. For the purposes of subsection 6.1 of WV 114CSR2, the phrase "nominal fee" means a one-time fee of twenty-five dollars ($25.00) or less.

4.2. The payment of any referral fee cannot depend on whether the referral results in the sale or issuance of an insurance product or service.