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

Form #5

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FILED
2004 AUG 26 P 2:34
OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: WV Code §33-2-10

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

_____

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS September 25, 2004

Authorized Signature

Insurance Commissioner
Title 114, Series 70

RESPONSE TO COMMENTS

In a letter dated and received on July 29, 2004, Sandra M. Murphy, Attorney at Law, submitted comments during the comment period in response to the proposed legislative rule. Ms. Murphy is counsel for West Virginia Bankers Association ("WVBA").

1. Ms. Murphy, on behalf of WVBA, suggests that the twenty-five dollar ($25.00) referral fee as proposed in Section 4.1 be based on the Consumer Price Index in order for that amount to be periodically increased. Ms. Murphy notes that a similar approach has been used with respect to fees permitted under the Consumer Credit Protection Act. It is the Commissioner's belief that the use of the Consumer Price Index is not warranted in this circumstance as such use would likely lead to unnecessary confusion concerning what amount could be charged as a referral fee. Moreover, the use of the Index would require the Insurance Commission to continuously be apprized of fluctuations, however small, in the allowed referral fee. Therefore, the Commissioner believes that any benefit that would result in the use of the Index is outweighed by the certainty of a set amount and the administrative burden in monitoring the changes to the fee amount.

2. Ms. Murphy also comments that Section 4.2 should be amended to provide that although a referral fee cannot be based on whether the referral results in the sale or issuance of an insurance product or service, it may be contingent on whether a potential customer contacts or keeps an appointment to meet with a registered insurance agent of the bank. The Commissioner disagrees with this proposal. The Commissioner believes that the act of referring potential insurance purchases to a licensed individual or agency insurance producer should be the only contingency that triggers the possible compensation of a nominal referral fee. Ms. Murphy's suggestion would come perilously close to basing the referral on the customer's application, which is prohibited by Section 6.1 of 114CSR2. It is a logical assumption that once a potential customer contacts or meets with the insurance producer, the application process has begun.

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July 29, 2004

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Victor A. Mullins, Esq.
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West Virginia Insurance Commission
1124 Smith Street
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VIA HAND DELIVERY

Re: Proposed Interpretive Rule - Rebates and Referrals

Dear Mr. Mullins:

Our firm represents the West Virginia Bankers Association ("WVBA"), a trade association which represents the interest of approximately 75 federally insured lending institutions in West Virginia. Many of the members of the WVBA engage in the insurance agency business. We are writing on behalf of the WVBA to comment on the proposed interpretive rule concerning rebates and referral fees. Specifically, we would like to recommend a change to the definition of nominal fee with respect to referrals.

First, we would propose that a provision be added to proposed Section 114-70-4.1 which would permit the maximum $25 referral fee to escalate from time to time based on the Consumer Price Index. A similar approach has been used with respect to fees permitted under the Consumer Credit Protection Act. See, eg., West Virginia Code Section 46A-2-115 (b)(3)(iii).

Second, we would propose that proposed Section 114-70-4.2 be amended to provide that although a referral fee cannot be based on whether the referral results in the sale or issuance of an insured product or service, it may be contingent on whether a customer contacts or keeps an appointment to meet with a registered insurance agent of the bank.

Thank you for permitting our comments on this important regulation. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Sandra M. Murphy

Sandra M. Murphy

SMM/jam
cc: A. Douglas Maddy
1290632.1

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WV INS. DEPT.

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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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. -- August 26, 2004.

1.4. Effective Date. -- September 25, 2004.

§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.